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95th Congress COMMITTEE PRINT

PANAMA CANAL TREATIES

[UNITED STATES SENATE DEBATE]

1977–78

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PREPARED BY THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

3RD AND FINAL PART

MARCH 17 THRU APRIL 19, 1978

Printed for the use of the Committee on the Judiciary

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[1] Senator James B. Allen died June 1, 1978. His widow, Maryon, was appointed to his office and subsequently to the chairmanship of Separation of Powers Subcommittee, Committee on the Judiciary on July 27, 1978.

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON SEPARATION OF POWERS,
Washington, D.C., December 1, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: At the direction of the late chairman of the Subcommittee on Separation of Powers, Senator James B. Allen of Alabama, I respectfully submit on behalf of the subcommittee the following three-volume compilation of Panama Canal Treaty debates and related material consolidated from the records of the 95th Congress.

As you particularly know through your close friendship with the late Senator, our chairman felt very strongly that the debate of these treaties was perhaps the most significant national decision facing our country during this decade, and he expended great personal energy and thought during consideration of all aspects of the proposed cession of the Canal Zone to the Republic of Panama. In directing this consolidation of the Senate debate, Senator Allen hoped to provide a single, major source document for future research by historians and for convenient use by the Congress in the continuing review of this issue—a review which will undoubtedly be resumed in the immediate future in connection with proposed legislation to authorize and implement the treaties. In my judgment, this work will well serve that intended purpose and will prove valuable to future generations in enabling an accurate understanding of what actually transpired during this important time in the history of the United States and of the U.S. Senate.

With kindest regards, I am

Very respectfully,

QUENTIN CROMMELIN, Jr.,
Chief Counsel and Staff Director,
Subcommittee on Separation of Powers.

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PANAMA CANAL TREATY

[From the Congressional Record—Senate, Mar. 17, 1978]

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the Panama Canal Treaty.

ARTICLE I

ABROGATION OF PRIOR TREATIES AND ESTABLISHMENT OF A NEW RELATIONSHIP

1. Upon its entry into force, this Treaty terminates and supersedes:
(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;
(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;
(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama, concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and
(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.
2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.
3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.
4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

The PRESIDING OFFICER. Are there amendments to article I?

Mr. ROBERT C. BYRD. Madam President, will the Chair recognize me?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I had promised the distinguished Senator from Alabama that nothing would occur until he entered the Chamber.

Mr. ALLEN. The Senator is here.

Mr. ROBERT C. BYRD. I wanted recognition to keep my commitment, so the Senator is here now. The Senator and I are both here.

Mr. ALLEN. I thank the Senator

Does the Senator desire recognition?

Mr. ROBERT C. BYRD. No. I only wanted recognition in order that I might take a little time until the Senator came into the Chamber.

Mr. ALLEN. I thank the Senator.

May I pose a parliamentary inquiry?

Mr. ROBERT C. BYRD. Yes, I yield the floor.

Mr. ALLEN. Madam President, are we now in the Committee of the Whole for the purpose of considering the Panama Canal Treaty?

The PRESIDING OFFICER. The Senate is as in the Committee of the Whole.

Mr. ALLEN. I did not understand the Chair.

The PRESIDING OFFICER. The Senate is as in the Committee of the Whole.

Mr. ALLEN. I thank the Chair. That would mean then that shortly we will start considering the Panama Canal Treaty which, I might say, many people throughout the country think was approved on yesterday. But we will start considering the Panama Canal Treaty article by article shortly, is that correct?

The PRESIDING OFFICER. We are considering that treaty article by article right now.

Mr. ALLEN. Very well. We have article I before us?

The PRESIDING OFFICER. Article I is before us.

Mr. ALLEN. I thank the Chair.

Madam President, as we consider article I of the treaty, I think it might be well to take stock of just where we stand with respect to the two treaties that have been submitted to us by the President of the United States, resulting from negotiations between the Panamanian Government and our Government with respect to the disposal of the Panama Canal, the transfer of the canal to Panama, which would take place at the end of this century, and then the approval of the so-called Neutrality Treaty, which really provides for the defense of the canal starting in the year 2000.

Yesterday the Senate, with one vote to spare, did approve the Neutrality Treaty. What, then, was the effect of the approval of the Neutrality Treaty? That vote gave tentative approval to the Neutrality Treaty. It provides that if the Panama Canal Treaty is approved by the Senate, and notes of ratification are exchanged by the two Governments, the treaties will not go into effect, I believe, until 6 months after the exchange of the notes of ratification. Therefore, such rights as might be conferred by the Neutrality Treaty are inchoate rights; they have not sprung into being as yet. They are more or less in a state of suspended animation awaiting further action by the U.S. Senate and the executive department.

This is a strange situation, and it really comes about as the result of the decision of the leadership to place the Neutrality Treaty ahead of the Panama Canal Treaty in Senate consideration of the two treaties.

I urged that the leadership not do that; that that was putting the cart before the horse. We ought first to decide whether we are going to give the Panama Canal away, and under what conditions, before we talk about defending it in the year 2000.

Madam President, I made a motion to that effect, and we had a rollcall vote here in the Senate on it. The Senate decided by a vote of 67 to 30 to abide by the leadership decision and consider the Neutrality Treaty first.

I pointed out to the leadership, both privately and on the foor, that going the route of considering the Neutrality Treaty first would deprive many Senators of the privilege of voting for the Neutrality Treaty. I urged that we decide first the basic question,

the question of whether or not we are going to give the canal away, before we worry about defending it in the year 2000.

I pointed out that if the Panama Canal Treaty were being considered first, and that treaty was approved by the Senate, there would probably be five, six, or seven amendments offered to the Neutrality Treaty, but that in the final analysis, having already agreed on the Panama Canal Treaty—if this had been the case—there would probably have been a well nigh unanimous vote for the Neutrality Treaty.

No one objects to the defense of the canal. The chief objection raised here on the Senate floor has not been to the ultimate approval of the Neutrality Treaty, if the decision is first made to give the canal away, but to strengthening amendments that were sought to be added to the treaty by Members of the Senate giving the right to continue to maintain troops in the Panama Canal Zone if it were necessary for the defense of the canal.

But, no leadership wanted to leave the provisions of the treaty just as they were, requiring full withdrawal of our troops, the abandonment of all of our bases, by the year 2000.

I pointed out to the leadership, both privately and on the floor, that going the route they were going would take more time than going the route of considering the basic question first. I suggested a difference of a week in the ultimate timing of action on both treaties.

I pointed out, too, that if the Panama Canal Treaty had first been approved, many Senators who felt on yesterday that it was necessary to oppose the Neutrality Treaty, because it was and is part and parcel of the Panama Canal Treaty, would have been glad to have voted for a strong defense treaty. If the other treaty had been acted upon first, I daresay the defense treaty, the Neutrality Treaty, could have been acted upon in not over 2 or 3 days.

No, they said they had to act on the Neutrality Treaty first because some of us cannot vote for the Panama Canal Treaty unless we have a Neutrality Treaty first.

Well, of course, they knew that the same provision is in the Panama Canal Treaty as is in the Neutrality Treaty, that each one goes into effect simultaneously with the other, no matter which is considered first. Furthermore, the leadership amendment was cosponsored by some 78 or 80 Senators, so there was no doubt but what the Neutrality Treaty would be approved and, furthermore, one could not go into effect without the other.

Because of the choice of the leadership we now have the basic question, the propriety of giving up the Panama Canal, still undecided—and very much undecided, I might add.

I assume, Madam President, that that was part of the strategy of the leadership. They are very wise and very astute; they are great Senators, with over 60 Senators following their recommendations on questions before the Senate. I have to take that back: On one amendment we received 41 votes, on an amendment I offered. I guess really they are in command of only 59 Senators on any question concerning the treaties which might come up.

The effect of the leadership action in putting the wrong treaty first has left us, after 5 weeks of debate, with the basic question, the only real question which is in dispute aside from the adequacy

of the defense rights given us under the Neutrality Treaty. The only real question in dispute is, Shall we give the canal away, and under what circumstances?

That still remains to be acted upon.

Madam President, the main thought I wish to get across, not only to the leadership and the Members of the Senate but to the people of the Nation, is that this fight is just the beginning; that no momentum has been built up that is going to move like a steamroller to the approval of the Panama Canal Treaty. If there is any thought of a buildup of momentum, let me disabuse the thinking of those who feel that that is the case. No momentum has built up, because we have not even started considering the basic and fundamental issue.

Madam President, it is rather strange that all of this effort we have gone through with respect to these treaties, including the approval by the Senate of the Neutrality Treaty, the defense treaty, will have been nullified and held for naught unless the Panama Canal Treaty is agreed to. What good would the Neutrality Treaty be if the canal stays the property of the United States or, to word it more accurately, if the 1903 treaty remains in full force and effect?

Madam President, we have a situation that I would say is somewhat analogous to two baseball teams, shall I say, playing two games, the first game being an exhibition game, not part of the regular season play of that league; then the next game being part of the regularly scheduled season between the two teams. The only game the outcome of which would be considered in the averages of the season would not be the exhibition game, which counts for nothing in the standing of the team. The only game that would have any standing in the league averages would be the regular season game. So, carrying that analogy one step farther, what we have done thus far is something of a preliminary action, an exhibition game, a straw vote, as it were—a very high level straw vote, I might say, a vote of 68 to 32. That is the way the Senate voted on the Neutrality Treaty; but unless the Panama Canal Treaty is approved by a two-thirds majority in the Senate, this action taken on yesterday will be in effect vitiated, held for naught.

If we had gone the other route and considered it first, as I had stated, I would feel we would have had a well-nigh unanimous vote for the Neutrality Treaty. So the battle has yet to be won. The battle lies ahead.

The basic and fundamental issue, the transfer of the canal—some Senators object to the use of the words "giveaway of the canal," so I am going to try, as often as I can, to refer to this as the transfer of the canal, since it is not pleasing to some Senators to say the giveaway of the canal. But the basic and fundamental issue before the Senate is, shall the canal be transferred to Panama; shall conditions be set up that would change this nonprofit operation by the United States of the canal into a profitmaking operation which the United States carries on for 22 years for Panama and, thereafter, Panama would carry on for itself; and is the American taxpayer going to be called on to pay tens and hundreds of millions of dollars?

Assurances have been given by the President himself, by the way, in his fireside chat, that payments to Panama are going to come out of Panama Canal tolls. So I think we want to write that—I might say also that statement has been made here on this floor time and time again. So I think, in the interest of the American people and in the interest of the taxpayers of the United States, we are going to want to write that into the treaty—not merely add it to the treaty in some reservation.

But the way, these reservations—I have not listened to the radio to TV this morning; I have not read the morning paper, as a matter of fact. I heard other Senators say this morning that Mr. Torrijos is saying he does not much like these reservations. I say to the distinguished Senator from North Carolina (Mr. Helms), who is listening attentively here, that I consider that an act. I do not think he has any doubt at all that he is going to accept these reservations and be overjoyed at doing so. I have said here on the floor that I believe he would accept 100 amendments. This is the opinion of the Senator from Alabama; I am not stating this as a fact. I believe he would accept 100 amendments to this treaty to get that $100 million a year start rolling in down in Panama to bolster his dictatorial regime, I say to the distinguished Senator from North Carolina.

Mr. HELMS. Will the Senator yield?

Mr. ALLEN. Yes I yield.

Mr. HELMS. Not only is the dictator Torrijos acting, I would say there are a number in the Senate and others downtown who would qualify at least for an Academy Award, I say to the Senator from Alabama.

Mr. GRIFFIN. Will the Senator from Alabama yield?

Mr. ALLEN. Yes, I yield.

Mr. GRIFFIN. The Senator from Alabama may well be correct in his appraisal of the reaction by General Torrijos. However, a matter that disturbs this Senator very much relates to an exchange, within the last 48 hours, of telephone calls and an exchange of letters between the President and General Torrijos relating to the reservations that were being considered in the Senate. I now find, by reading the morning papers—not from any information provided by the White House—that a letter was received at the White House yesterday from General Torrijos, apparently in response to a letter sent by President Carter to General Torrijos on Wednesday, and that these letters pertain directly to the matter under discussion in the Senate. Despite the fact that this Senator, early in the debate on yesterday, following a CBS report by Phil Jones, called upon the White House to provide us with a report as to previous telephone conversations and the letter sent by President Carter, no information was provided to the Senate.

I suppose some would say, "Well, now, Senator Griffin, did you call up the President and make that request personally?" No, I did not. But, of course, I know that Hamilton Jordan has the radio on down at the White House. At least, I read that he does. At the White House, they have turned off the music and are listening to the debate in the Senate. At the White House, they know what we are saying up here. I have no doubt about that.

I find it rather disturbing that the exchange of letters between the two heads of Government was not made available to the Senate yesterday before the vote. I do not know precisely what was in the letters. In the news reports this morning I find strong indications that the President apparently was seeking to assure the Panamanians that the reservations and amendments being adopted in the Senate are meaningless and will not change the treaty.

Mr. ALLEN. Is the Senator talking about the amendments to the resolution of ratification?

Mr. GRIFFIN. And certain reservations, particularly the one offered by Senator DeConcini.

Mr. ALLEN. In other words, agreeing to something here that he was assuring Torrijos did not mean anything, is that right?

Mr. GRIFFIN. Obviously, until we see the letters, it is diffcult to say what is in them.

Mr. ALLEN. Yes.

Mr. GRIFFIN. But there is every reason to be concerned that while Senators were being assured, on the one hand, that their amendments were meaningful, in order to get their vote, there were assurances being given to the Panamanians or General Torrijos that the same amendments would not change anything.

Mr. ALLEN. That is a very interesting circumstance.

Mr. GRIFFIN. I should like to see the letters.

I also learned by reading the papers that the exchange of correspondence I am referring to was read over the radio in Panama on yesterday. In other words, the letters are not a secret down in Panama, but they are a secret in the U.S. Senate. Is that not an interesting situation?

Mr. ALLEN. Yes; I might say to the distinguished Senator from Michigan (Mr. Griffin) that that is the pattern that they apparently have had down in Panama. The Senator will recall that when the President and the dictator entered into this so-called memorandum, as quickly as Torrijos got back to Panama he put an entirely different interpretation on what the memorandum meant from what our people up here were saying it meant. That very same interpretation was carried forward into the leadership amendment, because the leadership amendment was in fact the memorandum between the President and the dictator.

So just following the same pattern, if what the distinguished Senator says is correct about it being broadcast down in Panama, do I understand him to say that the President's letter was broadcast over the Panamanian radio?

Mr. GRIFFIN. That is my understanding from reading the various press reports this morning: The letter of President Carter to General Torrijos on Wednesday, and a response from General Torrijos to the President, which was delivered to the White House before yesterday's vote, were both read on the Panamanian radio yesterday. Apparently—and I wish to emphasize that I do not know the contents of the letter yet—apparently the purpose was to assure the Panamanian people that the amendments and reservations being adopted in the Senate after being "accepted" by the President, really would not change the treaty.

I take it that was the purpose of it.

Mr. ALLEN. And the Senate is the last to know about what is going on, really.

Mr. GRIFFIN. We were.

Mr. ALLEN. Between them.

Mr. GRIFFIN. We are entitled to know what was in the exchange of correspondence, which was not provided to us or to the American people.

Mr. ALLEN. Did the Senator request it of the White House?

Mr. GRIFFIN. Well, I did not know, of course, at the time I did not know there was a letter from General Torrijos to President Carter. I thought the Senate should be advised in a report provided to the Senate concerning the communications in recent days between the President and General Torrijos.

I was aware, because of a report by CBS yesterday morning, that on Wednesday the President had talked personally with General Torrijos on the telephone about these matters of concern involving the DeConcini reservation, and also that there was a letter from the President to General Torrijos.

Now, despite the public request to the President and to the White House to provide that information to the Senate it has not been forthcoming. In addition, the situation is compounded by the fact that later in the day, but before the vote, there was a letter, according to press reports, from General Torrijos to the President. I think that letter would have been very important information for the Senate to have had on yesterday.

Mr. ALLEN. Yes.

Mr. GRIFFIN. Would not the Senator agree?

Mr. ALLEN. I would certainly agree.

As soon as some of the leadership people come in—I rather imagine, possibly, they are listening to the proceedings over the radio or over the various squawk boxes that we have or some Senators have. I do not have one myself. They are probably listening to this. I should say that I feel what the distinguished Senator from Michigan feels, that would be appropriate, not only to have these letters, the correspondence between the President and Torrijos as to the amendments under consideration in the Senate—and when I say, "amendments" I mean not only amendments to the treaty, but amendments to the resolution of ratification. I think that would really have an important bearing on the bona fides of the whole operation. It would seem to me if the Senate is being assured that the reservation means something and if—and I do say "if," because I do not know if a different connotation is being placed on these amendments in assurances to Panama. I think we would need to know about that. There is nothing we can do about the action on the treaty because the action has already been sought to be reconsidered by the leadership as a parliamentary move, and then that motion has been tabled; but certainly if that is the manner that they have of treating amendments, saying here in the Senate that it means something and saying to the dictator that they do not mean anything, I think it is highly important that that correspondence come in, and along the same line, that the telephone conversations come in.

I would vote to call right now on the leadership, in their contact with the White House—and I assume they are in daily contact

with the White House; the Senator from Alabama is not, but I imagine that they are—or in one of their victory celebrations, it could be brought up at one of those sessions that some Senators here would like to have this same correspondence; and I am calling on the leadership at this time, over the weekend, to obtain for the Senate this information to which the distinguished Senator from Michigan (Mr. Griffin) has alluded, and I think it is very important to find out under what circumstances and what differing interpretations of language we were proceeding on yesterday, and then the weight that we are going to give to amendments offered here in the Senate under the assurance to us that they mean something, while assurances are being given to the other party that they mean nothing.

I am assuming that that is the thrust of what the distinguished Senator is saying.

Mr. GRIFFIN. The Senator from Alabama is precisely correct. And, of course, one could only engage in speculation at this point, without having those letters before us and being able to read them, but certainly one must wonder, if that information had been available to the Senate yesterday, whether the vote would have been the same.

Mr. ALLEN. Well, I think it might be well to put a time, not only a date, but a time for the dispatch of the President's letter or communication or phone call, the time of day as well as the date itself.

Would the Senator join in the request of the Senator from Alabama that those letters and a log of those phone calls be made available to the Senate on Monday?

Mr. GRIFFIN. Oh, well, I would hope that the White House——

Mr. ALLEN. Or possibly today.

Mr. GRIFFIN. This is the Senate of the United States. We are a coordinate, equal branch of the Government with a responsibility of high order. I would think the President would immediately provide those letters to us upon request. I will be surprised and shocked if that is not the case. I do not understand why this information was not provided yesterday before the vote.

Mr. ALLEN. The distinguished Senator seems to think they might have sent it up by limousine within the hour possibly.

Mr. GRIFFIN. I would hope so, if the White House staff is listening on the radio down there, as I am sure they are. Of course, they may not be quite as interested in the debate this morning.

Mr. ALLEN. Well, they had better start taking an interest, because, as the distinguished Senator from Michigan knows, the battle is just now getting started.

Mr. GRIFFIN. Before I forget, I ask unanimous consent that various articles which appeared principally in the New York Times and the Washington Post providing the background from which I am speaking be printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

[From the Washington Post, Mar. 17, 1978]

Panama Hails Vote; Senate Reservation May Cause Trouble

(By Karen DeYoung)

Panama City.—The Panamanian government yesterday called the U.S. Senate's ratification of the Panama Canal neutrality treaty "a historic moment for the country," but warned that it would study carefully a reservation the Senate approved in its action on the treaty.

The reservation authorizes the use of U.S. military force in Panama, and the government here said it will determine if that alters the treaty objectives or violates Panamanian sovereignty or integrity.

In a radio address to the country minutes after the Senate vote, chief treaty negotiator Romulo Escobar Betancourt said that Panamanian head of state Gen. Omar Torrijos sent a letter to President Carter yesterday outlining possible problems with the reservation.

Panama, the Torrijos letter said, will find "unacceptable any reservation that dishonors the national dignity, that changes the objectives of the treaty, or is intended to impede the exercise of Panama's sovereignty over all of its territory or the U.S. military withdrawal on December 31, 1999."

A government spokesman said the letter referred primarily to the reservation proposed by Sen. Dennis DeConcini (D-Ariz.) and approved by a 75–23 vote preceding the ratification approval.

The reservation authorizes both Panama and the United States independently to use military force in Panamanian territory should the canal be closed or its operations interfered with, even after the 1999 withdrawal date.

Panama has long objected to any provision of the neutrality treaty that would authorize a U.S. military presence here without Panamanian permission.

Torrijos was believed to be greatly angered by the proposed reservation. It puts him in the difficult position of explaining to the Panamanian people a possible eventuality—U.S. invasion of Panama should canal operations be interfered with—that he had promised them would not occur.

Escobar said Torrijos had received a letter Wednesday and a telephone call yesterday afternoon from President Carter explaining the additional provision and the probability of its passage.

A lengthy radio explanation of the reservation, including a full reading of the texts of the Carter-Torrijos letters, was apparently an attempt to head off anticipated criticism here of the DeConcini provision and circumvent the need for an additional Panamanian referendum to approve it.

While pledging that the issue would be carefully studied, Escobar said that, in principle, the government considered the reservation "allowable" since it did not affect the "essence or content" of the treaty itself.

Specifically, he said, the reservation did not affect the scheduled 1999 closing of U.S. bases and complete withdrawal of U.S. troops stationed here.

Torrijos spent the day closeted with his Cabinet in the downtown house of a friend. Reporters converging on the scene after the Senate vote were told that Torrijos had "nothing to say" in addition to the Escobar statement.

While anticipated large-scale anti-treaty demonstrations did not occur, a small group of University of Panama law students paraded on the campus with banners reading, "No to the Right of Yankee Intervention in Panama." Students said the turnout—no more than 30—was low because the university is currently in spring recess.

A spokesman for a group of Panamanian attorneys who have been outspoken treaty opponents said they would meet to compose a protest statement.

"We think [approval of the DeConcini reservation] was an elegant way for the Senate to reject the treaty," he said. The attorneys maintain, and the spokesman said the Senators are aware, that the additional provision will require another referendum on the treaties here.

A referendum, required by Panamaian law, was held here last October and showed that 66 percent of the population approved the treaties. The lawyers said that the "wording of the referendum question did not say anything about changes on reservations," and thus new provisions require a new vote.

In the U.S.-controlled Canal Zone, most ignored the final Senate debate until the last moment, when they turned on their radios to hear the live Southern Command Network broadcast. Canal company spokesman Al Baldwin said he "never saw [the Canal Zone] so quiet in my life."

While the predominantly antitreaty Zonians took the new of passage of the treaty in relative silence, the radio perhaps expressed the sentiment of some.

A country music broadcast following the end of the debate and vote began with a mournful song entitled "You can take this job and shove it, I ain't working here no more."

[From the New York Times, Mar. 17, 1978]

Panamanians Reluctantly Indicate They Accept Pact's Reservations

(By Alan Riding)

Panama City, March 16.—With evident reluctance, the Panamanian Government indicated tonight that it would accept the last-minute reservations attached to the new Panama Canal neutrality treaty before it was ratified by the United States Senate today.

In a nation-wide radio broadcast immediately after the Senate vote, Panama's chief treaty negotiator, Romulo Escobar Betancourt, said that "the fundamental objectives sought by Panama in the treaty have not been affected by the reservations."

He said that Panama's chief of government, Brig. Gen. Omar Torrijos Herrera, had ordered that the various amendments and reservations attached to the neutrality treaty this week be carefully studied by officials here before a formal response is made to the United States.

But Dr. Escobar added: "In principle, we consider that these reservations are very digestible since they do not touch the foundations, essence or content of the neutrality treaty, above all such basic provisions as the [United States] military withdrawal by Dec. 31, 1999."

Diplomatic sources nevertheless indicated that General Torrijos and the Panamanian negotiating team were particularly distressed by the reservation adopted by the Senate today granting the United States the right to send troops into Panama after the year 2000 if the canal were closed even by a strike.

STORM OF PROTEST EXPECTED

But rather than reject the reservation out of hand or risk defeat of the treaties in a new Panamanian plebiscite, General Torrijos has apparently decided to try to ride out the storm of protest that is expected to follow the spelling out of the American right to intervene here after 2000.

Leftist and Nationalist opposition groups that campaigned against Panamanian ratification of the treaties last October are now expected to begin a new offensive, contending that Panama has been forced to make too many concessions to Washington. "At the very least, we should have another plebescite," said a spokesman for the left-of-center Independent Lawyers' Movement.

A small group of leftist students held a brief demonstration against the treaties on the university campus here this afternoon, but few young people attended because high schools and the university are closed for vacation. When classes reopen next month, however, more protests are planned.

To forestall an angry reaction by the Panamanian Government to the reservations, the Carter Administration has maintained close contact with General Torrijos over the last four days of Senate debate, with a top American treaty negotiator, Ambler Moss, Deputy Assistant Secretary of State for Congressional Relations, sent to explain the reservations to senior officials here.

President Carter also wrote to General Torrijos yesterday morning and had a telephone conversation with him later in the afternoon. In his letter, according to Dr. Escobar, Mr. Carter indicated that "everything possible to insure that the reservations are in accordance with the general objectives of the treaty" had been done.

In his response to President Carter, sent last night, General Torrijos expressed gratitude for Administration efforts to insure Senate ratification of the treaties and indicated that Panama would study the reservations with great care.

"Our study will be guided by the following principles," he told Mr. Carter. "For Panama, any reservation will be unacceptable if it affects national dignity, distorts or changes the objectives of the treaty or is aimed at impeding the effective exercise of Panama's sovereignty over all its territory, the handover of the canal or the military withdrawal by Dec. 31, 1999."

ANY MOVE AT "INTERFERENCE" REJECTED

General Torrijos said that the Panamanian people would not accept "words or ambiguous phrases that imply or mean perpetual occupation or interference in our internal affairs disguised as neutrality."

The key reservation adopted by the Senate this morning had the effect of dampening any immediate celebration over the United States ratification of the neutrality treaty that, with the new canal treaty that is still awaiting final American approval, should eventually replace the 1903 treaty that gave the United States control over the canal and the Canal Zone "in perpetuity."

After his broadest speech, Dr. Escobar told reporters that today's vote was "a great triumph." But General Torrijos, ensconced with his advisers in a well-guarded house in a residential district of Panama City, refused to speak to the press.

Asked by reporters if Panama was angered by the last-minute reservations, Ernesto Solis, the general's spokesman, said: "We have never been angry, we have always been expecting justice from the United States." Asked if Panama had now obtained justice, he added: "We hope we will get it."

U.S. WORRIED OVER PANAMANIAN REACTION

WASHINGTON, March 16.—The Carter Administration was concerned tonight about Panamanian acceptance of the amendments and reservations to the Neutrality Treaty.

In particular, Administration officials feared the reaction of General Torrijos to the reservation proposed by Senator Dennis DeConcini, Democrat of Arizona, that in effect would give the United States the right to send troops to Panama to reopen the canal or restore operations on the waterway, if such actions should ever be deemed necessary, after Panama takes control.

Mr. GRIFFIN. Will the Senator yield me 30 seconds more?

Mr. ALLEN. Yes.

Mr. GRIFFIN. I have a little bit of additional information to add to our colloquy.

I do not have available the complete letter from General Torrijos to President Carter which was delivered on yesterday, but there is now available from an authoritative source the fact that the letter from General Torrijos to President Carter included this sentence:

In your letter and your conversation—

And that refers to the telephone conversation—

you informed me the Senate will introduce some reservations, but that they do not alter or lessen the contents of what was agreed to in the Neutrality Treaty or in our statement of October 14, 1977.

Mr. ALLEN. Very interesting.

Mr. GRIFFIN. Yes. I hope the letters will be provided so we can see exactly what it was President Carter wrote to General Torrijos.

Of course, it would be even more interesting if we could have a transcript of the telephone conversation as well—all of which was pertinent and important information and should have been available to the U.S. Senate as we were proceeding yesterday to a vote on the treaty.

The fact that a public request had been made for the information and that it was not provided is very disturbing to this Senator.

Mr. ALLEN. I feel the information will be made available. I have that much confidence in the administration and the openness of this administration. But I feel sure that will be forthcoming.

(A colloquy concerning emergency farm legislation which occurred at this point is printed earlier in today's RECORD, by unanimous consent.)

Mr. BAKER. On the matter of the alleged exchange of correspondence between the White House and General Torrijos, I would tell

my friend from Alabama that I have no knowledge of that. I have not been informed of such letters. I do not know of such letters. I heard of them first this morning.

Mr. ALLEN. It may not have been letters but communications in other forms.

Mr. BAKER. I do think on that score I would say that on yesterday I was advised by the Vice President's office that the Panamanians have expressed concern about the DeConcini reservation. but no mention was made to me of letters, and if there are letters, I must say I think the Senate is entitled to those letters.

Mr. ALLEN. I thank the Senator.

Mr. BAKER. I joined with the opponents of this treaty in insisting, for instance, that we have full access to the implementing legislation for these treaties. That is unprecedented. I am told no other administration has ever submitted implementing legislation for treaties in advance of the vote on ratification.

But as the Senator from Alabama may know, in response to a request made by the distinguished Senator from South Carolina (Mr. Thurmond) and others on my side, I wrote to the Secretary of State and insisted that we have a full draft of the implementing legislation proposed for these treaties before we voted on them, and that was done.

I am pleased it was, because I have been insistent that every Member of the Senate on my side of the aisle, indeed, every Member of the Senate, for or against the treaty, have every scrap of information which is relevant to our intelligent determination of these issues. I think these letters, if there are letters, fall in the same category. I herewith express my support for any request for such letters, or copies of those letters, if they exist. If they do not exist, of course, it is a different matter.

My only motivation is to see that the Senate have all the facts and all of the relevant detail and material, all the documentation, necessary to make an intelligent, reasoned and rational decision on these treaties. Nothing should be withheld.

Mr. ALLEN. I thank the distinguished Senator.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. ALLEN. Let me answer and then I will yield.

I have never stated other than I have great admiration for the distinguished Senator (Mr. Baker), our distinguished minority leader. I have confidence in his openness, his fairmindedness, his candor, and his willingness—not only his willingness but his determination—to ascertain the facts. I appreciate his attitude. I have certainly not in any sense been critical in the slightest of the Senator.

Mr. BAKER. If the Senator will yield, I did not believe the Senator from Alabama had been critical. I simply wanted to reiterate what I am sure the Senator already knew, that I insist the Senate have every document, whether it helps or hurts the treaties, that we have every document and every bit of information.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. Mr. President, did I understand the distinguished Senator to say that he felt we would arrive at an agree-

ment which would include a vote on the resolution of ratification within a reasonable length of time?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. But that it would be after the Easter nonlegislative period before we could reach such an agreement?

Mr. ALLEN. Yes. I would like to suggest that is not unfair. The distinguished majority leader has already scheduled two bills which have 6 hours each on them, starting on Tuesday, with leave to amend. They might well take the entire remaining period that we have prior to the recess. I would hope the distinguished majority leader would not think it was unreasonable to allow us to get back from our recess, assess the situation, debate the matter for possibly 2 or 3 days and then sit down and seek to come to a reasonable agreement on a time certain to vote. We did work that out on the Neutrality Treaty. I am confident we can do it again.

Mr. ROBERT C. BYRD. I appreciate what the Senator has said. I do not understand what he means when he says that the consideration of the farm bill would be continuing to the beginning of the Easter nonlegislative period.

Mr. ALLEN. It is possible that it might. I thought both bills had 6 hours with leave to amend.

Mr. ROBERT C. BYRD. It has been reduced to 4 hours each, with the understanding that any motions, appeals, and so on, would come out of those 4 hours.

Mr. ALLEN. That would take 1 full day, then.

Mr. ROBERT C. BYRD. It would take 1 full day.

Mr. ALLEN. I misunderstood the time.

Mr. ROBERT C. BYRD. I hope that the Senate will be able to enter into an agreement before the nonlegislative period for the observance of Easter, which would lay down a definite date at some point following that nonlegislative period when the Senate could reach a final decision on the resolution of ratification for the Panama Canal Treaty. My thought was if we could agree to a date during the week of April 10, that would allow us 5 days before the nonlegislative period, and it would allow us up to 10 days, not including Saturdays, and we could utilize Saturdays, following the nonlegislative period. It would make a total of something like 15 days which would seem to me to be adequate in view of the fact that we actually have been debating this treaty into the 23d day. While the Senate was considering the Neutrality Treaty, it was also debating the Panama Canal Treaty.

As the distinguished Senator from Alabama has so correctly stated, both of these are one package and the debate has been rather frequently far reaching. There has been no attempt to confine the debate on the Neutrality Treaty.

Actually, with the treaties having been debated for 22 days prior to today, I do not think it is unreasonable for the majority leader to express the hope that before next Thursday evening at the close of business when we begin the nonlegislative period which was scheduled previously and announced to run from the close of business on Thursday, March 23, until Monday, April 3—that nonlegislative period has been laid out for Senators so they could schedule engagements in their home States—we could reach an agreement

which would assure the Senate that it would dispose, one way or the other, up or down, of this Panama Canal Treaty.

I think we should have every reason to hope that after 5 days, beginning today, and concluding those 5 days next Thursday, and then taking the first 5 days when we return, and the second 5 days, into the week of April 10, there would be 3 weeks of debate on this treaty. It seems that would be a very reasonable suggestion. I hope the distinguished Senator from Alabama will give this his consideration over the weekend. We might arrive at an agreement one day next week.

Mr. ALLEN. I appreciate the courtesy and graciousness of the distinguished majority leader. Certainly, I can find no fault with what he has suggested. I believe we could reach pretty much the same end result if we did wait until after the recess. I am certainly not trying to prolong the debate. I do not know what it is going to encompass before we get into it. That is the reason I would like to debate it for the rest of this week, or until the recess, and then take an assessment of the situation soon after we come back.

I point out that no dilatory tactics have been used with respect to the first treaty. Senators were ready and, as a matter of fact, standing in line most of the time in order to speak. There were no quorum calls of any large number which were requested.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator will suspend. Will Senators wishing to carry on conversations please retire to the cloakrooms?

Mr. ALLEN. I will say that fewer than 10 quorum calls have been called for during this debate. The Senator from Alabama did not make a single request for a quorum call until the last day of the debate, at a time when he felt a quorum call was appropriate.

I assure the distinguished majority leader there is going to be no effort to use dilatory tactics. There will be no filibuster by amendment. Only legitimate amendments will be offered. There will be an effort made, however, to protect the interests of the United States and to protect the interests of the taxpayers of the United States. I know the distinguished majority leader wants to accomplish the same end result. I think in time we can work out a very fair and reasonable agreement. It might not take the length of time the Senator suggests.

Mr. ROBERT C. BYRD. Mr. President, what the Senator says encourages me. I hope that it will be possible, after the nonlegislative day period, to reach an agreement which would bring about a final vote earlier than the date which was included in my suggestion. However, I think that, unless we are able to reach an agreement before the evening of next Thursday—and I do not rule that out; I hope the distinguished Senator from Alabama will give further thought to it over the weekend and during next week, and talk with others who are on his side in this matter. I hope that we could still reach an agreement.

Mr. ALLEN. I hope the Senator will not proceed further than that, because if the Senator is getting ready to say what I fear he is getting ready to say, I do not believe that would be conducive to reaching an agreement. I hope he will leave it where he has now stopped.

Mr. BAKER. Mr. President, will the Senator yield for just a moment?

Mr. ROBERT C. BYRD. Will the Senator allow me to regain my composure?

[Laughter.]

I think that this is about the first time that I can recall that I have been left completely disarmed, speechless, and helpless. He anticipated what I am going to say and cut me off at the pass.

Well, I shall not proceed to say what I was about to say. In good humor, may I say that I have been encouraged by what the Senator from Alabama has said.

May I just close on this St. Patrick's Day by saying that if we can reach agreement, we will not get to that sad state of affairs to which the poet alluded when he said:

There once was two cats from Kilkenny.
Each thought there was one cat too many.
So they quarreled and they fit;
They scratched and they bit;
'Til barrin' their nails
And the tips o' their tails,
Instead of two cats, there weren't any.

I hope that the two sides will not proceed to the point that there is nothing left but their nails and the tips of their tails.

Mr. PERCY. Will the Senator yield?

Mr. ALLEN. Yes, I am going to yield the floor in just a moment. I shall be delighted to yield at this time to the distinguished Senator from Illinois.

Mr. PERCY. May I have the attention of the distinguished majority leader?

Mr. ALLEN. If the Senator will excuse me, I shall yield the floor.

Mr. ROBERT C. BYRD. Will the Senator yield to me for just a moment?

Mr. ALLEN. Yes, I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I have in my hands a letter dated March 17, 1978, which is this date, addressed to me by Douglas J. Bennet, Jr., Assistant Secretary for Congressional Relations, which reads as follows:

DEPARTMENT OF STATE,
Washington, D.C., March 17, 1978.

HON. ROBERT C. BYRD,
U.S. Senate.

DEAR SENATOR BYRD: You may wish to share with the Senate the exchange or correspondence between President Carter and General Torrijos which occurred in connection with the Senate's vote on the Neutrality Treaty. Copies of both letters are enclosed.

With best wishes,
Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary for Congressional Relations.

Mr. President, I shall make arrangements to see that all Senators have copies of these letters. I ask unanimous consent that they be printed in the Record.

Mr. ALLEN. The cover letter is dated today. Would the Senator mind saying the date of the letters enclosed?

Mr. ROBERT C. BYRD. I have not had opportunity to read them. As I look at them now, they are dated March 15.

Mr. ALLEN. I see.

The PRESIDING OFFICER. Did the Senator from Alabama object to the unanimous-consent request?

Mr. ALLEN. No; I have no objection.

There being no objection, the letters were ordered to be printed in the Record, as follows:

MARCH 15, 1978.

MY DEAR GENERAL: As you know, the Senate is now approaching the end of its debate on the Neutrality Treaty. Although we expect the final vote to be close, we remain hopeful about the result.

We have made good progress since last September when you and I signed the Treaties. The Senate Foreign Relations Committee endorsed the Treaties by an overwhelming vote. In the Senate debate, we have fortunately been able to prevent any amendments to the Treaty other than the so-called "Leadership" amendments to Articles IV and VI. These incorporate exactly the terms of the Statement of Understanding published after our conversation of October 14.

In considering its Resolution of Ratification of the Treaty, the Senate will almost certainly attach a number of reservations, conditions or understandings reflecting certain of its concerns. We have made every effort and have been successful to date in ensuring that these will be consistent with the general purposes of our two countries as parties to the Treaty. I hope you will examine them in this light.

After approving the Neutrality Treaty, the Senate will move immediately to consider the basic Panama Treaty. While there will be problems, I am hopeful that the outcome will again be favorable, and that the two Treaties combined will gain for our countries the advantages we had envisaged when we signed them last September.

I know that the long public discussion of the Treaties in the United States has involved difficulties for you and your country. It has been a necessary element in informing the American public of the reasons for negotiating the Treaties and the benefits they bring to both parties. We have made notable progress in this regard.

Thus, as matters stand today, we are approaching an important milestone. If all of us can continue to work patiently and constructively for the achievement of our objectives, I believe we can achieve the outcome we both desire—sound and equitable Treaties in our common interest.

JIMMY CARTER.

MARCH 15, 1978.

DEAR PRESIDENT CARTER: In your kind letter of this date, as well as in the conversation which we had this afternoon, you expressed to me, among other things, your hope concerning a positive vote in the United States Senate on the Neutrality Treaty. I understand and I perceived the great efforts which you, as head of a great nation as well as those of numerous distinguished Senators, have carried out to create a consciousness in the rest of the Senate and in the American public for the need for a new relationship between Panama and the United States.

After intense and difficult negotiations we signed the resulting Treaties in Washington. Subsequently, and on account of certain confusion with respect to two articles of the Neutrality Treaty, we proceeded to release a Memorandum of Understanding which clearly interpreted the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the Canal, priority passage for warships in case of emergency and nonintervention in the internal affairs of Panama as well as a respect for territorial integrity and political independence of my country.

In this manner we perfected treaties which have received, because of their balance and equity, the support of practically all the countries of the world.

In your letter and conversation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content of what was agreed upon in the Neutrality Treaty and in our Declaration of October 14, 1977. In this respect, I wish to inform you that the Government of Panama will proceed to study carefully these reservations and will take its position once the Senate has voted on both Treaties. The situation is thus because in the plebiscite held in Panama the Panamanian people voted for the two Treaties together and not in separate form.

I do wish, nonetheless, to point out that such a study will be based on the following concepts: For Panama any reservation would be unacceptable which blem-

ished our national dignity, which altered or changed the objectives of the Treaty or which were directed at hindering the effective exercise of Panamanian sovereignty over all of its territory, the transfer of the Canal, and military withdrawal on December 31, 1999. For that reason, I received with great gratitude your words that these objectives will absolutely not be changed by means of amendments or reservations. This reaffirms my estimate concerning the great morality and honesty which characterizes you as a political leader and as a person.

The Panamanian people would not accept words, misplaced commas or ambiguous sentences which had as their objective, or which might signify, occupation in perpetuity disguised as neutrality or intervention in their internal affairs.

President Carter, we both know the difficulties which we must overcome to achieve a new attitude in our two countries. But the expressions which you have made to me reveal the intimate truths of a man of great integrity. We believe that the American people elected you precisely for these qualities. Therefore, with the frankness which has characterized our relationship, I must tell you that we must face all of these difficulties about the Treaties with true courage.

The great power of conviction which you have must reach the true and upright men of your Senate. In your country there exists great proof of this fact by virtue of men who have never considered arrogance or threats as normal standards of conduct in the United States in its relations with the various sectors of its own people and in its relations with other countries. For that reason Lincoln, Franklin Delano Roosevelt, Kennedy and other great American Presidents hold a place in the history of the United States and serve as an inspiration to other peoples of the world.

It is obvious that not only Panama but the entire world anxiously awaits the decision which the Senate will make tomorrow. The Canal, as an international public service, is of interest to all humanity. For that reason, we see in the Treaties which we signed the peaceful solution which guarantees access to the Canal on an equal basis to all its users. Panama has made its great sacrifice: to wait 22 long years to achieve its decolonization. We have demonstrated maturity and patience. We are confident that the Senate will not disappoint the world.

Let me take this opportunity to express my highest esteem.

OMAR TORRIJOS HERRERA,
Chief of Government of the Republic of Panama.

Mr. ALLEN. I was just wondering, I say to the distinguished majority leader, if the letters were dated the 15th, it might have been of some benefit to the Senate to have had them up here on the 16th. They might have influenced a vote.

Mr. ROBERT C. BYRD. Mr. President, that could be said both ways. We could say what might have been.

Mr. ALLEN. I doubt if it would have made votes for the treaty.

Mr. ROBERT C. BYRD. I beg the Senator's pardon?

Mr. ALLEN. I doubt if the letters would have made votes for the treaties. Possibly they would have.

Mr. ROBERT C. BYRD. I do not know. I have not read them yet. I have tried to secure them for the Senator because of his interest. Of all sad words of tongue or pen, the saddest are these: "It might have been."

I do not know. They might have made votes. But I have not read them. I have asked that they printed in the Record because I wanted the Senator to know that the leadership wants to cooperate in every way to get the information that he and Senator Griffin had expressed interest in.

Mr. ALLEN. I appreciate that. I might say that it is further indication of the power of the leadership, because only 30 minutes ago did we request the leadership to furnish these documents. Now we have them and they are before the Senate.

Mr. ROBERT C. BYRD. Mr. President, there is a time for every purpose under heaven; a time to speak and a time to keep silent. I shall choose to keep silent.

Mr. BAKER. Will the Senator yield to me?

Mr. ALLEN. Yes.

Mr. BAKER. Mr. President, I have just been handed copies of the letters of March 15, to which the majority leader referred, by a representative of the Vice President's office. I only want to take this opportunity to express my appreciation to the administration for very promptly acceding to the suggestion or the request that these letters be supplied. I am happy that they are now part of our official record.

Mr. ALLEN. Before yielding the floor, I wonder if I may glance at one copy.

Mr. ROBERT C. BYRD. Mr. President, let us just read the letters.

Mr. ALLEN. Fine; I yield for that purpose.

Mr. ROBERT C. BYRD. If the Senator will yield, I read first the letter by President Carter dated March 15, 1978, addressed to General Torrijos as follows:

MY DEAR GENERAL: As you know, the Senate is now approaching the end of its debate on the Neutrality Treaty. Although we expect the final vote to be close, we remain hopeful about the result.

We have made good progress since last September when you and I signed the Treaties. The Senate Foreign Relations Committee endorsed the Treaties by an overwhelming vote. In the Senate debate, we have fortunately been able to prevent any amendments to the Treaty other than the so-called "Leadership" amendments to Articles IV and VI. These incorporate exactly the terms of the Statement of Understanding published after our conversation of October 14.

In considering its Resolution of Ratification of the Treaty, the Senate will almost certainly attach a number of reservations, conditions or understandings reflecting certain of its concerns. We have made every effort and have been successful to date in ensuring that these will be consistent with the general purposes of our two countries as parties to the Treaty. I hope you will examine them in this light.

After approving the Neutrality Treaty, the Senate will move immediately to consider the basic Panama Treaty. While there will be problems, I am hopeful that the outcome will again be favorable, and that the two Treaties combined will gain for our countries the advantages we had envisaged when we signed them last September.

I know that the long public discussion of the Treaties in the United States has involved difficulties for you and your country. It has been a necessary element in informing the American public of the reasons for negotiating the Treaties and the benefits they bring to both parties. We have made notable progress in this regard.

Thus, as matters stand today, we are approaching an important milestone. If all of us can continue to work patiently and constructively for the achievement of our objectives, I believe we can achieve the outcome we both desire—sound and equitable Treaties in our common interest.

JIMMY CARTER.

Mr. President, as I read that letter, I am reminded of the tempest in the teapot. From what I have heard said today, there has been much ado about nothing. I see nothing in that letter—nothing. I think it was a very diplomatic, very factual, very articulate presentation of the situation as it existed and, as the President said:

We have made every effort and have been successful to date in ensuring that these will be consistent with the general purposes of our two countries as parties to the Treaty.

Mr. President, I congratulate the President of the United States on the letter. I think it laid out to General Torrijos in concise and succinct terms what the situation was. I hope that will put the matter to rest.

Now if the Senators would like for me to read the response—I suppose it is a response—by General Torrijos to the President's letter, I will be glad to do that.

Mr. SPARKMAN. Do it.

Mr. ROBERT C. BYRD. Let us do it. All right.

The letter is dated same date, March 15, which I believe has been recognized for centuries as the ides of March.

MARCH 15, 1978.

DEAR PRESIDENT CARTER: In your kind letter of this date, as well as in the conversation which had this afternoon, you expressed to me, among other things, your hope concerning a positive vote in the United States Senate on the Neutrality Treaty. I understand and I perceived the great efforts which you, as head of a great nation as well as those of numerous distinguished Senators, have carried out to create a consciousness in the rest of the Senate and in the American public for the need for a new relationship between Panama and the United States.

After intense and difficult negotiations we signed the resulting Treaties in Washington. Subsequently, and on account of certain confusion with respect to two articles of the Neutrality Treaty, we proceeded to release a Memorandum of Understanding which clearly interpreted the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the Canal, priority passage for warships in case of emergency and non-intervention in the internal affairs of Panama as well as a respect for territorial integrity and political independence of my country.

In this manner we perfected treaties which have received, because of their balance and equity, the support of practically all the countries of the world.

In your letter and conversation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content of what was agreed upon in the Neutrality Treaty and in our Declaration of October 14, 1977.

Mr. ALLEN. Would the Senator mind reading that sentence over? I think it is significant.

Mr. ROBERT C. BYRD. I will read it over when I finish. I may have some comment.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. I would like to read the rest of the letter. Will you allow me to read the rest of the letter?

The Senator does not mind if I proceed.

Mr. ALLEN. I did not say I minded. I made a request of the distinguished Senator.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

In this respect, I wish to inform you that the Government of Panama will proceed to study carefully these reservations and will take its position once the Senate has voted on both Treaties. The situation is thus because in the plebiscite held in Panama the Panamanian people voted for the two Treaties together and not in separate form.

I do wish, nonetheless, to point out that such a study will be based on the following concepts: For Panama any reservation would be unacceptable which blemished our national dignity, which altered or changed the objectives of the Treaty or which were directed at hindering the effective exercise of Panamanian sovereignty over all of its territory, the transfer of the Canal, and military withdrawal on December 31, 1999. For that reason, I received with great gratitude your words that these objectives will absolutely not be changed by means of amendments or reservations. This reaffirms my estimate concerning the great morality and honesty which characterizes you as a political leader and as a person.

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President Carter, we both know the difficulties which we must overcome to achieve a new attitude in our two countries. But the expressions which you have made to me reveal the intimate truths of a man of great integrity. We believe that the American people elected you precisely for these qualities. Therefore, with the frankness which has characterized our relationship, I must tell you that we must face all of these difficulties about the Treaties with true courage.

The great power of conviction which you have must reach the true and upright men of your Senate. In your country there exists great proof of this fact by virtue of

men who have never considered arrogance or threats as normal standards of conduct in the United States in its relations with the various sectors of its own people and in its relations with other countries. For that reason Lincoln, Franklin Delano Roosevelt, Kennedy and other great American Presidents hold a place in the history of the United States and serve as an inspiration to other peoples of the world.

It is obvious that not only Panama but the entire world anxiously awaits the decision which the Senate will make tomorrow. The Canal, as an international public service, is of interest to all humanity. For that reason, we see in the Treaties which we signed the peaceful solution which guarantees access to the Canal on an equal basis to all its users. Panama has made its great sacrifice: to wait 22 long years to achieve its decolonization. We have demonstrated maturity and patience. We are confident that the Senate will not disappoint the world.

Let me take this opportunity to express my highest esteem.

OMAR TORRIJOS HERRERA,
Chief of Government
of the Republic of Panama.

Now, I will read, at the request of the Senator from Alabama again this sentence in General Torrijos' letter.

In your letter and converation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content of what was agreed upon in the Neutrality Treaty and in our Declaration of October 14, 1977.

Mr. ALLEN. I thank the Senator.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama.

Mr. ALLEN. Mr. President, I am glad to receive these letters, which were mentioned first on the floor here by the distinguished Senator from Michigan (Mr. Griffin). I am wondering if there was a reply by the President to this letter.

Is there a reply to the letter of March 15?

Mr. ROBERT C. BYRD. Pardon?

Mr. ALLEN. I am wondering if there was a reply to the letter of March 15 from Torrijos to the President.

Mr. ROBERT C. BYRD. Well, Mr. President, I will immediately dispatch a call to the President of the United States or to one of his aides and inquire.

Mr. ALLEN. I thank the distinguished Senator.

Mr. ROBERT C. BYRD. I will attempt to get the answer for the Senator as to whether or not there was a reply to General Torrijos' reply to the President's letter.

Mr. ALLEN. I thank the Senator. The significant sentence here, it would seem, is in the dictator's letter to President Carter, starting with the fourth paragraph of that letter of Torrijos to President Carter.

In your letter and conversation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content of what was agreed upon in the Neutrality Treaty and in our Declaration of October 14, 1977.

It looks as if Torrijos got the impression that the reservations, though here on the floor we were of the opinion that they did alter or detract from the content of what was agreed upon in the Neutrality Treaty and our declaration of October 14, 1977. Though, if we did not do something, what was the use of offering them.

I am also somewhat puzzled by the identical dates on the letters. I am wondering if Mr. Torrijos was in town or at the White House at the time and they exchanged their letters. I am not an expert,

but it looks like the letters may have been written on the same typewriter.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. Does the Senator want to go out over the airwaves of this country with this kind of subtle accusation? I do not believe the Senator wants to do that.

Mr. ALLEN. I merely asked.

I would ask the majority leader, if Mr Torrijos was in town on March 15. Both letters are dated on that day.

Mr. ROBERT C. BYRD. Oh, they are both dated on that day, but we do not live in the age of Samuel F. B. Morse. We live in the age when communications are rather fast. One speaks and in the same instant people hear him halfway around the world. I hope the Senator will not imply that because two letters are dated the same date, they may have been written on the same typewriter, and so on. I do not believe the Senator wants to leave that impression.

The Senator first suggested that the leadership get the letter that was written by the President and the response. Now I have got them and I have read them.

Mr. ALLEN. Very well. I appreciate that. I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. I thought it was the Senator's understanding to begin with that they were of the same date.

Mr. SPARKMAN. May I respond?

Mr. ROBERT C. BYRD. In further response to the Senator's question.

Mr. ALLEN. Obviously, they are copies and could well have been prepared in the same place.

Mr. ROBERT C. BYRD. I would hope they would be bona fide.

Mr. ALLEN. I am sure.

Mr. SPARKMAN. Will the Senator yield?

Mr. ROBERT C. BYRD. May I further respond to say, and I will not proceed further, in answer to the question the Senator just asked, I am informed that there was no further communication, no further letter written in response to General Torrijos' letter.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. Which was in reply to the President's.

Mr. SPARKMAN. Will the Senator yield to me?

Mr. ROBERT C. BYRD. Yes.

Mr. SARBANES. Will the Senator yield to me?

The PRESIDING OFFICER. Senator Allen has the floor.

Mr. ALLEN. Yes, I yield to my distinguished senior colleague.

Mr. SPARKMAN. I understand, preceding the writing of this exchange of letters, they had telephone conversations.

Can the Senator tell me if that is right? That is my understanding.

Mr. ROBERT C. BYRD. I do not know. I do know we live in a world in which countries exchange letters by cable. That does not require 24 hours always to respond to a communication between these two countries.

I just take some umbrage, the implication that these two letters which were requested by the leadership after the charge was made on the Senate floor and in partial response—

Mr. ALLEN. No charge was made.

Mr. ROBERT C. BYRD. I did not say a Senator made the charge. I said a charge was made on the Senate floor which left the inference to be drawn that there was some kind of hocus-pocus, or something, that went on between President Carter yesterday and General Torrijos that should be kept hidden, that has been kept unrevealed, and that if revealed it might have changed the votes on yesterday.

Now, I have secured the correspondence. I hope that Senators will not imply that these letters have been manufactured.

Mr. ALLEN. I make no such charge.

Mr. SPARKMAN. I think I can clear that up.

Mr. ROBERT C. BYRD. All right. I hope the Senator can.

Mr. SPARKMAN. If we note in the letter to President Carter, General Torrijos says:

> Your kind letter of this date, as well as in the conversation which we had this afternoon.

So, there was an exchange over the telephone that was on the same date.

Mr. ALLEN. Yes.

Mr. SPARKMAN. The same day as that letter was written.

Mr. ALLEN. I wish the Senator would continue reading that.

Mr. SPARKMAN. Yes. I have read the whole letter.

Mr. ALLEN. Yes.

Mr. SPARKMAN. I have read the whole letter. I want to mention one thing that Senator DeConcini said on yesterday, I believe it was, when his reservation came up.

Mr DeConcini said:

> It is my interpretation and judgment it does not affect a major change in the treaty, but it is a condition precedent to the treaty taking effect, which means it has to be accepted or not contradicted by the Panamanians before the treaty is effective.

It seems to me that has, certainly, some bearing on the interpretation.

Mr. ROBERT C. BYRD. In any event, Mr. President, both letters have been laid on the record for everyone to see.

Mr. ALLEN. I say to the distinguished majority leader, the only significant sentence I find here is the sentence in the Torrijos letter in which he says:

> In your letter and conversation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content of what was agreed upon in the Neutrality Treaty and in our Declaration of October 14, 1977.

I think that is a significant sentence.

With that, I am ready to close the issue.

Mr. ROBERT C. BYRD. Well, Mr. President, that sentence alludes to this sentence in the President's letter: "We have made every effort and have been successful to date in insuring that these"—meaning reservations, conditions or understandings, in my words—"will be consistent with the general purposes of our two countries as parties to the treaty."

The President of the United States did not misrepresent the situation at all. He said:

> In considering its Resolution of Ratification of the Treaty, the Senate will almost certainly attach a number of reservations, conditions, or understandings reflecting

certain of its concerns. We have made every effort and have been successful to date in ensuring that these will be consistent with the general purposes of our two countries as parties to the Treaty.

Now, that is all that I see in the President's letter. That is the only verbiage I see that could possibly have been addressed by General Torrijos' sentence which the distinguished Senator from Alabama mentioned.

Mr. ALLEN. The word "conversation."

Mr. ROBERT C. BYRD. Now, the Senator talks about conversations, but he says, "In your letter and conversation."

So we have half of it in front of us. The letter is here. I do not have the President's conversation.

Mr. ALLEN. Yes, I understand.

Mr. ROBERT C. BYRD. If the Senator wants me—

Mr. ALLEN. I do not intend to contend any further with the Senator. I am willing to let the matter rest.

Mr. ROBERT C. BYRD. I take the letter on its face. I think it speaks for itself.

I am delighted to have had the opportunity to present it to the Senate.

Mr. SPARKMAN. Will the Senator yield?

Mr. ROBERT C. BYRD. I do not have the floor.

Mr. ALLEN. I yield to my distinguished colleague.

Mr. SPARKMAN. I simply want to bring out the point that Mr. DeConcini—and I remember, the President was talking about what had been accomplished by the reservation—in his reservation said exactly the same thing.

Mr. ROBERT C. BYRD. Yes.

Mr. SPARKMAN. That it made no major changes.

Mr. ROBERT C. BYRD. Precisely.

Mr. SPARKMAN. That it was a clarification.

Mr. ROBERT C. BYRD. Exactly.

Now, the senior Senator from Alabama is chairman of the Foreign Relations Committee of the Senate. Is it not true these communications between nations will usually be cabled and that—

Mr. SPARKMAN. Either that or telephoned.

Mr. ROBERT C. BYRD. And that these cables are then typed up, and even if both these were typed on the same typewriter, what would that indicate? Would that indicate any sinister, ulterior—

Mr. SPARKMAN. In fact, it is saying it makes no changes, does not affect the terms that have been agreed upon.

Mr. ALLEN. Mr. President, I yield the floor.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. SPARKMAN. I thank the Senator.

Mr. ALLEN. I thank my distinguished senior colleague (Mr. Sparkman).

I yield the floor, Mr President.

The PRESIDING OFFICER. What is the will of the Senate?

The Senator from West Virginia (Mr. Robert C. Byrd).

Mr. ROBERT C. BYRD. Proceed to article II, if there are no——

The PRESIDING OFFICER. If there are no amendments——

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I have asked the White House to send up the cables; and they, likewise, will be made available to Senators, so that there will not be any question as to the letters and as to the apparent similarities in the type in the two communications which were of the same date.

(Subsequently Mr. Robert C. Byrd supplied the following material for the Record:)

WASHINGTON, D.C.,
March 17, 1978.

Hon. ROBERT C. BYRD,
U.S. Senate.

DEAR SENATOR BYRD: I understand some Senators have expressed a wish to see the cables containing the exchange of correspondence between President Carter and General Torrijos, copies of which I sent to you earlier today. Copies of the two cables are enclosed. These copies are identical to the original cables except that they have been declassified, as indicated by the words "class change and deletion of caption."

You may wish to inform Senators that the original copy of President Carter's letter is now on its way to General Torrijos, and that the original copy of General Torrijos' reply is now on its way to President Carter. It has become a normal diplomatic procedure to exchange copies of such correspondence by means of telegram in the interest of speed.

The copies of the letters I supplied you this morning were transcribed from the attached telegrams in an effort to supply as quickly as possible the information Senators had requested. This explains the phenomenon, noted by Senator Allen, that the copies of the letter appear to have typed on the same machine.

I will be happy to supply an authoritative transcript of General Torrijos' letter as soon as the original is received.

Sincerely,

DOUGLAS J. BENNET, Jr.

[Incoming telegram pass White House for President Carter]

GENERAL TORRIJOS LETTER TO PRESIDENT DATED MARCH 15, 1978

1. Have just received following letter (unofficial translation from General Torrijos for President Carter:)

PANAMA,
March 15, 1978.

DEAR PRESIDENT CARTER: In your kind letter of this date, as well as in the conversation which we had this afternoon, you expressed to me, among other things, your hope concerning a positive vote in the United States Senate on the Neutrality Treaty. I undetstand and I have perceived the great efforts which you, as head of a great nation as well as those of numerous distinguished Senators, have carried-out to create a consciousness in the rest of the Senate and in the American public for the need for a new relationship between Panama and the United States.

After intense and difficult negotiations we signed the resulting treaties in Washington subsequently, and on account of certain confusion with respect to two articles of the Neutrality Treaty, we proceeded to release a memorandum of understanding which clearly interpreted the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the canal, priority passage for warships in case of emergency and non-intervention in the internal affairs of Panama as well as a respect for territorial integrity and political independence of my country.

In this manner we perfected treaties which have received, because of their balance and equity, the support of practically all the countries of the world.

In your letter and conversation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content of what was agreed upon in the Neutrality Treaty and in our declaration of October 14, 1977. In this respect, I wish to inform you that the government of Panama will proceed to study carefully these reservations and will take its position once the Senate has voted on both treaties. The situation is thus because in the plebiscite

held in Panama the Panamanian people voted for two treaties together and not in separate form.

I do wish, nevertheless, to point out that such a study will be based on the following concepts; for Panama any reservation would be unacceptable which blemished our national dignity, which altered or changed the objectives of the treaty or which were directed at hindering the effective exercise of Panamanian sovereignty over all of its territory, the transfer of the canal, and military withdrawal on December 31, 1999.

For that reason, I received with great gratitude your words that these objectives will absolutely not be changed by means of amendments or reservations. This reaffirms my estimate concerning the great morality and honesty which characterizes you as a political leader and as a person.

The Panamanian people would not accept words, misplaced commas or ambiguous sentences which had as their objective, or which might signify, occupation in perpetuity disguised as neutrality or intervention in their internal affairs.

President Carter: We both know the difficulties which we must overcome to achieve a new attitude in our two countries. But the expressions which you have made to me reveal the intimate truths of a man of great integrity. We believe that the American people elected you precisely for these qualities. Therefore, with the frankness which has characterized our relationship. I must tell you that we must face all of these difficulties about the treaties with true courage.

The great power of conviction which you have must reach the true and upright men of your Senate. In you country there exists great proof of this fact by virtue of men who have never considered arrogance or threats as normal standards of conduct in the United States in its relations with the various sectors of its own people and in its relations with other countries. For that reason Lincoln, Franklin Delano Roosevelt, Kennedy and other great American presidents hold a place in the history of the United States and serve as an inspiration to other peoples of the world.

It is obvious that not only Panama but the entire world anxiously awaits the decision which the Senate will make tomorrow. The canal, as an international public service, is of interest to all humanity. For that reason, we see in the treaties which we signed the peaceful solution which guarantees access to the canal on an equal basis to all its users. Panama has made its great scarifice: To wait 22 long years to achieve its decolonization. We have demonstated maturity and patience. We are confident that the Senate will not disappoint the world.

Let me take this opportunity to express my highest esteem.

OMAR TORRIJOS HERRERA,
Chief of Government
of the Republic of Panama.

[Outgoing telegram for Ambassador Jorden]

PRESIDENT'S LETTER TO GENERAL TORRIJOS, DATED MARCH 15, 1978

(Please deliver to General Torrijos soonest today following letter from President Carter, of which text follows:)

MY DEAR GENERAL: As you know, the Senate is now approaching the end of its debate on the neutrality treaty. Although we expect the final vote to be close, we remain hopeful about the result.

We have made good progress since last September when you and I signed the treaties. The Senate Foreign Relations Committee endorsed the treaties by an overwhelming vote. In the Senate debate, we have fortunately been able to prevent any amendments to the treaty other than the so-called "leadership" amendments to Articles IV and VI. These incorporate exactly the terms of the statement of understanding published after our conversation of October 14.

In considering its resolution of ratification of the treaty, the Senate will almost certainly attach a number of reservations, conditions or understandings reflecting certain of its concerns. We have made every effort and have been successful to date in ensuring that these will be consistent with the general purposes of our two countries as parties to the treaty. I hope you will examine them in this light.

After approving the neutrality treaty, the Senate will move immediately to consider the basic Panama treaty. While there will be problems, I am hopeful that the outcome will again be favorable, and that the two treaties combined will gain for our countries the advantages we had envisaged when we signed them last September.

I know that the long public discussion of the treaties in the United States has involved difficulties for you and your country. It has been a necessary element in informing the American public of the reasons for negotiating the treaties and the benefits they bring to both parties. We have made notable progress in this regard.

Mr. LAXALT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PERCY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, I should like to make just a general comment on the amendments to the Neutrality Treaty that were adopted before the resolution of ratification was approved yesterday by the Senate.

I had said before that without Senate adoption of the two major amendments which assure the United States the unilateral right to defend the canal beyond the year 2000 and to send its warships and auxiliary vessels to the head of the line in time of need or emergency, I could not have voted for the treaties as signed by President Carter and General Torrijos. I think the adoption of those amendments was absolutely essential to ratification of the Neutrality Treaty.

The Senator from Illinois is concerned about one other aspect of the treaties, and it reflects not only a personal concern but also one reflected in conversations I have had with a great many constituents in Illinois.

While the amendments we have adopted have materially strengthened the Panama Canal treaties. I believe we must now work to minimize the burden on American taxpayers of the estimated $758 million it will cost to implement the treaties. Consideration of legislation to implement the treaties after they are ratified will provide an opportunity to confront the costs over the next 22 years associated with the takeover of control of the canal.

I would propose that we have higher canal tolls up to a level of, say 50 percent, to recover such costs as lost annual interest payments from the Panama Canal Company to the U.S. Treasury, and such cost as civil service early retirement for hundreds of workers.

In addition, higher tolls would help insure legitimate payments to Panama under the treaties.

We have a responsibility to find ways to recover as much of our costs as possible. In the implementing ligislation, we can require the new Panama Canal Commission to set tolls to meet many of these costs.

I intend either to offer a measure or support a measure to require Senate confirmation of the nominations of the U.S. members of the Board of the Commission. so that we can monitor their efforts to recover the cost.

Mr. President, at a time when we are trying to balance the budget—and the distinguished Senator from Virginia for a long time has been a proponent of this and a fighter for it—we must work toward that objective. We cannot just look lightly at these anticipated costs in connection with these treaties.

We have not run the canal on a businesslike basis in the past We have run it in fine shape, but we have done it in many respects by

offering a service to the users of that canal at rates that are less than commercial rates. When these treaties are ratified and we move toward the 22-year period when we will eventually turn over control of the canal, I believe we have a duty and an obligation to our own taxpayers to run the business of the canal like a business, to maximize its income. Certainly, that is not inconsistent with the partnership we intend to establish with Panama.

So, I simply wish to serve notice at this time that during the course of the next week's debate I will introduce the subject which, I think, already has been addressed in part by the Armed Services Committee and the Budget Committee. They have rendered a valuable service in bringing out in the testimony their estimates of the costs involved in these treaties. We can try to recover that cost and bring down to an irreducible minimum the impact on the American taxpayer and the U.S. Treasury, to see that the ships of the 70 countries that use the canal actually bear the cost that will be involved.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. PERCY. I am happy to yield.

Mr. ALLEN. Mr. President, I am encourged by the comments of the distinguished Senator from Illinois (Mr. Percy) about the membership of the Panama Canal Commission, which, upon the approval of the Panama Canal Treaty, is to take over the operation of the Panama Canal from the Panama Canal Company which now operates the canal.

I understood the distinguished Senator to say that he was going to offer an mendment that would require the nominations of five of the nine members of the Commission to be confirmed by the U.S. Senate. Is that correct?

Mr. PERCY. That is correct; during consideration of implementation legisalation, I will either support it or submit it myself. But I do feel that the nominations of the American appointees should be confirmed by the Senate of the United States.

Mr. ALLEN. The Senator realizes, of course, that there will be four Panamanians on the Commission and that the United States has no power or direction over approving these Panamanians. The Panamanian Government makes up a list of four and hands it to the United States—I assume it is going to be the Secretary of the Army, because he presently makes the appointments—and we have no option or discretion, as I read the treaty.

Therefore, any Panamanian, whether of good moral character, whether under indictment, whether of bad reputation, as I read the treaty, we have to appoint.

This is not a joint commission. This is not a United States-Panama commission. This is an instrumentality of the U.S. Government for the next 22 years. Why would not the four Panamanians need to be confirmed by the U.S. Senate? Will the Senator kindly enlighten me on that?

Mr. PERCY. The whole issue, of course, that we have been dealing with in these treaties is a question of national pride and sovereignty. I really could not envision calling before a Senate committee foreign nationals and subjecting them to a confirmation proceeding of the U.S. Senate. I know of no precedent for that in any international body.

Mr. ALLEN. The trouble is they are members of the U.S. Commission. Why should they not be confirmed?

Mr. PERCY. I just put the shoe on the other foot. Could we envision Amercain citizens being subject to a confirmation proceeding by some other legislative body in some foreign country? I think this would be a difficult thing.

Mr. ALLEN. Yes. If they are members of the commission of that foreign country, yes. This is not a joint commission. This is a U.S. agency and every member thereof should be confirmed by the U.S. Senate in the judgment of the Senator from Alabama.

Mr. PERCY. The Senator from Alabama is perfectly free to offer a substitute, if he would care to. The Senator from Illinois has thought it through as carefully as he can. The Senator from Illinois determined that it would simply lead to a great deal of complication, that it would not be worthy of the effort, and that it would really subvert, in a sense, the pride of sovereignty that we are trying to nurture in the partnership we are establishing with Panama. Certainly we would have sufficient oversight if five of the nine members were subject to Senate confirmation. That is the majority of the board to start with and that would be enough. It would be enough, probably, if we just confirmed the chairman. But in this case we would have all five American members. That would constitute the majority of the board, and it would seem to the Senator from Illinois that would give adequate oversight. It would not be necessary to call nine members before us as long as we knew that we, in the confirmation proceeding, would demand to know of the nominees whether or not they would assent to return to the Senate and appropriate committees any time for questioning on the operation of the canal.

Certainly, in the confirmation proceedings we could ask them then these pertinent questions. Do you intend to run the canal as a business or do you intend to subsidize for the next 22 years the 70 nations that use this canal, as we have really in the past, or do you intend to maximize revenue so that we cover all of the obligations that we have to the U.S. Government, to U.S. taxpayers and our own Treasury, as well as to our partners in Panama? Take into account that we cannot be and would not be unreasonable, because you reach a point of diminishing return. When you get the toll revenue up too high you lose enough tonnage so your net income is going to be less than it was before. That is why I say use good business judgment, and we want people who have that background and experience.

Mr. ALLEN. I thank the distinguished Senator, and I am very much pleased he is going to be insisting on the commission being operated on a businesslike basis.

I might also suggest to the distinguished Senator that whereas on the Neutrality Treaty the argument was made, of course, that that involved national pride, sovereignty, and dignity of the Panamanian Government and Panama and therefore we would not have any amendments—I believe the Distinguished Senator from Illinois voted against all amendments—I am led to be hopeful by the attitude of the distinguished Senator from Illinois now that as we turn to the Panama Canal Treaty we are not dealing with something that has a whole lot of national pride involved; we merely

have a business arrangement involved along with the gift of the canal by the United States to Panama.

I am glad to see the distinguished Senator wanting to tighten up on that business arrangement a little bit to protect the American taxpayer. And I assure the Senator amendments will be offered that would have that desired result. I am looking forward to having the very fine support of the distinguished Senator from Illinois on amendments of that sort.

I thank the Senator.

Mr. PERCY. I thank my distinguished colleague, and I will advise him ahead of time when I intent to take the floor to begin this debate. I will certainly invite members of the Armed Services Committee and Budget Committee who have had hearings on this matter and I feel that we will have a good deal of support for this principle on the floor of the Senate.

The Senator from Illinois has supported, right from the outset, amendments to these treaties that the Senator from Illinois felt absolutely essential and crucial, and I said I would not have voted for these treaties as signed by the President and General Torrijos if they were not amended in some respects. The Senator from Illinois has supported some reservations. I now indicate that I will introduce legislation to require Senate confirmation of the American appointees to the Board of the Panama Canal Commission and would welcome my distinguished colleagues' comments at that particular time in debate when we have that piece of legislation under way.

Mr. ALLEN. I thank the Senator.

The only thought that occurs to me on it is that with a U.S. commission it would seem a little bit strange to have a hybrid-type membership, five Americans and four Panamanians sitting side by side around the great big mahogany table, with five of them having been confirmed by the U.S. Senate and four being Panamanians of uncertain origin or reputation. I just hope that the Senator would be willing to extend his thinking along this line to the extent of requiring all of these members of this American commission to be confirmed by the U.S. Senate. I hope the Senator will reflect on that and reach that conclusion.

Mr. PERCY. I thank my distinguished colleague.

Mr. President, I yield the floor.

Mr. LAXALT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAXALT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. Hodges). Without objection, it is so ordered.

Mr. LAXALT. Mr. President, one of the vital items involved in the course of these various debates involves the matter of sovereignty. We have had extended discussions concerning these matters for these several weeks. We have been debating this matter and, of course, there are conflicting opinions that have been voiced on this floor in respect to sovereignty, as to the legal effect one way or the other, as to whether it really makes any difference at all.

I would like to for the next few moments read into the Record what I considered to be one of the better discussions of the legal situation in Panama overall and, in particular, the observations of an eminent American, an exceedingly fine lawyer, and one who probably more than anybody else, from firsthand knowledge, experience the legal situation in Panama and more particularly, through extensive research, would give us the benefits of his analysis on the question of sovereignty.

I speak of Hon. Guthrie. F. Crowe, who is a retired judge and who served in that capacity for a long while in the country of Panama.

In testimony before the Subcommittee on Separation of Powers, which was conducted under the chairmanship of the very able Senator from Alabama (Mr. Allen) several weeks ago, Judge Crowe appeared and testified. I would like for the next several minutes to have the record indicate, even though it is contained in the report, have the record formally indicate what his observations to the committee at that time were:

Judge CROWE. I am retired and I have no secretary or staff, so my comments today will be off the cuff. I retired because of old age. I am somewhat like the old judge I heard at the judicial conference, who said that old age made him a lot more moral than the Methodist Church ever did. So I am in that position.

I am very happy to be here and to be able to present something about my experience in the Canal Zone, I was there for 25 years as judge. I was appointed for an 8-year term by President Truman, and then reappointed by President Kennedy. Then no one was appointed to take my place, so I stayed on under operation of the statute until my successor was appointed and qualified. That was not done by President Nixon nor President Ford.

I resigned as of the 30th of April after, as I say, serving 25 years.

We have a number of good lawyers who are Members of the U.S. Senate. We have had a number of good international lawyers give us varying opinions concerning the basic issue of sovereignty. But I must say that of all those I have been exposed to in one form or another during extensive debates and deliberations in this matter, I doubt if we have anybody in this entire country who has had more personal experience in connection with the legal situation in Panama than does Judge Crowe, as he has indicated here in his testimony. He has served for 25 years and served in a very distinguished manner.

Now, why do I make reference to his testimony? For two purposes: One is to give my colleagues through the Record the benefit of his views concerning sovereignty which I consider to be a vital matter.

It seems to me the consideration we have in connection with the main Panama Canal Treaty as to whether we turn over this facility stock free, with additional payments amounting to several million dollars on top of it, the considerations relating to that transaction are far different if we have sovereignty than if we do not.

Obviously, if we are in some legal capacity short of ownership, in a tenant capacity, our legal relationship to the facility and its value and all the rest of it are far different than if we do own it. I happen to be one of the many Members of the U.S. Senate who feels that from the very outset, from the provisions of the various documents, we have purchased the 10-mile buffer zone known now

as the Canal Zone. I feel history supports that view. I feel that the law supports that view.

In addition there are other values in hearing from Judge Crowe and in making his testimony part of the Record, and that is the fact that we have thousands of Americans who presently live in the Canal Zone who, under the terms of these treaties, very quickly will be subjected to the legal jurisdiction of Panama.

So it seems to me that is is terribly vital for all of us in consideration of these overall treaties to try to determine what type of legal system we are going to be subjecting our own to in addition to the vital question of where we are in relation to the legal issue of sovereignty.

I proceed now to read further from his testimony:

I entered on duty there in August of 1952. I had a very varied experience. I learned to speak Spanish while I was there and got to know a lot of Panamanian people. I think that many of them are splendid people. I am a great admirer of many of them, and I feel that many of them are quite competent.

There have been several discussions during the course of the debates here that those of us who are opposed to these treaties are insensitive to the Panamanians; that we were something less than humanitarian in seeking to preserve our own property.

We have attempted many, many times on this floor, all of us, to indicate that that is not our wish, it is not our desire, it is not our attitude. The fact is that we do relate to the Panamanians. The fact is that we do appreciate them. The fact is that they have been reliable allies for some 75 years. The fact is that we have had a good working relationship with them, politically and otherwise. The fact is that 75 percent or more of the employees working for us in operating the canal are Panamanians—good, loyal, competent employees.

The reason why I make this observation is to indicate the statement being made here by the Federal judge, Guthrie F. Crowe, indicated that by virtue of his experience, which apparently is favorable in this regard, he has basically the same attitude and position that we have.

Going back to his testimony:

There was a good deal of discussion this morning as to whether or not they would be able to operate the canal. Of course, there are some men who have been educated in the American schools, and who have high competency. Whether or not as a nation they could operate the canal, of course, is a matter of considerable speculation.

Emphasis is on the words "as a nation."

We have never entertained any serious doubt that the Panamanians could physically manage the facility. I had some reservations before the beginning of these debates, but I am satisfied from what has been adduced here during the many discussions on the floor that there is ample expertise among the Panamanians within a period of 22 years to actually manage and operate the facilities.

But that is not the issue. The issue really is whether or not as a nation, whether or not politically, they can properly operate this facility.

As my colleagues will remember, during the course of debates on the Neutrality Treaty, Senator Garn, the very able Senator from

the State of Utah, spoke at length on this subject from his experience as a former mayor and a former executive.

He expressed concern about the lack of stability on the part of the Panamanian Government, and certainly that has been the history. Since we became involved in 1903, as I remember—and I will stand corrected if I am wrong in this—there have been some 50 changes in the Panamanian Government over all that period of years. It has been stable for the last several years, that is true. Why? Because since 1968 it has been run by a dictator who runs the country with an iron hand, who took control at the point of a gun, who maintains control today at the point of a gun. It is a rigid dictatorship.

If that is the kind of stability that we want, and I do not believe it is, I think we have entered into a sad course of events in this country.

If that is the kind of stability that we want, and I do not believe it is, I think we have entered into a sad course of events in this country.

The point I want to make is that we have had a history of unstable government in Panama. We are now asked, as Senator Allen indicated before, to enter into a business arrangement. That is what the Panama Canal Treaty is all about: Whether or not it is to our business interests to turn over this facility. In any business consideration, if we are talking about entering into a partnership—and that is basically what we are going to be doing—an obvious question is, how stable is the partner?

I happen to be a lawyer by profession. One of the first inquiries you would have when a client would come in thinking in terms of entering into a partnership is, what is his prospective partner like? How solvent is he from a financial standpoint? How stable is he? How honest is he?

During the course of this debate I was frankly quite disappointed, particularly when we had our secret hearings, when there was substantial evidence developed here that the Torrijos family and associates had been involved in extensive drug trafficking of serious drugs such as herion. There was additional evidence indicating that there is an abundant amount of corruption in Panama. Many of our colleagues not only did not pay any attention to it, but stated on this floor during the course of the session that it was irrelevant.

How in the world can entering into a partnership with an unstable partner, who admittedly has been engaging in drug trafficking, with all that that involves, possibly be irrelevant? I personally cannot believe the American people would ever subscribe to that kind of standard. I cannot believe that they would not hold the Senate to a standard of decency. That is basically what we are talking about.

We are told that we have no choice; that we take the government as we find it; that we take the dictatorship as we find it.

We are told that all the rest of them are about the same; that they all engage in one degree or another in drug trafficking; that they all are afflicted to one degree or another with corruption, so it really does not make any difference.

But does it? The distinction, in my mind at least, which is shared by many of my colleagues, is that this is not a typical foreign aid transaction. We are not being asked here, as a Government, as a Senate, to dole out millions of dollars to a given country. We are asked here, and we will be asked here in the weeks to come, to make a judgment as to whether we turn over a vital international facility to this Government of Panama.

To that extent it seems to me it is highly relevant for us to seriously examine whether or not the government in question is a stable one, is one that we can rely upon and trust to faithfully and properly manage this facility from a political standpoint after the year 2000, in our interests, in their own interests, and certainly in the interests of our various allies.

Those are questions, Mr. President, that I think are highly relevant and that we should once again probe very closely during the course of the continuing debate of this matter.

May I proceed further with the discussions of Judge Crowe?

I want to bring to the attention of this committee the condition of the court at present. I think it might emanate from the fact that the Department of State is advising the President to the contrary. That is the need for a judge.

Since I resigned there has been no appointment of a judge, although there are a number of applicants. They have been using a distinguished judge from Florida, Judge Mertens, who has been sitting in criminal cases only. He has only been able to go 2 or 3 days at a time periodically.

As a consequence, the civil side of the docket has been completely unattended to. The people are suffering a great deal by reason of the fact that there is no judge there.

We have a pretty good sized court. As a matter of fact, it was the largest docket of any single judge in the Federal system under the American flag. There were about 400 criminal cases a year and 400 civil cases.

That is a rather astounding load when you consider the limited number of people there are in that particular area.

The fact that there is no judge, of course, leaves the people in considerable difficulty.

I might remark upon the Admiralty situation in the event that the Congress or the Executive with the treaty powers decide to transfer the canal to Panama.

The Admiralty jurisdiction of that court is equivalent to the Admiralty jurisdiction of a district court in the United States, although it is a territorial court and the judge is not a title III judge. He comes under title IV and is only appointed for a term of years. He has equivalent Admiralty jurisdiction under the Canal Zone Code, with judges in the United States.

Panama has no Admiralty courts nor any case law concerning Admiralty. Whenever a question in Admiralty arises it is decided under what is called a Panamanian Commericial Code. This means that the Admiralty bar of the world, whose members are accustomed to appear before courts that recognize the agreements adopted by the international Admiralty conventions, would be at a disadvantage and the causes of their clients would suffer.

He has then many observations relating to the conditions of the courts. Let me proceed not to some salient portions which affect the interests of our Americans living in Panama, and the effect that turning over our court system and its jurisdiction to the Panamanian courts would have:

Americans who have lived in the zone for many years feel that American citizens who are caught and charged with crimes in Panama are dealt with more harshly than Panamanians, due to the strong feelings that have grown up over the years. There is no reason to think that this will change if and when Panama is in control of law enforcement in the zone area.

Small wonder, Mr. President, that our own citizens are terribly concerned about this feature of the treaty. We have many, many thousands of Americans living in the Canal Zone who very quickly, if these treaties are ratified, will become subject to the jurisdiction of the Panamanian courts and subject to the type of unequal treatment of which Judge Crowe speaks. Small wonder, Mr. President, thay they are very apprehensive as to that feature of the treaty.

It is planned or discussed that a number of Americans will, of course, have to reside there because of their expertise in handling the Canal Zone and the engineering problems and the shipping difficulties. If those people are there they will be exposed, of course, to this type of jurisdiction of which I speak.

Again, Mr. President, let me remind those listening and for the purpose of the Record that these are the words of Hon. Guthrie F. Crowe, retired judge, who served in Panama for a distinguished career of 25 years. He is speaking now of his great concern about the effect of imposing the Panama legal system upon our own citizens in the event that this treaty is passed:

In civil cases in the Canal Zone we use the Federal rules of civil procedure and the Canal Zone Code, especially drafted by Congress for the Zone. Great attention is paid to the service of process. The greatest of diligence is used to see the rights of the parties are safeguarded. The court is open for the filing of cases and the issuance of needed process 24 hours a day, 7 days a week.

Obviously, it is a very efficient court:

In Panama there are no civil jury trials. I am advised that all cases are by deposition, taken in such a way that there is no opportunity for confronting witnesses and conducting a fruitful cross-examination. Criminal and civil liability in actions in tort are interlocked so that there is no civil liability unless there is criminal liability.

Think of the drastic differences there are in impressing the Panamanian system of law upon our citizens in these respects. Small wonder, Mr. President, that they are concerned about this as well:

Law enforcement in the Canal Zone is by a highly trained, carefully selected police force that is completly separate from the military. I suspect that Governor Parfitt touched upon that this morning. Unfortunately, I missed part of his statement. It is a fine organization of men who are well qualified, as well as women now. They have some excellent women on the police force.

We are talking about the police force, our police force, who are presently operating and have been for a number of years, within the Canal Zone:

There are, of course, military police drawn from the military units assigned to the zone. These people police the military encampments and military personnel only.

In Panama there is no separate constabulary. It is a military dictatorship. All policing is done by members of the Guardia Nacional—that is, the Panamanian Army.

So remember that in Panama—and again, we are subjecting our own people to this system—they do not have a police force as we know it in this country. The rights, the assets, the liablities—whatever may be touched by the rule of law—would be governed thereafter by military police under the authority and under the domination of a dictator:

Each one of the members of the army has full powers of arrest just as though he were a civil constable or a police officer.

There has been discussion here about how we would feel if a number of these conditions were imposed upon us. I wonder how a number of the citizens and residents, say, of the good State of Idaho, to whom we have had frequent reference, would feel if a system were imposed upon them that their police laws were administered and regulated, not by trained policemen but by military persons, amounting to martial law. Yet, that is precisely what is going to happen to our Americans in Panama, because the day that we ratify these treaties, the day that they become effective in this respect and we have the turnover, our Canal Zone Americans will be subjected to this kind of police activity.

This is the judge once again speaking, and he is speaking, now, of the Panamanians:

They also do have a secret police organization called the "Deni."

The 10,000 or 11,000 soldiers of Panama have full powers of arrest and law enforcement throughout the country.

I submit, Mr. President, that would be akin to having 10,000 or 12,000 National Guard people here in the District of Columbia, or in the State of Texas, or the State of Utah, or the State of Navada, with full powers of arrest without any conditions, supporting martial law. That is the situation we presently have in Panama, as attested to by Judge Crowe:

The general said this morning that there were only about 8,000 in the military. Panamanians whom I know and with whom I have talked on many occasions seem to think that there are many more—that there are about 10,000 or 11,000.

There are no sheriffs, no city police, nor State police, nor anybody of that nature. Political prisoners are not uncommon and exile has been used against prominent citizens without trial.

That is the type of law enforcement that you will find.

I submit, Mr. President, that is the type of law enforcement, if we approve these treaties, that we are going to subject Americans to:

I have a clipping here which is very interesting, on that particular score, that appeared in the Miami Herald recently. It was reported on Tuesday, May 24, 1977 concerning one Eisenman. Mr. Roberto Eisenman and 10 others were critical of the method that the Government of Panama was using in handling the beef situation. These people were raising beef and went up into the interior and protested against this method.

They are not unlike the hundreds and thousands of good farmers and agricultural people we have had all over this town and through these buildings in protest of their particular difficulties. These people are basically doing the same thing. They are protesting policies of the Government which are affecting them adversely as beef producers.

All right, what happened to them in Panama?

Those people were immediately arrested and handcuffed and exiled from the country without trial. They were sent to Ecuador, as this committee may already know. Mr Eisenman charged that the Panama dictatorship is alive and well due to the support of the United States. He said this in Miami just recently.

Now, it has been stated time and time again on the floor of the Senate that this is the just due of the Panamanians. I do not subscribe to that. I think history reveals that there is no country that has ever been treated better in every way than we have treated Panama from its inception. It is my view that Panama would not be the Panama of today if it were not for the U.S.

generosity over the years, and certainly not without the Panama Canal.

Let me proceed further with the statement:

> In that meeting there were a number of people. The audience reaction generally appeared to be antitreaty * * *.

I am speaking again of Judge Crowe in his testimony before the Subcommittee on Seperation of Powers of the Committee on the Judiciary of the U.S. Senate:

> In that meeting there were a number of people. The audience reaction generally appeared to be antitreaty, although the luncheon debate was cosponsored by the Council of the Americas, representing some 220 U.S. firms doing business in Latin America which has publicly endorsed the negotiations.
>
> I have sat in the court, as I say, for 25 years. I have had occasion to study the history of the acquisition of the Canal Zone area. It has been gone over pretty thoroughly this morning. I am no expert on the question of separation of powers. Cases of that kind have not arisen in my court. I am familiar with the *Alabama* case and the *Fitzgerald* case and the different ones that were alluded to by Mr. Leonard this morning.
>
> I believe thoroughly that the Congress must sit in the disposition of property that is the property of the United States.

Now, why is that important? Because we have had extensive debate and discussion in these last several weeks, on this floor and otherwise, as to whether or not the Constitution requires the approval of the House of Representatives in the disposition of Federal property. It has been said time and time again by the proponents of the treaty that that is not necessary, that that is a function of the executive that upon approval of the treaty here, will be self-executing.

We know that well over a majority of the House of Representatives do not subscribe to this view. They have recently signed statements indicating that it is their judgment, on a bipartisan basis, Democrats and Republicans alike, that it is the constitutional responsibility of this body and the President to transfer this matter to the House of Representatives for approval before it is finally concluded.

Mr. LEAHY. Will the Senator yield for a moment on that point?

Mr. LAXALT. I certainly will. I am happy to yield to the Senator from Maine.

Mr. LEAHY. Vermont.

Mr. LAXALT. I apologize. These are long days. My apologies to the able Senator Patrick Leahy, from Vermont.

Mr. LEAHY. Maine is a beautiful State also. We also have been among those traveling up to those Northern States on occasion.

I have heard my good friend from Nevada discuss the question of allowing the House of Representatives to vote on this issue. My good friend from Utah did the same again last night. I have also heard a number of Members of the House of Representatives say that they would like to have a vote on it, at least publicly, and I have heard some of the same signers of the letter right here yesterday chuckling a little bit in the back of the hall during our vote on it, saying "It is a good thing you guys are the only ones voting on this."

I would love to have every one of them vote on the Panama treaties, but I think we are somewhat constrained by the Constitution in that regard.

With all due respect to our respect to our friends in the other body. I recall last year when the matter of major controversy was a pay raise—which I voted against twice here in this Chamber, I hasten to add—but the matter of controversy was a pay raise, and I recall Members of the other body being polled as to their feelings about it. An overwhelming majority said that if they were allowed to vote they would vote against the pay raise.

Of course, when suddenly by accident they were allowed to vote on it, as we all know, they voted for the pay raise. That may or may not be a matter of some concern here, but the facts is that the Constitution very clearly states that on treaties of this nature, the Senate alone will vote. This was done on the first treaty and will be done on the second treaty.

Now, on the question of implementation: Whenever the implementation legislation comes up, naturally both Houses vote on that. As members of the Senate Appropriations Committee, for example, we have an inflexible analysis of the Constitution. I would be delighted to start a few appropriation bills over here rather than in the House. Maybe the Senator from Nevada, the Senator from Utah, and I could get together on a resolution asking the House of Representatives if, in return for us forgoing the Constitution and letting them vote on the Panama treaties, they would let us initiate appropriation bills on this side of the Capitol.

Would the Senator from Nevada like to join such a resolution?

Mr. LAXALT. I might not have any difficulty with that, Senator Leahy. I wondered, though, if I could address a question to the Senator from Vermont in this whole general area.

There is a split of opinion as to whether or not the House of Representatives must pass on the disposition of property, admittedly. As a matter of fact, this whole matter now is the subject of litigation.

Mr. LEAHY. I ask my friend from Nevada, because there is a split of opinion, and because very learned constitutional lawyers have stated that they feel that it must be thus. There are precedents for it, and the matter is the subject of litigation.

If it has the urgency that many in the other body feel it does, is it not a fact, would not the Senator from Nevada agree, that such a matter, if pushed with diligence by those who claim that they feel a great urgency on it, could be through the appellate process, could have been before the U.S. Supreme Court, and could have been determined by now?

Mr. LAXALT. It has not been, though I assume they are pushing it with due diligence, and I understand that they are.

Mr. LEAHY. I look at other matters within the past few years that have gone quickly to the U.S. Supreme Court and have quickly been disposed of. During the Watergate time there were questions regarding the Watergate tapes. The ownership of the Watergate tapes is probably an example that we can all recall where the matter went very quickly to the U.S. Supreme Court and, of course, was disposed of.

I suggest that while it is very nice for Members of the other body to join in a lawsuit to seek a determination of this question, the U.S. Supreme Court is the one place where final determination could be made. Would the Senator agree on that?

Mr. LAXALT. Yes, I would.

Mr. LEAHY. I would suggest that if the Members of the other body are really that concerned and really that eager to have the treaties come over to the other side, to the other body, for a vote, I would suggest, considering the time at which their litigation was begun, that the matter could be much further along than it is now. Steps could have been taken to have assured a decision within the U.S. Supreme Court, if not by now, certainly by the time we finish voting on these treaties.

Mr. LAXALT. Will the Senator suspend for just a moment?

Mr. LEAHY. Certainly.

Mr. LAXALT. Without discussing further the legal ramifications here, we are fortunate in having on the floor the very able Senator from Utah (Mr. Hatch), who probably, as much as anybody in the entire U.S. Senate, has been involved in the legal features.

Let me discuss with you for just a moment or two, Senator Leahy, the question beyond the legal problems, as to whether or not it would not be just good political sense to have the House pass on these treaties.

Mr. LEAHY. I think that the U.S. Constitution has clearly set out that the treaties' ratification should be voted on within the Senate. I would not want, for the sake of political science or political expediency, to ask to have the other body act on them.

As a member of the Appropriations Committee, I find it very frustrating to have to wait for the other body to act first on appropriation matters, but that is clearly within the Constitution, and I have to forestall that frustration and wait for it to come over. Certainly, if the U.S. Supreme Court ruled in this case that this treaty, contrary to what many legal experts have advised and what appears to be the constitutional background to it, if the U.S. Supreme Court said that the House also should vote on it, then I would say "Fine. Let them vote on it. Let them vote on it." But I certainly would not want to pass it over there as a matter of political expediency.

Mr. LAXALT. I would not deem it to be a matter of political expediency. I would feature it to be almost a matter of political necessity.

I will tell you why. We have had Senator after Senator stand up on this floor and say that despite the fact that they may have a 10-to-1 majority against this treaty, they do not feel that they are bound by their constituencies.

Well, I will agree that we cannot be automatically sure. We cannot run the affairs of the U.S. Senate by simply looking at a poll; but I would say that if we do not pay heed to the people out there, and we have a situation where it is 10 to 1 or 15 to 1 or 20 to 1, as it may well be in some of these States, that we are not being as responsive as we might be in this Senate if we do not listen to that, and at least, make it a considerable factor even not conclusive.

Mr. LEAHY. I would agree with the Senator from Nevada on that. I happen to enjoy the luxury of representing a State where the latest polls show that the opinion is split 50–50—right down the middle on the treaties as of today.

Mr. LAXALT. All right.

Mr. LEAHY. But I will ask the Senator one further question.

If a U.S. Senator feels in his own conscience that his particular position is right, can he vote against his conscience, no matter what polls or constituents might say?

Can our form of government continue to exist if we have people on the floor of the U.S. Senate voting contrary to their consciences?

Mr. LAXALT. Of course not. But I must say this to the Senator from Vermont: We could pass on a thousand matters here on the floor of the U.S. Senate and there might be one of those thousand which may be a matter of conscience.

Mr. LEAHY. And I contend that this one is.

Mr. LAXALT. All right. So be it.

Mr. LEAHY. As I said yesterday on the floor of the Senate, I feel that the vast majority of Members of the Senate, those who vote both for and against the treaties, have voted the way they feel in their consciences is right and in the best interests of the United States.

Again, I do not think the vast majority of the Members of this body have voted in the way they think will get them the most political mileage, one way or the other. I say that both for proponents and opponents of the treaty. They have voted instead what they feel in their minds and in their consciences, is in the best interests of the United States.

I say this because it is the only way, especially in a matter of such significance. This is the only way the final decision can be made.

Certainly, everybody should do as I have done. I am sure they have gone to their own State, talked with their own constituents, studied the matter as deeply and as carefully as they know how.

The ultimate result was that most voted by their own consciences, because no U.S. Senator owns a seat in the U.S. Senate. No U.S. Senator, once having gotten here, has some kind of lifetime tenure, and no U.S. Senator——

Mr. FORD. Will the Senator yield at that point?

Mr. LEAHY. Can I finish?

Mr. FORD. Who owns the seat then if the Senator does not own it? Who really owns the seat and who sends the Senator here to warm the seat?

Mr. LEAHY. The people of the State.

The people of the United States do.

When they send us here, they send us to exercise our best judgment, to represent them as well as we know how.

But they do not own you. They do not own your conscience. Nobody—nobody—in the country owns your conscience.

In the final result, the Senator, when he casts his vote, must cast the vote that is consistent with his own conscience.

Mr. FORD. The Senator has been arguing the Constitution ever since I walked into this Chamber. Will the Senator yield to me for half a minute?

Mr. LAXALT. Yes.

Mr. LEAHY. The Senator from Nevada has the floor.

The PRESIDING OFFICER. The Senator from Nevada still has the floor.

Mr. LAXALT. I am happy to yield to the Senator from Kentucky.

Mr. FORD. The Senator has been arguing the Constitution ever since I walked in this Chamber, and how important the Constitution is. The Senator says the treaty should not go to the House and be voted on in the House because that is what the Constitution says.

Alexander Hamilton in about 1825, in framing the Constitution, said to us and to the world that this is where the people's voice is heard. I repeat, this is where the people's voice is heard.

Now, I do not think we ought to just throw our conscience out the window and not have a conscience, but if we are truly going to reflect the voice of the people, somewhere along the way we have to say what they are saying.

I think the voices out there today are saying, "Big brother, listen to us. Why should we be interested in the political arena?"

That is why there is less than a 50-percent vote in an election, because they say their vote does not count, or their voice is not heard, and they are tired.

Mr. LEAHY. I think it is unfortunate if the Senator has less than a 50-percent vote in his State. In my State we have usually been in the top of the country for percentage of votes. Maybe that is why in our State, where opinion is split down the middle on this issue, the vast majority of people have come down and told their Senators that they exercised their input to us and they expect us to use our best judgment and vote our conscience.

Mr. FORD. If it is 50–50, you can fall on either side then, and your conscience will be clear.

Mr. LEAHY. No, I disagree with the Senator. I could not fall on either side and my conscience be clear because my conscience will tell me one side, and that is the only side I could go on, irrespective of what the poll might be.

Perhaps it is fortunate that in my State it is split 50–50. But no matter how it might be split, in the end result, like all Senators from Vermont before me, in the end result my conscience must be the guide.

Now, I would do everything possible to make sure, in reaching that conclusion and molding that conscience, that the people of my State have the ability to involve themselves. Fortunately, being from a small State, I can read every piece of mail, and do, that comes from Vermont. I can, several times a month, be in my home State and have town meetings. I am probably the only Senator in the country that has a listed home phone number, in both Vermont and Washington.

Mr. LAXALT. Mr. President, who has the floor?

The PRESIDING OFFICER. In this situation, may we have a more orderly debate?

The Senator from Nevada continues to have the floor.

Mr. LAXALT. The only point I want to make is that I will not argue with Senator Leahy that when a given issue is a matter of conscience he follows it. Of course he does.

But the point the Senator from Kentucky (Mr. Ford) raises is also valid. We are there in a representative capacity. I cannot help believe the reason why the Congress and this body, in terms of public approval, are down to a rating of less than 20 percent is because of the fact that millions of Americans in this country do

not think we listen any more. They think we talk to ourselves. We form our own conclusions in an ivory tower and we are not responsive.

Believe me, this certainly true of our consideration of the Panama Canal treaties.

I personally believe, and that is the reason why I raised the point in issue, that one of the valid reasons for having the House pass on these treaties is that they run every 2 years and are far more responsive to the people.

I suggest to the Senator from Vermont that if every Senator who voted yesterday was running for office this year, instead of 34 votes we would have gotten twice that many.

Several Senators addressed the Chair.

Mr. LAXALT. I am happy to yield to the able Senator from Hawaii.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. I thank the Senator from Nevada for yielding.

As the Senator well knows, I served for 14 years in the House of Representatives prior to coming to the Senate. In those 14 years that I was there I learned this much: Generally speaking, Members of the House, as well as Members of the Senate, may be divided into two general classifications. One would be the issue-oriented, and the other the constituent-oriented.

The constituent-oriented, I found, would check the mail on any issue and say, "Well, today I received a thousand letters; 800 were opposed to the bill"—or whatever was before the House—"and only 200 supported it. So I will vote against it."

Mr. LAXALT. They voted by mail.

Mr. MATSUNAGA. Well, this, they feel, expresses the opinion of the constituents.

Mr. LAXALT. If that is spontaneous mail, as long as it is not fully automatic, is that harmful?

Mr. MATSUNAGA. If the Senator from Nevada will let me make my point, in the event a shift in public opinion is reflected by letters, now I suppose those who voted against the treaty yesterday would say, "Now, my mail shows 800 for the treaty and 200 against. So I will now vote for the treaty."

On the other hand, we find the issue-oriented Members of Congress who would go by what they believe to be the right thing to do, the fair thing to do, not by how many letters they receive for or against a particular bill or treaty, as in this case; but by having the facts before them, they are better able to make a judgment on the issue than are their constituents. The constituents do not have the facts the Member of Congress has before him. He can make his judgment on the facts before him and decide on that basis, fully confident that he can go back to his people and lay the facts before them, explain his vote, and even win the majority of his constituents to his views.

Mr. FORD. Mr. President, will the Senator from Nevada allow me to question the Senator from Hawaii?

The PRESIDING OFFICER. As the Chair understood the Senator from Nevada, he was only yielding temporarily to the Senator from Hawaii.

Mr. LAXALT. I would be happy to yield to the Senator from Kentucky if the Senator from Hawaii has concluded his statement.

Mr. MATSUNAGA. Will the Senator permit me to conclude my statement?

Mr. LAXALT. Certainly.

Mr. MATSUNAGA. I hope that in the consideration of the Panama Canal Treaty, we will have more of the Senators here who will go on the basis of what Edmund Burke was trying to tell his people. Of course, it has been repeated here over and over. The Senator from Vermont (Mr. Leahy), who sits next to me, did a beautiful job yesterday.

Mr. LAXALT. When was that statement made by Mr. Burke? It was in the 1800's, was it not?

Mr. MATSUNAGA. In the 1800's.

Mr. LAXALT. Before television, before electronic communication, before the high level of education we have in this country, before we had an electorate as well informed as they are on the Panama Canal.

Mr. MATSUNAGA. The Senator has the floor and can cut me off at any time.

Mr. LEAHY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Will Senators follow normal procedure? The floor is held by the Senator from Nevada.

Mr. MATSUNAGA. I will yield back the floor to the Senator from Nevada, so that he may yield to the Senator from Vermont.

Mr. LEAHY. Will the Senator yield 30 seconds?

Mr. LAXALT. I yield to the Senator from Vermont for a question, for 30 seconds.

The PRESIDING OFFICER. The Senator has yielded for a question to the Senator from Vermont.

Mr. LEAHY. Is the Senator from Nevada suggesting by what he has said that because now we have television, with the quality of television coverage in this country, that it should be the determining factor for us?

Mr. LAXALT. No, of course not.

Mr. LEAHY. I think he has taken a total about-face from statements I have heard him make earlier. When I sit here, for example, in the Senate, and sometimes spend all day long in a hearing, not leaving the room once, and then watch the same coverage of that on television at night, I sometimes wonder if it is the same hearing, it is changed so. I hope we do not rely on the television networks in this country to be the educating factor for our people.

Mr. LAXALT. Of course not.

The only point I make is this: I have heard Mr. Burke quoted time and time again on the Senate floor. I suggest to my colleague that the situation then existing was far different from the situation that now exists. At that time, he was representing a constituency that was largely uneducated, uniformed, and very often reacted emotionally. Surely, his standard of care was different from ours, when the electorate of this country, by reason principally of a higher level of education, by reason, since Watergate, of a far higher sense of political interest, are well informed. I suggest that there are millions of Americans out there who are far better informed concerning the Panama Canal treaties than we are.

I suggest that on this point, the Burke matter of substituting our judgment, in that ivory tower, and imposing our judgment on all those poor masses, those uninformed masses, is the poorest standard of all.

Mr. LEAHY. I suggest to the Senator from Nevada that he is restating what I had to say either yesterday or today. He is restating it in an entirely different form from the way I did then. I quoted my own announcement for the Senate, in which I said at that time that in any vote, the ultimate determinant is going to be my conscience and my judgment—a matter that I repeated at every campaign stop I made from then until the time I was elected.

Mr. LAXALT. I understand perfectly.

Mr. LEAHY. The discussion has gone off the basic subject we were talking about before. But with respect to the House voting on these treaties, my interpretation of the Constitution is that they cannot. However, if the Supreme Court said otherwise and if the House Members are really anxious to have a chance to vote on them, they will push the case as quickly as possible before the Supreme Court; and if the Supreme Court says they should, they will. In any event, the implementation legislation is before us, and since it contains appropriations, the House will have a chance to vote on it.

Mr. LAXALT. The only point I make, before yielding to the Senator from Kentucky, is this: The reason why I injected this into the debate, in the matter of the House of Representatives passing upon these treaties so far as the transfer of property is concerned, is that I do not think we are as responsive to the American people as are the Members of the House of Representatives, because they have to run for office every couple of years.

Numerous suggestions have been proposed that we should have a national referendum on these treaties. Obviously, that is not practical, and it probably is not good political science. But I suggest that in this type case you have the conflict situation where the House of Representatives, more accurately reflecting the sentiment of the American people, should pass on this question. It is for that reason, separate and aside from the law, that I think it makes good political science.

I now yield to the Senator from Kentucky for an observation or two.

Mr. FORD. I thank the Senator for yielding.

Each of us, in our own way, has to answer to his own conscience.

I think that the education of the people of this country, as the Senator has stated, by those who are for and against the treaties, has been extensive. Each of us has to represent his or her State as we see best.

With respect to the knowledge and the change of emotions as related to the general constituency, I can only speak for my State. We received in our State, with open arms and delight, the Secretary of State, Mr. Vance, at a large meeting in our largest community. People from all over the State were there, and he expressed his support of the treaty and answered questions.

Ambassador Bunker came and made several statements in our State, meeting with large groups of people, stating the pros of the treaties and answering questions. Former Governor and former Ambassador Harriman was there and made many visits around the

State. A distinguished former colleague of this body, Senator Cooper, made his statement and has written letters by the hundreds to people of my State. We have had groups from the State Department, from the committee that was formed in favor of the treaties, all over our State—civic clubs, schools, colleges, universities. I think our people understand. Those were all protreaty people I have talked about.

Then, those who were opposed to the treaties have been getting their message over. I think the people of my State are well-informed through the electronic media, television, radio, newspapers, visits, and the so-called townhall meetings. The percentage has been higher in opposition to the treaties as they have learned about them.

I wanted to vote for the treaties. I said that to the VFW, the American Legion, and everybody else. But I could not go against the people I represent, and they are knowledgeable, in my opinion. So if it is lack of conscience that I represent the people of my State as to what I think they are saying to me. Then I will yield to having no conscience. But I think I am their conscience when I vote what I think they want me to do.

Mr. LAXALT. I thank the Senator from Kentucky.

The Senator from Nevada has shared the same experience. Our State has been flooded by representatives of proponents of the treaty, by various appeals, through literature and otherwise.

I find that the people of my State, particularly since these debates have started, are exceedingly well informed. In all the years I have been in this business, I have not seen a higher quality of mail. I do not mean the highly orchestrated, post card kind of mail, but thoughtful mail, exploring the aspects and facets of this treaty that did not even occur to me.

I learn a lot from my mail, as I suspect all of our colleagues here have. The point I make is I do not think the situation we now have, in really shunting aside our constituency in terms of our substituting our judgment for theirs, is any longer relevant in considering the treaty.

Mr. MATSUNAGA. Mr. President, will the Senator from Nevada yield?

Mr. LAXALT. I yield.

Mr. MATSUNAGA. This has already been inserted onto the record, but in the light of what has been said by the Senator from Kentucky—I am sorry he had to leave, but I had him read this before he left the floor—I might point out that in the October CBS-Time survey, after a second question was asked relative to whether or not the people favored the ratification of the treaties, the question was put, "Suppose you felt the treaties provided that the United States could only send in troops to keep the canal open to ships of all nations, would you approve of the treaties?"

The result showed a complete reversal from opposing the treaties by 49 to 29 percent to favoring them by 63 to 24 percent.

So, public opinion definitely has shifted and, in the light of the fact that we did adopt this so-called leadership amendment, the DeConcini reservation, and the Hayakawa understanding, I would think that public opinion in the United States today would support ratification of both treaties.

Mr. Laxalt addressed the Chair.

Mr. MATSUNAGA. If the Senator from Nevada will permit me to continue, in the January NBC news survey this followup question was asked: "Would you favor or oppose approval of the Panama Canal Treaty if an amendment were added specifically giving the United States the right to intervene if the canal is threatened by attack?" Again the results, abruptly reversing the original percentages, showed 62 to 28 percent opposed to the treaties among those who had heard or read about the treaties. But the second question, after if had been put to those who, again, had heard or read about the treaties, produced a result of 65 to 25 percent in favor of the treaties.

So the actual polls which have been conducted indicate what the proponents have been saying here, that after the people listen to what is being debated here on the floor they tend to even go further and are even more against the treaties, is not true. These polls which were conducted were scientific polls and they show that the more the people of America learn about the treaties the more they become supportive of the treaties.

Mr. LAXALT. Mr. President, I must suggest to the Senator from Hawaii, and he has been in this business I think even longer than I, that there are polls and there are polls. I would think that probable standing fairly low on the totem poll of credibility of the polls are the type the Senator described, not because they are improperly done but because they are not scientifically done.

I would suggest that the recent poll conducted by Opinion Research from Princeton is scientific, it is credible and over the years has had as high degree of credibility as any polling detail firm has. We have here the Senator from Utah (Mr. Hatch), who is familiar with the results of this poll, and I would like to have him read into the Record, if he will, the results recently of a scientifically conducted poll on the issues relating to the Panama Canal treaties.

Mr. HATCH. Mr. President, I thank the distinguished Senator from Nevada.

When we talk about polling sources and polling people we have to hold the Opinion Research Corp. of Princeton, N.J., very high in the overall understanding of polling.

This poll taken by Opinion Research is fairly dramatic, and it was taken just recently—actually, I think, after the polls cited by the distinguished Senator from Hawaii.

The interviewing in this poll was conducted during the period of February 24 through February 27, 1978.

This poll supports the argument of the distinguished Senator from Nevada, who has asserted that the people are not as dumb as some of our colleagues in this great body believe they are, because, according to this poll, their awareness of these negotiations has risen markedly over the years, from 18 percent in June 1975, to 69 percent currently.

Over the same period of time, the majority of the public have favored continued U.S. ownership and control of the Panama Canal. Currently—and that is toward the end of February, just a few weeks ago—72 percent of the people hold this view. There has been a significant increase in the number of persons who support Panamanian ownership and control of the canal. It is now 19

percent. It used to be only 8 percent; so that has increased also. When those who favor turning over the canal to Panama are presented with an alternative proposal, namely that the United States continue ownership but improve the canal and provide economic benefits to Panama, the large majority continued to favor ownership. However, 78 percent, or three-quarters of the total public, would favor continued U.S. ownership under this alternative plan. They also conclude that there is considerable support, 68 percent, for a treaty amended that clearly guarantees the right of the United States to defend the canal without the permission of Panama. Only 18 percent of the public believes that the present clarification, which states that the United States can defend the canal but not interfere in the internal affairs or territory of Panama, is a satisfactory defense position.

Keep in mind that 69 percent of the people have great awareness of the problem according to the poll. Three-fourths of the people believe that the military facility on Galeta Island should continue under U.S. ownership even if the rest of the Canal Zone is turned over to Panama. My distinguished friend from North Carolina, Senator Helms, brought that out very strongly with his amendment on the Galeta Island controversy. Three-quarters of the public do not want us to give that up, but nevertheless it was shot down in the Neutrality Treaty.

There is a majority opposition, 55 percent of the American people, to the treaty provisions that would cost the United States $100 million a year until the year 2000, with most of those costs involving payments to Panama.

Most people are unaware, this poll concludes, that the treaties require the United States to have the consent of Panama before we can build a new canal. Almost half the public, 47 percent, would favor an amendment removing the requirement for Panama's consent, although 36 percent believe this requirement to be all right.

According to the Opinion Research poll, a poll without peer in the polling business and recognized all over the world as one of the great polling sources right out of Princeton, N.J., they conclude that 7 persons in 10 believe the treaties should be sent to the House of Representatives for consideration under the terms of the Constitution that state that Congress, not just the Senate but Congress, shall have the power to dispose of territory or other property belonging to the United States.

Even those who favor Panamanian ownership of the canal are largely in favor. Sixty-seven percent of those who are for these treaties are largely in favor of sending the treaties to the House of Representatives.

I could go on and on with this poll. It certainly shows there is a considerable disparity between the various polls in this country. But this poll, I think, has fairly shown that the American people are not as dumb as some of our friends and colleagues in the Senate seem to think they are.

I can tell you I know they are not that dumb. I know very well the American people understand these issues and they are concerned.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield to the distinguished Senator from North Carolina (Mr. Helms).

Mr. HELMS. Mr. President, what the Senator has said is true, and I would add the further comment that the attitude of the public opposition of these treaties has prevailed despite what many believe to be an almost unconscionable bias in the coverage of these debates.

Mr. HATCH. The Senator is not talking about the radio coverage?

Mr. HELMS. No; I refer to the major news media which so carefully select material supporting their posture in favor of the Panama Canal giveaway.

Mr. HATCH. Right.

Mr. HELMS. As the Senator knows, I come from the news media, and I was especially interested in a comment one afternoon a week or so ago, when the distinguished Adm. Tom Moorer came by for a visit. He said he had been involved in many public events of some controversy throughout his career.

Mr. HATCH. He was the former Chairman of the Joint Chiefs of Staff, from 1970 to 1974.

Mr. HELMS. That is right. Admiral Moorer said he had never before seen such one-sided coverage by the major media of this country. Now, Mr. President, I am not talking about the local television and radio stations, or the local newspapers; I am talking about the New York Times, the Washington Post, and others. With all due respect for their right to publish and broadcast as they please, I believe they nonetheless have a duty to present both sides of this issue. But they are not alone in their bias.

The President of the United States has been on national television twice, 30 minutes or more on each occasion; Ronald Reagan was granted time for response by one network.

I recall the President in a fireside chat stating various reasons why, in his mistaken judgment, these treaties should be approved.

It occurred to me at the time that the President of the United States, no doubt based on information supplied him by the State Department, delivered about five or six misconceptions—to be charitable in describing them—in about 60 seconds. For example, he said the United States had never owned the Canal Zone property and does not now own it. Well, the able Senator from Utah, who is a distinguished member of the Subcommittee on Separation of Powers of the Judiciary Committee, knows that last Saturday a hearing was held on this very question, and that misconception was blown out of the water.

Mr. HATCH. That is correct.

Mr. HELMS. The Senator knows that three enormous crates were delivered by uniformed officers. These sealed crates were opened at that hearing, and therein were several thousand deeds representing the purchase of the Canal Zone property. So it is absolutely correct that the American taxpayer bought and paid for that property.

It was interesting to me that the most coverage this hearing received was about a 30-second clip on one of the networks. The Washington Post did not carry one syllable about it. Nor did the New York Times.

Mr. HATCH. That is in spite of the fact we have had Senators on this floor trying to say these agreements were leases, temporary agreements, anything but a transfer of title and all the right of sovereign ownership.

Mr. HELMS. Not only have they said it——

Mr. HATCH. And ownership.

Mr. HELMS. They have literally shouted it for the benefit of the radio broadcasts going out across the Nation. But it still is a misconception that has no doubt misled many people.

Then repeatedly it has been contended, beginning with the President of the United States, that we will not be loved in other South American countries if we do not give this dictator in Panama the canal belonging to the people of the United States.

Nothing could be further from the truth, even if it were relevant—which it is not. The able Senator from Utah just the other day laid that to rest on this floor. I think he referred to a visit to South America by this Senator at this Senator's own expense. I did not go under the aegis of the State Department. I did not use any public funds. I went, as the saying goes, on my own nickel, and I arranged my own itinerary. That just happened to include visits with the heads of state in each of several countries representing three-fourths of the population, the gross national product, and the land area of South America.

Each of these heads of state said, in effect, "Don't give Torrijos your canal."

Then I recall the distinguished Senator from Alaska who, during the debate on the Neutrality Treaty, declared in his eloquent fashion, and certainly very loudly, that the canal is obsolete, that all it would accommodate were "a few old rust buckets," as I believe he called them, accommodating one drop of oil apiece.

Well, that was reductio ad absurdum on its face. The Senator from Alaska was colorful. But he was contending, in effect, that the canal is obsolete and we were not doing Panama any favor by giving the canal to Panama.

Well, the fact is, as the Senator from Utah knows, that 98 percent of the vessels afloat in this world can go through the Panama Canal, can transit it. The only vessels that cannot transit it are the supertankers and the larger aircraft carriers. The Senator from Utah knows that the aircraft carriers would not use the canal anyhow because aircraft carriers are not intended to move from the Atlantic to the Pacific or vice versa. You build one for the Pacific, you build one for the Atlantic. Supposedly we have a two-ocean Navy, which we actually no longer have. We have at best a one-and-a-half-ocean Navy.

As for the supertankers, there would be no place for them to dock even if they went through the canal. So that is another misconception the proponents of the treaty have repeatedly stated on this floor and elsewhere.

I am a little bit amazed, I would say to my able collegue from Utah, that despite the deluge of misconceptions distributed by those who favor these treaties, the American people have instinctively understood what is afoot on this floor in the discussion of these treaties. I am very proud of the American people for not having been any more misled than they have been.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. HELMS. I would be glad to. However, I do not have the floor. The Senator from Utah yielded to me, and I am sure he will yield to the Senator.

Mr. MATSUNAGA. Mr. President, a parliamentary inquiry. Who has the floor?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. MATSUNAGA. I thought the Senator from North Carolina had the floor.

The PRESIDING OFFICER. No, the Senator from Utah yielded the floor. I understand the Senator from Utah has yielded for a commentary to the Senator from North Carolina. Has he completed it?

Mr. HELMS. No, not quite, Mr. President. I shall be through in just a moment.

In summation, as I was saying, I am very proud of the people of the United States for not having been misled by the misconceptions that have been published and broadcasted. The people understand what is at stake here. they understand that this is a facility that was bought, built, and paid for with the resources and sacrifices of the American people; a facility that is vital not merely to the best interests of the United States but to the entire free world; a facility that is by no means obsolete; and a facility which leaders throughout South America fervently hope will remain in the hands of the United States of America.

I compliment the Senator for his discussion on the Opinion Research Corp. findings. I would just add this footnote: I doubt that the Senator from Utah can find one mention in the major news media of that poll.

Mr. HATCH. I have looked for it and I have not been able to find anything; and yet it is the most signficant poll taken to date, with the fairest questions and from all angles, and I have to agree with the distinguished Senator from North Carolina. I have not seen anything, which is not to say that it has not been printed; I just have not seen it.

I have looked, and I certainly have looked in some of the media sources that the distinguished Senator has commented about here today.

Mr. HELMS. I thank the Senator for yielding.

Mr. HATCH. I appreciate the remarks of the distinguished Senator from North Carolina.

Mr. MATSUNAGA. Mr. President, will the Senator from Utah yield?

Mr. HATCH. Without losing my right to the floor, for a question.

Mr. MATSUNAGA. I thank the Senator for yielding.

As the Senator from Utah (Mr. Hatch) has stated, there are those who have said they would oppose and oppose and oppose. I take it that in the view of the Senator from Utah the Gallup poll is a reliable poll?

Mr. HATCH. No, it is not.

Mr. MATSUNAGA. It is not?

Mr. HATCH. Because some of the questions were carefully calculated to produce and evoke a certain response. I will agree to this extent, that with regard to other issues I have found him to be

eminently qualified. With regard to this issue, it is another matter. I think the questions were geared to get the desired responses.

Mr. MATSUNAGA. Will the Senator yield further?

Mr. HATCH. I will yield for a question, but I want to get back to the original question raised by the distinguished Senator from Vermont. It involved the constitutional issues here. If the Senator has a question he wants to ask, I will yield for that purpose.

Mr. MATSUNAGA. I would like to read into the Record the latest Gallup poll, inasmuch as the Senator from Utah read into the Record a poll conducted by another research group.

Mr. HATCH. How much time does the distinguished Senator from Hawaii wish?

Mr. MATSUNAGA. No more than 2 minutes.

Mr. HATCH. That is fair, and I yield for that expressed purpose.

Mr. MATSUNAGA. I thank the Senator for yielding.

The result of a poll, as the Senator knows, depends on how the question is phrased. While we did not use the type of question asked in the opinion research study, the Gallup poll, which was conducted in February of this year, showed that the American opinion was 48 to 40 percent in opposition to the treaties. The last survey showed that 45 percent were in favor and 42 percent opposed.

The important finding of this survey was that the more the Americans were informed, the more they tended to favor the treaties, and the better informed, as determined by the ability to answer three questions about the treaties, expressed being in favor of the treaties by 57 percent, and those better informed opposed the treaty only by 39 percent, while 4 percent held no opinion or refused to express one.

We find that Americans who are better informed about the treaties tend definitely to favor the treaties. I would say to the distinguished Senator from Utah that in my own experience, among my own constituents, I have found this to be true, that those who are better informed favor the treaties. Believe me, I have spent many, many hours convincing those who were opposed to the treaties, not by being an advocate but by merely being a conveyor of facts. I have been able to convert opponents to proponents of the treaties. I thank the Senator for yielding.

Mr. HATCH. I am very interested in the remaks of the distinguished Senator from Hawaii. He just joints up what Senator Laxalt said. There are polls and there are polls and there are polls. Let me say this: I suppose the ultimate poll will be at the election box next election, and the election after that election and the election after that. I suspect if the American people are so much in favor of this hardly anybody voting for the treaties has anything to fear. But my experience, as I have gone all over this country, and have talked to all kinds of groups, is that almost everybody is overwhelmingly against these treaties.

I have, in a sense, conducted by own polls with thousands and thousands of people. All I can say is we will have to wait until the elections to see how angry the American people are.

I think the real issue which was brought up was a question involving, why do we not let the Supreme Court decide this issue, whether or not the House of Representatives should have the privi-

lege of voting on this transfer of $10 billion of Amerian property?

Of course, that question arises out of article IV, section 3, clause 2 of the Constitution, which reads as follows:

The Congress—

Not the Senate but the Congress, which means both Houses—

shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;

I do not intend to go into that in great detail today, but probably on Monday or Wednesday of next week I will go into it in great detail, what type of territory the Panama area was and is to the United States, which will prove, I think, through constitutional law, that both houses should vote on this transfer of $10 billion of American property.

The point was raised here, why not let the Supreme Court do it?

Well, one reason is because the Supreme Court will not do it prior to the end of this debate, which means that if we wait until the end of the debate and we deny the House of Representatives the right to pass or reject the transfer of American property, which is the only issue they would have a right to vote upon under article IV, section 3, clause 2 of the Constitution, then the fait accompli will have occurred. There is not much we can do about it, if we ratify these treaties, whether or not the Supreme Court ultimately determines that the constitutional issues are as maintained by those of us who sit on the Separation of Powers Subcommittee, and I sit on the Constitutional Law and Amendments Subcommittee of the Judiciary Committee.

Mr. LEAHY. I did not understand the point the Senator made.

Mr. HATCH. Would the Senator like me to yield?

Mr. LEAHY. Just so I may ask him to clarify one thing. Is the Senator from Utah speaking of the House voting on both of the treaties?

Mr. HATCH. No. I am speaking about the House voting on one issue, the transfer of American property, which is what is covered under article IV, section 3, clause 2.

Mr. LEAHY. Is the Senator, insofar as the discussion before and the vote of the Senate on the treaties, suggesting that the House vote on the same treaties that are to be voted upon here?

Mr. HATCH. No. The issue is: Under article IV, section 3, clause 2, I will requote it, "The Congress," not the Senate alone, "shall have the power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States."

To respond directly to the question, why not let the Supreme Court decide this for us, I think what we ought to consider is some of the ramifications surrounding that particular statement.

Before examining the issue of Congress' rights under the treaty, we need to be mindful of our duties under the Constitution. It has been suggested by some Members that because this is a constitutional issue involving the powers of both the President and the Congress, the proper place for its resolution is not the floor of the Senate but the Supreme Court of the United States of America.

Such a view, Mr. President, represents a gross distortion of our constitutional duties, and I hope that Senators will not be persuaded to abdicate their responsibilities by this sort of reasoning. It is true, of course, that the Federal courts may ultimately be required to give their opinion on this issue. Whether they will or will not, I do not know. Whether there will be a judicial determination depends in large measure on the action we take here and on technical matters relating to the question of standing and the so-called political question doctrine.

Certainly, the issue is settled if we accept this amendment and require the House of Representatives to join with the Senate in the decision to transfer the Canal Zone to the Government of Panama. That would be the end of the issue, the end of the question.

The growth of judicial power in this century, usually at the expense of Congress and the several States, suggests that the Senate has, however, already seriously weakened our separation of powers by refusing to exercise its powers, by giving the courts a free hand to roam at will and make laws throughout the country, and by abandoning the field, so to speak, and inviting the courts to step in where legislators fear to tread, in such manner does the Senate avoid a difficult vote that might anger the people back home. This may seem prudent to those who have no desire other than to be reelected, but it is nevertheless politically and constitutionally irresponsible. As a matter of sound constitutional policy, Senators should face constitutional problems squarely. Otherwise, we might just as well close up shop and turn over the whole Government to the courts.

Over and above these considerations is the Constitution itself, which states in no uncertain terms that we must, in order to serve as Members of this body, take an oath to uphold the supremacy of the Constitution. I fail to see how we can live up to our oaths of office if we disregard the Constitution during the course of our deliberations because it is easier to throw the yoke and the burden upon the Supreme Court. To meet our obligation, we must keep an eye on the Constitution especially in this case. It is the light which guides us through the legislative process. it sets the rules and the standards by which we judge the legitmacy of legislation and the propriety of our actions. We cannot legislate in a vacuum. The first test of every measure we consider is the constitutional test. Is this bill constitutional? If it is not, we abandon it, whether it is a good bill or a bad one.

Legislative construction, in other words, is one of our primary duties. If we are mistaken, if we erroneously interpret some provision of the Constitution, then the courts are free to declare our action null and void. But the possibility of judicial intrusion does not relieve the President of his duty to interpret the Constitution when he is called upon to enforce it or to sign a bill into law. All three branches of this Government, in fact, must interpret the Constitution in order to determine the legitimacy of their actions. It is not limited strictly to the Supreme Court of the United States. As a matter of fact, the Congress has asked them many times to determine what is to be done in a given situation, and certainly here.

This is not to say that our interpretation must be final, but only that the Constitution contemplates that all three branches of the Government have a constitutional role to play, and that our system would be reduced to utter confusion if every decision, in the first instance as well as the last, were to be made by nine men who are neither elected to office nor are responsible to the people of this country, as we are.

This question of our duty to interpret the Constitution first arose in 1789, in the first Congress. It was answered and put to rest by James Madison, one of the men who drafted our Constitution, and I believe his words bear repeating today.

The issue was whether the President had the power of removal. The Constitution expressly provides that the President may appoint principal officers, but it contains no instructions for the removal of officers except in instances where impeachment is appropriate. Members of the House considered at length whether Congress may decide the question of constitutionality and specify a removal process and a statute creating an executive department.

In response to the argument made by Representative Alexander White, of Virginia, back in 1789, that Congress ought not to interpret the powers of the President, Madison rose and addressed the matter in these words:

> It has been said by one gentleman that it would be officious in this branch of the legislature to expound the Constitution so far as it relates to the division of power between the President and Senate.
>
> It is incontrovertibly of as much importance to this branch of the Government as to any other, that the Constitution should be preserved entire. It is our duty, so far as it depends upon us, to take care that the powers of the Constitution be preserved entire to every Department of government; the breach of the Constitution in one point will facilitate the breach in another; a breach in this point may destroy that equilibrium by which the House retains its consequence and share of power; therefore we are not chargable with an officious interference . . .
>
> But the great objection drawn from the source to which the last arguments would lead us is, that the Legislature itself has no right to expound the Constitution; that wherever its meaning is doubtful, you must leave it to take its course until the Judiciary is called upon to declare its meaning. I acknowledge, in the ordinary course of Government, that the exposition of the laws and the Constitution devolves upon the Judiciary. But I beg to know upon what principle it can be contended that any one department draws from the Constitution greater powers than another, in marking out the limits of the powers of the several Departments? The Constitution is the charter of the people to the government; it specifies certain great powers as absolutely granted and marks out the departments to exercise them. If the Constitutional boundary of either be brought into question, I do not see that any one of these independent departments has more right than another to declare their sentiments on that point.

That statement by James Madison is found in the annals at page 500.

Mr. President, James Madison's explanation of our constitutional duties of legislative interpretation is no less valid today than it was some 189 years ago. We have a right and a duty to declare our sense of the meaning of the Constitution. Either we honor the Constitution now or never. But I reject the view that we honor it only in the breach.

The reason the Founding Fathers wanted the House of Representatives to vote on the transfer of American property is that they did not want any President of the United States or anybody else, for that matter, unilaterally making a decision to transfer American property without the consent of those Representatives of the

Government in the legislature. Not just the Senators, who are elected only every 6 years, but those who have to go back to the people every 2 years, because those are the people who are going to realize, first and foremost, what the feelings of the populace really are.

The Founding Fathers wanted them to vote, because those 435 Representatives, as well as the 100 Senators, speak for the people in legislative matters—or at least should, I say, should speak for the people in legislative matters.

As I look at what has been happening to this country over the last number of years, I do not think they speak very well for the people in legislative matters. As a matter of fact, I think we have gone through some problems in this country that would never have arisen were it not for the fact that one philosophy has been ruling for the past 41 years. We are in the dilemma and plight we are in today strictly because some of our colleagues in the Congress have not done their duty or done their job.

In this case, we have 231 Members of the House of Representatives—Congressmen, if you will—elected by the people every 2 years, who have demanded the right to vote on the transfer of $10 billion of American property. I for one, think they ought to have that right. I think the Constitution means what it says when it says that the Congress shall make that decision, not just the Senate.

Let me say this: If we want to do what is right here—I do not know how Congress is going to go. I do not know whether, if we gave them this right, they would vote for these treaties or not. I know one thing: I would feel a lot better whichever way they go knowing they had the opportunity to vote in this very important, specific area. I think it is almost crucial to this Government that we do not extend Executive power beyond where it is right now.

If we allow the President, through the representatives of the Department of State, the Ambassadors and others, to ignore the House of Representatives in this matter, since they have at least demanded it and the Constitution mandates it, I think we are going to be in trouble. I think we will allow the President in one fell swoop to extend his powers in violation of the separation of powers doctrine of the Constitution, to the detriment of the House of Representatives and, I think, the whole Congress. And we, as Senators, would have abdicated our responsibility to stand up and do what is right in this matter to insist on the protection of the rights of the House of Representatives as well as the Congress.

I might add that the 231 Congressmen are a bipartisan group. They are not just Republicans, they are not just Democrats. They are from both parties. And they are not all against the treaties. A number of them are for the treaties. But they know what is at issue here.

What is at issue here is one of the most important constitutional issues in the history of the country because it involves the very balance in the separation of powers. The Founding Fathers said that we have three coequal branches of Government, and not just one President who can ride roughshod over the other branches of Government.

To be frank, when Raoul Berger, that great authority on executive privilege, was backing those who wanted to attack Nixon for some of the things they said he did—and he should have been attacked—he was the hero of America. Everybody was talking about Raoul Berger, the great constitutional expert, because he was showing the way to impeach a President, in delicate matters of first impression. I think his opinion should be interesting to know, because I agree with Senator Helms: I agree with him that the media, the major news media in this country, have not covered this constitutional issue, and it is the most significant issue in this whole debate.

I can tell you this: You will be interested to know that Raoul Berger, who, himself, would vote for these treaties if this problem were cleared up, has come out in definitive statements and made it very, very clear that, under the Constitution, the House should vote on this issue, and if the Senate refuses to allow it, the Senate is participating in extending the President's power over and above that of a coequal branch of the Government, meaning the U.S. Congress.

Now that is what is involved here, and it is no small issue. As I have said, it is one of the most important constitutional issues in the history of the country regarding the powers of the President and the scope of the treaty power.

Let me read what Professor Berger had to say, the eminent constitutional authority, formerly from Harverd University, when he testified before Congress a few weeks ago:

> You have invited me to comment on the relation between the Article IV, § 3(2) power of Congress to dispose of property of the United States and the treaty power. Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress be diminished. I have long held the conviction that all agents of the United States, be they Justice, members of Congress, or the President, must respect those boundaries. No agent of the people may overleap the bounds of delegated power, or encroach on power granted to another. That is the essence of constitutional government and of our democratic system.

That is what we mean by a separation of powers. That is the hallmark of American constitutional life, that we do not have any one of those coequal branches more powerful than the other. At least, they are supposed to be equal, even though at times some through power of leadership do rise above the other.

There is no question that the Senate could rise much above the administration of leadership if they would just recognize the House of Representatives.

In any event, he said, in essence, this is a balance of powers, this is a separation of powers, these are three coequal branches of Government. This is the essence of constitutional government and of our democratic system:

> The effect of these hearings ranges beyond the Panama Treaty, for the Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for "concurrent jurisdiction" of the President in the disposition of United States property. For it needs constantly to be remembered that a succession of Presidents have circumvented Senate participation in treaties of gravest import by resort to Executive Agreements. Acquiescence in such claims spells progressive attrition of Congressional powers. Your insistence on respect for constitutional boundaries will warn the Executive against encroachments on the powers of Congress; it will alert foreign nations to the fact that treaties for the cession of

United States property must be subject to the consent of the House as well as the Senate.

What he was saying there is that Presidents have already ignored the Constitution by bypassing the Congress knowing that they could not get treaties through because of the coequal power of Congress and enacted and executed executive agreements, so that they did not have to go through this constitutional process of proving that the treaties are meritorious enough to get 67 votes.

The fact is, he said, that this is recognized above all in the Panama Canal decision. We are talking about the hallmark issue of constitutional government, the thing that makes this country the greatest in the world.

He goes on to say that:

The President, "by and with the advice and consent of the Senate", may make treaties. But Article IV, § 3(2) provides that "the Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." How are the two provisions to be accommodated? For present purposes the question whether the United States has "sovereignty" over the Panama Canal need not detain us because, in my judgment, the grant of "use and occupation * * * in perpetuity" constitutes "property" no less than the familiar lease of realty for 99 years. Then there are the installations that cost billions of dollars. Disposition of these no less requires the consent of Congress that does that of territory. In 1942, the President, by Executive Agreement, promised to return certain installations to Panama subject, however, to Congressional approval.

The precedents of the past with regard to Panama calls for congressional approval before we transfer property, and the reason they do is because the Presidents of the United States knew at that time that this principle rises above—transcends— the right of a President to transfer property without the consent of Congress:

A similar provision is to be found in the Treaty of 1955.

Involving the Panama Canal.

These executive constructions are confirmed by established canons of interpretation.

First, there is the settled rule that "where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."

And he is quoting directly from a Supreme Court case:

In other words, "a broad statutory provision will not apply to a matter specifically dealt with in another part of the same act." Restated in terms of the present issue, the specific power of disposition, in which the House of Representatives must concur, governs the general provision authorizing the President and Senate to make treaties.

Second, there is the canon that express mention signifies implied exclusion, which the Supreme Court has employed again and again: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." The grant of the disposition power to Congress, in other words, excludes its exercise by Senate and President. The rule was invoked by the Founders; for example, Egbert Benson said in the First Congress, in which sat many Framers and Ratifiers, that "it cannot be rationally intended that all offices should be held during good behaviour, because the Constitution has declared [only] one office to be held by this tenure." Under these rules it is of no moment that Article IV contains no express exclusion of "concurrent jurisdiction" under the treaty power. Having given Congress the power to dispose of public property, it follows that the President and Senate were impliedly excluded therefrom. Although this particular exclusion was not before the Court, it tactily ratified the application of the foregoing rules of

construction when it stated that Article IV *"implies an exclusion of all other authority* over the property which could interfere with this right * * *."

Attorney-General Griffin B. Bell conceded in his statement before the Senate Foreign Relations Committee, September 25, 1977 (hereafter cited as A.G.), that "the specific powers granted to the House of Representatives and Congress in fiscal matters (Article I, section 7, clause 1, and Article I, section 9, clause 7, money bills and appropriations power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditures of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the purse-strings."

The Attorney General went on to say:

Now Sections 9 and 7 are couched in quite dissimilar terms. Section 9(7) is framed in terms of flat prohibition: "No money shall be withdrawn from the Treasury but in consequence of appropriations made by law * * *" Section 7(1), however, merely provides that "All bills for raising revenue shall originate in the House." Yet the Attorney General reads § 7(1) to preclude the President and Senate from "bypass[ing] the power of Congress and in particular of the House of Representatives over the pursestrings." What is there that distinguishes "All bills * * * shall originate in the House" from the Congress shall have power to dispose * * *"? The impalpability of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes." Nothing in the Article 1, § 8(1) "The Congress shall have power to lay and collect taxes" distinguishes it from the Article IV "The Congress shall have power to dispose."

If the President may not by treaty "bypass" the power of the House to originate revenue-raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the property of the United States.

In their testimony before the Congress, Herbert J. Hansell, Legal Advisor, Department of State, and Ralph E. Erickson, Deputy Assistant Attorney General, cited a string of cases in support of "The power to dispose of public land * * * by treaty." For the most part they fall under boundary treaties or treaties with Indian tribes which, as will appear, turn on circumstances peculiar to themselves. Preliminary consider Hansell's citation of *Missouri* v. *Holland,* 252 U.S. 416 (1920). It arose out of a State challenge to the treaty with Great Britain for the protection of migratory birds which annually traversed parts of the United States and Canada. Justice Holmes, addressing the argument that the treaty infringed powers reserved to the States by the Tenth Amendment, stated:

"Wild birds are not in the possession of any one, and possession is the beginning of ownership. The whole foundation of the States' rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State, and in a week a thousand miles away."

The Indian treaty cases constitute one of the pillars of the argument for "concurrent power"; and Attorney General Griffin B. Bell referred to them as "a substantial body of Supreme Court decisions dealing with Indian tribes which holds that a treaty may dispose of property belonging to the United States without implementing legislation under Article IV, section 3, clause 2".

To begin with *Jones* v. *Meehan,* 175 U.S. 1 (1899), both Hansell and Erickson quote, "It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States." This was because the treaty merely *reserved* certain individual tracks from the cession to the United States. It "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres" for an individual Indian, and the issue was what kind of title did he take. The Court quoted from an opinion of Attorney General Taney, destined before long to succeed Chief Justice Marshall:

"These reservations are *excepted* out of the grant made by the treaty, and *did not therefore pass with it;* consequently the *title remains as it was* before the treaty; that is to say, the lands reserved are still held under the original Indian Title."

Which, of course, distinguishes that case and does not make it a case at all for the State Department.

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of complete title in fee simple." That explanation presumably responded to the fact that tribal lands were generally held in common; individual titles were all but unknown, so that such title had to be secured to an individual through the machinery of the treaty. But that is far from a

disposition of government land because, as Taney explained, the "reserved" title remained in the Indians. Many, if not most, of the Indian treaty cases involve just such "reserve" provisions.

We might dismiss *Holden* v. *Joy,* 84 U.S. 211 (1872) because, as Attorney General Bell noted, "The Court conceded that the question was immaterial in the case at bar because Congress had actually implemented and ratified that particular treaty." A.G.9.

In other words, Congress did exactly what we are saying should be done here.

Nevertheless, the Court, in what he terms a "strong dictum", stated that "there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an Act of Congress conferring it* * *." I was at pains to study each of the cases cited by the Court for this assertion, and abstracted them in an appendix attached to my statement before the Senate Subcommittee on Separation of Powers. There you may see for yourself that half of the cases thus cited are entirely irrelevant.

I should add, these were cited by the State Department and the Attorney General—and were entirely irrelevant.

and that the rest concern "reserves" under which, as Taney observed, no title had passed to the United States, but remained in the given Indian. In considering such dicta, it is well to bear in mind Chief Justice Taney's statement that the Court's "opinion upon the construction of the Consitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should thereafter depend altogether on the force of the reasoning by which it is supported."

By that standard the *Holden* dictum is no authority at all.

As to other treaties, Hansell tells us, "the precedents supporting the power to dispose of property by treaty alone can be found in the boundary treaties with neighboring powers, especially in the treaties between the United States and Great Britain in 1842 and 1846 for the location of our northeast and northwest boundaries. * * *" Settlements of boundary disputes are not really cessions of United States property. The Oregon boundary dispute proceeded from an extravagant claim: "Fifty-Four Forty or Fight"; the British, on the other hand, claimed land down to the forty-second parallel. Only when the dispute was settled by negotiation at 49 degrees could either party confidently assert that it had title. As a respected commentator, Samuel Crandall, observed, "a treaty for the determination of a disputed line operation not as a treaty of cession, but of recognition."

Among other examples of alleged treaty transfers of property, Hansell instances the return to Japan of the Ryukyu Islands. By Article III of the 1951 Treaty of Peace with Japan, the United States received the right to exercise "all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of those islands * * *" While Japan renounced in Article II "all right, title and claim" to various territories, it made no similar renunciation with respect to the Ryukyus. Quoting the Legal Advisor of the State Department, that "sovereignty over the Ryukyu Islands * * * remains in Japan," a District Court stated that sovereignty over a territory may be transferred by an agreement of cession," but it concluded that there had been no cession. The Fourth Circuit Court of Appeals quoted a statement by Ambassador John Foster Dulles, a delegate to the Japanese Peace Conference, that the aim was "to permit Japan to retain residual sovereignty," and it held that the treaty did not make "the island a part of the United States, and it remains a foreign country for purposes of" the Federal Tort Claims Act.

In sum, Messrs. Hansell and Erickson have failed to make out a case for the President's "concurrent jurisdiction" with Congress in the disposition of United States property.

It remains to consider the arguments advanced by Attorney General Bell before the Senate Foreign Relations Committee. He cited *United States* v. *Percheman,* 32 U.S. (7 Pet.) 51, 88-89 (1833) to prove that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory." A.G.10. At the cited page it appears that Article 8 of the treaty provided, "all the grants of land made before the 24th of January 1818, by his Catholic Majesty * * * in said territory ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands. * * *"

This article, Chief Justice Marshall held, "must be intended to stipulate for that security of private property which the laws and usages of nations would, without express stipulation have conferred."

In other words, the treaty provided that prior Spanish grants to *private* persons should be ratified and confirmed, a provision far removed from presidential "regulation" of *public* territory. Such regulation is confined to Congress, as *Foster* v. *Neilson,* 27 U.S. (2 Pet.) 253, 314–315 (1829) held with respect to the self-same provision: the ratification and confirmation which are promised must be by the Act of the Legislature," i.e., Congress.

REMARKS IN THE LEGISLATIVE HISTORY OF THE TREATY POWER

Before discussing the legislative history adduced by the Attorney General, permit me a few words of explanation and apology. When his statement before the Senate Committee reached me late of a Saturday afternoon, as appears in my own Senate statement, I had only about two days to prepare my comments before having them typed and forwarded to the Senate Committee. Pressure of time conduces to oversights, and I was mistaken respecting a time sequence, and in following the Attorney General's erroneous identification of a motion made by Williamson and Spaight with one he attributed to Sherman and Morris. Leisure for reflection and further research has since enabled me to correct such inaccuracies and to sharpen my analysis. And it has strengthened my conviction that the treaty power was not designed to diminish the Article IV power of Congress.

For the most part the Attorney General's citations have reference to settlement of boundary disputes by treaties of peace which, as we have seen, do not involve cessions. He begins with a remark of George Mason in the Constitutional Convention, an *in terrorem* statement during a debate on whether the Senate could share in originating revenue-raising bills. Speaking for exclusion of the Senate, Mason stated that the Senate "could already sell the whole country by means of treaties," and then toned down this extravagant overstatement to that quoted by the Attorney General: "the Senate by means of a treaty might alienate territory, etc., without legislative sanction." A.G.6, 2 Ferrand 297. Mason spoke *before* the Article IV progenitor was even proposed and referred to the Committee on Detail, 2 Farrand 321, 324, and of course before the resultant "disposition" provision was debated, id 466. Manifestly his earlier remark hardly expressed the view that the treaty power overrode the as yet unborn "power to dispose."

The Attorney General's other citations will be considered seriatim.

We will go into those more as we continue this debate on these most important issues on Monday.

All I am trying to say is that we have initiatives right here and now which involves the balance of powers of our Government, our constitutional separation of powers doctrine. It is lightly overlooked and lightly regarded, not only by the administration and the State Department and the Ambassadors in this case but also even by Members of this august body, who should be most interested in protecting the rights their fellow Members in the House of Representatives and of the Congress.

I think we should not reject the opportunity and reject the demand of the House of Representatives to approve the transfer of American property.

There is one thought I would like to finish with, and it is this: I do not think it is right for us to abdicate our responsibility to adjudge constitutional issues in these treaties by saying, "Let the Supreme Court take care of it," when we know they may never take care of it, by sliding off the issue on a political question basis. I do not see how the Supreme Court could slide off it on a political question basis when one-half of Congress would not have any say at all, if the Senate fails to recognize its right to vote on the transfer of $10 billion of American property. So how can that be a political question? If they had some right to say we do, then maybe it would be a political question. But they would be deprived of their rights and I think they would be injured. Their constituencies

would be deprived of their rights to have Members of Congress stand up and be counted on this issue of transferring American property.

As I said yesterday the most significant thing that occurred yesterday was that, for the first time in I think 14 years, the American people know which Senators voted for these treaties and which Senators voted against these treaties. It is significant, whichever way the ball bounces, that they know this.

I know one thing: The people in the United States of America are starting to realize that that was just the first battle, because the Neutrality Treaty is not worth anything unless the Panama Canal Treaty, which we are presently debating, and which we will debate well into the next number of weeks, is ratified.

If the Panama Canal Treaty is not ratified, if those who share my view consist of 34 Senators, 3 or 4 weeks from now, or whenever these debates come to a close, then the Neutrality Treaty will not be of much moment or value.

I might mention, also, that it is important to note that those who brought the Neutrality Treaty forth first knew that it was much more likely that it would be ratified than the Panama Canal Treaty, which is filled with ambiguities, filled with mistranslations between the Spanish version and the English version, unprotective of the United States, costly to the United States, and is much inferior to the bad treaty that the Neutrality Treaty was.

I think it is important for the people to know that those 32 votes we received yesterday were very significant, because we need only two more votes in order to defeat the Panama Canal Treaty.

Although the debate in the last 22 or 23 days has been extremely important, it is not anywhere near as important as the debate in the future on the Panama Canal Treaty.

Much of the future of this country depends on what we do during the next few weeks as we debate the second treaty. I, for one, hope that some of the ambiguities, the translation errors—there is a whole paragraph in the English version that is left out of the Spanish version, and it is substantive—will not involve the same stonewalling that we saw in the Neutrality Treaty.

I think the most significant statement that was made right before we voted on the treaty yesterday was that if these reservations and understandings, which everybody was so eager to make a deal on and get into the resolution of ratification—if they were so binding or so important, why did not we have the courage to put them into the treaty as amendments? Conversely, if the amendments were so bad, as they were stonewalled and shot down one after another, why do we have to go the the bother of trying to correct them with reservations and understandings, which, as a number of people in this Chamber know, are not legally binding on Panama, not by principles of international law and not by their own constitution?

I believe it is important for the people, as they see their Senators during the next weekend or during the Easter recess, to express their point of view. If you think this battle is over, it is not. The big battle is before us; because if the Panama Canal Treaty goes down, the people's wishes, in my opinion, will have been heard, and the Neutrality Treaty will not be of any moment.

So then it becomes incumbent upon us to try to negotiate treaties that will be fair not only to Panama but fair to this country and protective of our interests.

I say to the American people, as these men come home to chat with you, if they tell you, "Why, I protected you by getting you a reservation or understanding," you might as well know that since they are not legally binding either under international or Panamanian constitutional law they have not done anything except to protect themselves, so that they would have an argument when they get home that they have been working to try to do what is right for you.

I think it will pay everyone in America to look at the quality of the amendments that were put forth one right after the other by sincere, dedicated, insightful, and intelligent Senators, who were fighting for the American people and were stonewalled and shot down by the very same people who claim that their reservations and understandings were protective of their interests.

Why would they not vote for the amendments to the treaty itself instead of trying to put these reservations and understandings in?

The answer to that is because the President has said that if he does not get those treaties in exactly the way they are written, as bad as they are, Torrijos will not take them. I submit to you that Torrijos will take whatever we send to him as long as it is basically fair. He has to, not because of the use of force, but because he himself knows that these amendments are fair. If we do not enact some amendments to the Panama Canal Treaty we are going to be in deep trouble.

Let me just run quickly through a list of some of the substantive and highly meritorious amendments which have been defeated, voted down by these very same people who are pushing the reservations and understandings that are not protective of the American people but would like the people to believe they are. Listen to some of the meritorious amendments that almost all of these people shot down time after time, amendments that they themselves know would make the Neutrality Treaty a much better treaty and much more protective of the United States of America.

These meritorious amendments were defeated because of the leadership's wish to avoid troubling the dictator of Panama with another election. This list is by no means exhaustive but is does give an idea of what the Senate has rejected during the course of this debate. To me these are not by any means "killer" amendments, but they are substantive improvements without which the treaty is deplorable.

On February 27, by Mr. Allen, an amendment allowing a continued U.S. military presence in Panama until the year 2019, if the President certified as to its necessity.

On March 7, by Mr. Helms, an amendment allowing continued U.S. maintenance of the highly sensitive Galeta Island communications base, which is extremely important to us.

On March 8, by Mr. Stevens, an amendment prohibiting transit through the canal of vessels of war and auxiliary supply vessels of nations engaged in armed conflict with, or belligerent to, the United States.

On March 9, by Mr. Dole, an amendment guaranteeing the United States authority to intervene militarily when the United States alone determines that the neutrality of the canal is threatened.

You would think that that would certainly be acceptable.

On March 10, by Mr. Helms, an amendment setting up procedures for peaceful resolution of disputes but, in the event a threat to the neutrality or security of the canal could not be resolved by peaceful methods, each party would have the right to take, unilaterally, the measures it deems necessary.

On March 10, by Mr. Dole, an amendment allowing for continued U.S. military presence by mutual United States-Panamanian agreement after termination of the Panama Canal Treaty.

On March 13, by Mr. Dole, an amendment allowing the United States, independence of Panama, to declare the existence of an emergency which would permit our warships head-of-the-line passage.

I could go on and on. There were a lot of amendments.

We pointed out the translation difficulties between the two, where they take their Spanish translation to mean one thing which is very favorable to them and unfavorable to us.

Do not tell me that these amendments were not stonewalled; do not tell me they were not protective of the United States; and do not tell me they were "killer" amendments. They were amendments that any red-blooded person should have passed because they would protect this country without injuring Panama.

I go back to the original point that was made by the proponents of the treaty here, and that is this: I think that what is really involved here with the stonewalling is that the proponents of these treaties really do not seem to believe in democracy. They talk about democracy but they do not want the Panamanians to vote. They are unwilling to protect this country and force another plebiscite so they can vote on whether to accept the provisions that we have tried to put into these treaties.

Mr. LEAHY. Mr. President, will the Senator yield at that point?

Mr. HATCH. If I could finish, then I will be delighted to yield.

Mr. LEAHY. I wonder if I understood the Senator correctly that he is suggesting, because some of these amendments were defeated by very large majorities of Senators——

Mr. HATCH. Almost all were defeated that way.

Mr. LEAHY. That U.S. Senators who voted against them do not believe in democracy—is that what he is suggesting?

Mr. HATCH. That is not what I said. If it came out that way I certainly will correct it. I am asking, do they believe in democracy? My question is: Do the United States Senators who have stonewalled these amendments—now that might exclude the distinguished Senator from Vermont and it might exclude many others—really believe in democracy? By stonewalling these amendments, which are protective of the United States and which almost everyone I have talked to, including proponents and opponents, has admitted are protective, do they believe in democracy? Is it democratic to deny the Panamanians a chance to vote on amendments to the treaty? Is it democratic to deny the House of Representatives an opportunity to approve the transfer of property?

Mr. LEAHY. I might suggest to the Senator from Utah that any time someone has voted contrary to an amendment that I proposed I might have questioned that Senator's judgment, I might have prayed for his soul and redemption, but I have never ever questioned his belief in democracy or his belief in the United States of America.

Mr. HATCH. I have not named any Senators. I am saying this: I am asking a question, do they believe in democracy?

How about this matter of the House vote? The 435 representatives of the people, according to the leadership, are going to be denied their right to appear and vote on these matters, vote on the transfer of American property, as I said, $10 billion worth of American property. I think that we should be pretty solicitous of our brethren over in the House of Representatives because it goes right to the heart of the separation of powers doctrine.

What I am saying is, are we protecting our brethren in the House of Representatives? Are we projecting our own democratic and constitutional rights?

Do we understand that the Panamanian people deserve to vote even on some of these issues; and is not our duty, our highest sworn duty to uphold the Constitution and also to protect the people of the United States first?

And back to the major point: The fact that the Supreme Court might or might not be able to resolve this difficulty does not negate or take away the responsibility or the obligation of Senators in the U.S. Senate to determine constitutional questions.

I think we owe it to our brethern in the House of Representatives, and I for one am going to argue that they should have the opportunity. I think they have made some pretty strong arguments as they have testified before some of the committees; and it was interesting to me, if you look at the list of the 232 Congressmen who have demanded the right to vote on these matters, that they comprise the chairmen and ranking minority members of an awfully large number of committees over in the House of Representatives. These people are not stupid and these people do not like to be prohibited from voting on the transfer of American property, whether they are for or against the treaties; and some of them are said to be for and some of them are against.

I think our first consideration is to determine what is best for America, what is best for our people and still, at the same time, keeping in mind what is fair to Panama, what is moral, just, and right to Panama.

As my colleagues know, I have never advocated that we should stick with the 1093 treaty, not from the beginning of this controversy until now. I have always said we need to at least upgrade that treaty, even though it has been upgraded twice in the 1936 and 1955 amendments to it.

I think we certainly should improve upon these treaties if we can, get rid of the imbiguities and the difficulties so that future problems, which we can foresee now, will not rise up and cause us greater difficulty and discord than we are already undergoing.

I think that is the danger we are facing in this matter. We have not begun to scratch the surface of the constitutional issue, and I suppose we will be into that issue on Monday.

It is my understanding we are going to discuss two agricultural bills on Tuesday, so I suppose it will take Monday, Wednesday, and maybe longer because there is a lot of feeling on this issue in the Senate.

I would just like to encourage my colleagues in the Senate on the other side of this issue that regardless of whether they want the treaty or not, they ought to seriously consider not abdicating our power and giving it to the President through an extension of power which he presently does not have under the Constitution.

I did not take time today to go through some of the other statements of eminent authorities in this area who happen to agree that the House should vote in this particular area, but we will not go into those. We will go into whatever the necessary cases are as we discuss this great constitutional question in the future.

I think it is important, however, to ask the questions of what are we here to do. Are we here to rubberstamp a treaty in favor of Mr. Torrijos? Are we here to please Mr. Torrijos? Or are we here to please the people of the United States of America?

I personally feel that the reservations and understandings charade was exactly that. The only reason we went through that basic charade was in order to to get some argument settled with respect to certain Senators who were very concerned about their constituencies. If those things are important for the treaties, let us get them in as amendments so they are binding on both nations.

If the amendments are not important we can vote them down. But as we present decent amendments we ought to at least consider voting on what is right, and as we consider the constitutional issues I hopefully urge my colleagues in the Senate to consider them as deeply as they can and to consider with everything they have the rights of the full Congress in this matter, the specific language of the Constitution, the case law of the past, and the rights of our brethren over in the House.

[Mr. Leahy addressed the Chair.]

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I expect we will not be here much longer this afternoon, and I would hope, notwithstanding the fact that it is St. Patrick's Day and, perhaps, some share ancestry with me, some of the people in this country who share ancestry with me, might have found their loyalties torn this afternoon between certain celebrations that are known to take place in the country on March 17 and their overriding desire to sit by their radio and listen to every word of our debate today, that it is conceivable that we may not have a total radio population left at this point on Friday afternoon, and that maybe a percentage, possibly even a significant percentage, of the American people are not dropping everything right at the moment to listen to every word of our debate.

But for those possibly dwindling numbers who are still there, I think it is a fact that they should know that the Senate is well aware of the Constitution, is well aware of the history of the Constitution, is well aware, as is the Senator from Vermont well aware, of the fact that the Senate advises and consents to treaties, not the House of Representatives, but that the Senate advises and consents to treaties and has in this case and will continue to do so

in this case. But for those who have been listening to the debate today, who are at home concerned, perhaps almost overridden with fear, that the House of Representatives will not have a chance to vote on this issue, and those Members of the other body who maybe have had nothing on their minds in recent weeks but their grave and overwhelming disappointment that they also would not get a chance to vote on the treaties, I say that there is a light for them and that they could put aside to some extent their fears and join with those of us who have an Irish ancestry in celebrating our favorite saint's feast day today because, Mr. President, they will have a chance to vote on some aspects of this.

All the implementation legislation will have to be voted on in the House. I know that this will come as a great relief to the Members of the House because I know how eagerly every one of the 435 Members wants a chance to vote either for or against the Panama issue, and when implementation legislation reaches there, they will vote on it with an eagerness probably surpassed only by a chance to vote on the pay raise.

As I stated earlier, if you will recall the person-by-person poll last year of the House of Representatives when it looked as if they would not have a chance to vote on the pay raise, when it was, as a result of that poll, found that the pay raise would lose, I think it was by a 4- or 5-to-1 margin, then somehow something slipped up and they got a chance to vote on it, and the pay raise was passed. And those of us who had voted against the pay raise were by that action forced, obviously forced, against their wills to accept the pay raise.

So I say that even though I suspect that most Members of the other body have been unable to enjoy St. Patrick's Day for fear that they might not get a chance to vote on the Panama issue, they will indeed get to vote on it on the implementation, as will we all, for that matter. Those of us who, like myself, serve on the Appropriations Committee, will get a chance to vote on it twice, both in committee and on the floor.

Mr. President, that is all I have to say today, and I yield to my distinguished colleague from Maryland, Mr. Sarbanes.

[Mr. Sarbanes addressed the Chair.]

The PRESIDING OFFICER (Mr. Matsunaga). The Senator from Maryland (Mr. Sarbanes) is recognized.

Mr. SARBANES. I want to thank the very able Senator from Vermont (Mr. Leahy) for giving us St. Patrick's Day here on the floor of the Senate.

Mr. President, I am not going to take the time of my colleagues in any extended fashion, but I do want to make some observations about the Panama Canal Treaty.

The treaty concerning the permanent neutrality and operation of the Panama Canal having been advised and consented to on yesterday by the Senate by a vote of 68 to 32—and I am always struck by the treaty requirement and the extraordinary majority it makes necessary in the Senate of the United States, for every vote against the treaty it is necessary to have two votes for the treaty. A 68 to 32 vote on any issue of difference or controversy is a very considerable margin, but it does not exceed by all that much what is

required to pass a treaty, so the treaty requirement, the two-thirds requirement, is really a very heavy burden to carry.

I think it reflects well on the merits of the substantive provisions of the treaty that the Neutrality Treaty commanded a 68 to 32 margin. That having been concluded we now move to the Panama Canal Treaty, which is now pending before the Senate, which we will have to deal with in a similar fashion, as article by article it is opened for amendments. I understand there are a number of amendments pending at the desk. Is the information readily available, Mr. President, as to how many amendments there are pending to this treaty?

The PRESIDING OFFICER. There are 51 amendments, reservations, declarations, and understandings at the desk, a total of 51.

Mr. SARBANES. How many amendments are there to the text of the treaty? Is it 40?

The PRESIDING OFFICER. The Chair will determine. There are 38 amendments to the treaty.

Mr. SARBANES. I thank the Chair.

Mr. President, in the course of considering this treaty, the 14 articles which make up the Panama Canal Treaty, I am sure we will discuss many of the provisions in some detail. I simply want to underscore, since this is the treaty which applies to the 22-year period between now and the end of this century, that some of the provisions which are in this treaty accord very extensive rights to the United States.

Under the treaty, the United States is granted rights necessary to regulate the transit of ships through the Panama Canal and to manage, operate, maintain, improve, protect, and defend the canal. Those are rights which the United States will have.

Among those rights in article III, which is the article which discusses the canal operation and maintenance, it is stated:

In carrying out this function of managing, operating, and maintaining the Panama Canal, its complementary works, installations, and equipment, and to provide for the orderly transit of vessels through the Panama Canal, the United States may do a number of things, including the following:

> Use for the aforementioned purposes, without cost except as provided in the Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article as well as such other areas and installations as are made available to the United States under this treaty and related agreements.

Second, the United States can make such improvements and alterations to the aforesaid installations and areas as it deems appropriate consistent with the terms of the treaty;

Third, the United States can make and enforce all rules pertaining to the passage of vessels through the canal and other rules with respect to navigation and maritime matters;

Fourth, the United States can establish, modify, collect, and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

Fifth, the United States regulates relations with employees of the U.S. Government; and

Sixth, the United States will provide supporting services to facilitate the performance of its responsibilities.

Those are rather extensive rights, and those are the rights, among others—because the treaty goes on to set out some general provisions—which the United States will have over the next 22 years in the operation and the management of the Panama Canal. Of course, once we reach the end of the century, the transition will be accomplished with the operation and management of the canal then being done by the Republic of Panama.

The treaty further provides that in carrying out this function of managing and operating the canal it shall be done by a U.S. Government agency to be known as the Panama Canal Commission. Nine members, five of them Americans and four of them Panamanians, will comprise the Commission.

They will be the board which will supervise the work of the Panama Canal, five of whom shall be nationals of the United States and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

So the majority, five, will be Americans and the remainder, four, will be proposed by Panama to the United States for appointment.

The treaty also provides that the United States shall have primary responsibility to protect and defend the canal. There is an agreement, comparable to a status-of-forces agreement, which has been negotiated to cover the rights of our military people and their dependents. We will have the primary responsibility to protect and defend the canal.

To facilitate cooperation of the Armed Forces of both countries in the protection and defense of the canal—and this is an effort to work out a cooperative relationship between the United States and the Republic of Panama—there will be a combined board established by the United States and the Republic of Panama comprised of an equal number of senior military representatives of each party. These representatives shall be charged with consulting and cooperating on all matters pertaining to the protection and defense of the canal, and with planning actions to be taken in concert for that purpose.

So there is a combined board that will consult and advise and plan.

The treaty goes on to provide that such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the Armed Forces of the United States of America or the Republic of Panama.

While we have this combined board for the purposes of consultation, for the purposes of advice, the lines of authority of our Armed Forces are not inhibited. Of course, as I mentioned earlier, under another provision of this treaty the primary responsibility to protect and defend the canal is in American hands.

I think it is clear under these two articles I have been quoting, article III and article IV, that both in terms of operating and managing the Panama Canal and in terms of protecting and defending the Panama Canal, it is the United States which is given the powers and authorities under this treaty to meet those responsibilities. Other provisions in the treaty provide for a shared effort in trying to protect the environment in the Republic of Panama, something important to both countries. The United States, of

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course, depends, as do all countries who seek to use the canal, on the watershed contained in the Republic of Panama to produce the water to make it possible for the canal to function.

There are also in article VIII very extended provisions giving the United States certain privileges and immunities in the course of our operations.

Let me just read a couple of those so we can have some appreciation of the range and extent of the privilege and immunities which the United States has.

Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to the treaty and related agreements, shall be immune from the jurisdiction of the Republic of Panama.

There is also a provision that installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to the treaty and related agreements, and their official archives and documents, shall be inviolable.

So there is an effort here, recognizing the responsibilities which the United States will continue to have over the next 22 years, almost a quarter of a century, with respect to operating, managing, protecting, and defending the Panama Canal, to give to us a grant of rights sufficient to carry out those responsibilities. I think that grant is very important. I think that many people do not fully appreciate how extensive and extended those grants of authority are in terms of giving the United States the ability to continue to meet its responsibilities with respect to the Panama Canal.

There are other provisions in the Panama Canal Treaty that deal with the transition over to Panama of various functions in the Canal Zone. Under the treaty the zone will cease to exist as a corridor of land dividing the Republic of Panama in two and, in effect, will become part, just like any other part, of the territory of the Republic of Panama. Certain rights will be reserved for the operations of American Government agencies and certain protections provided for American employees, military and civilian, and their dependents and families, who are involved in the Republic of Panama in helping to carry forward the operation, management, protection, and defense functions with respect to the Panama Canal. But the zone dividing the country into two will be gone. So that situation, an American extraterritorial presence, will no longer be the case.

Now, at one point in the debate, someone suggested that only a small portion of the population of Panama was on one side of the Canal Zone, that most of the population was on the other side; and therefore, they suggested it really should not matter very much to the Panamanians that their country was divided by this zone. Mr. President, how can we overlook the sensitivity of any people to another power controlling a strip of land through their country and thereby dividing their nation. I can understand the sensitivity that any people would have—I think we in the United States would be extremely sensitive in the reverse situation. In fact a good percentage of the population of the Republic of Panama is located on either side of of this Canal Zone and it really does therefore in every sense, divide the country into two. Panamanians, when trav-

eling through the zone are in effect, traveling through another jurisdiction. They are subject, then, to different courts and different police, and so forth. One of the things that will take place under the treaty is that there will no longer be a zone dividing the Republic of Panama into two, with all of the problems that have come with that situation.

Mr. President, there are some very careful provisions contained in this treaty with respect to employment: First of all, an effort to protect those people already working on the Panama Canal and their particular rights; and second, an effort to give an opportunity to include the Panamanian people more and more in the work of the Panama Canal; so that, over time, they, in effect, will gain the experience and the training that will be necessary to manage, conduct, operate, and maintain this important facility when at the end of the century they assume full responsibility. There are some very careful provisions that have been worked out to accomplish this, I think reflecting a great deal of concern, for those who are already working there and also a concern that the people of Panama should have an opportunity to participate in making this canal work. In a sense, it is a great opportunity to show the benefits of mutual cooperation and a great opportunity for young people and not-so-young people in the Republic of Panama to develop the skills that will enable them to operate this major facility.

Almost 80 percent of the work force today on the Panama Canal are Panamanians. It has grieved me greatly, in the course of some of the dabate that we have had on this issue, to have it suggested by some on the floor of the Senate that the Panamanians may not be capable of operating the canal, that they do not have the capacity to conduct this major facility. I think that is nonsense. The work of the canal today is largely carried on by Panamanians.

On a visit to Panama, meeting with employees who work on the canal, one of the inquiries that was made was how effective the Panamanians were as employees. The response we received was that they were the equal in every respect to other employees, Americans or others, who were working on the canal. I think it is clear that the capacity is there.

What is needed is the opportunity. These treaties hold out an opportunity to the people of Panama to move increasingly into higher positions and to assume, more and more, the responsibility for the operation of this canal.

In that sense, it is a great opportunity, not only for them but for the United States, working with the people of Panama in order to assure the efficient and effective operation of this canal indefinitely into the future.

Mr. President, there are other provisions in the treaty which I am sure we will discuss at much greater length—a provision for a sea-level canal and the provisions for Panama's economic participation in the canal, in which the tolls will provide certain payments to the Republic of Panama, which, of course, will then bring them a return on their greatest natural asset commensurate with what they have devoted to this international waterway.

In short, Mr. President, the treaty now before us, the Panama Canal Treaty, that we are now considering, having approved the other treaty 68 to 32, offers the opportunity to develop between the

United States and the Republic of Panama and between the peoples of our two countries a cooperative relationship which can be an example to the whole world. At the same time, it insures certain grants of rights to the United States which will fully enable us to meet our role to operate and manage the canal and our role to protect and defend the canal, since we will have the direct responsibility for both of those functions for the balance of this century, for almost another quarter of a century.

I submit, Mr. President, that this treaty, just like the one that has been approved, is a treaty that well serves important basic American interests and ought to command the approval of this body.

In the days ahead I know we will consider some 40 amendments, or those, at least those that will be called up that are pending at the desk. I hope we will be able to proceed, as I have indicated earlier in the debate, in an expeditious way to do that.

Someone said earlier today that the first treaty was like an exhibition game and that this was the real game. I differ with that. It is really like a doubleheader. You know, we have had just a brief pause in between the we are now into the second game of the doubleheader.

I must say, if you talk about cooperation between the United States and Panama, referring to baseball, I end on this note: A major sport in Panama is baseball. They are close to us in so many ways and this is but another example. Rod Carew who is such an extraordinary performer in this country and as I think many people know, he is a Panamanian citizen. He has been the batting leader in the American League now for a number of years with an extraordinary average, almost .400 last year, and I only bring that up at the close of this afternoon to underscore once again how much, in so many ways, we share as two peoples; and I hope that the debate that we have had over the course of the past weeks will not in any lasting way do anything to harm the relationship or weaken the friendship which has existed between the people of this country and the people of Panama.

It has been a special friendship. I hope that we will move ahead to approve this treaty, and that we will do it in such a way that the strength of the ties between our two countries will develop and increase.

Mr. PROXMIRE. Mr. President——

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, I ask unanimous consent to be allowed to proceed for 2 minutes, as in legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

[From the Congressional Record—Senate, Mar. 20, 1978]

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar Order No. 2, the Panama Canal Treaty, which the clerk will state.

The assistant legislative clerk read as follows:

Calendar Order No. 2, Executive 6 (95th Cong., 1st sess.), the Panama Canal Treaty.

The Senate continued with the consideration of the treaty.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Kansas (Mr. Dole) is recognized to call up an amendment.

AMENDMENT NO. 69

Mr. DOLE. Mr. President, I call up amendment No. 69 to article I of the Panama Canal Treaty and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. Dole) proposes amendment numbered 69.

At the end of article I, add the following:

5. For the duration of this Treaty and consistent with the provisions of Article IV, the Republic of Panama and the United States of America agree that, subject to the other provisions of this Treaty, only the military forces, defense sites, or military installations of the Republic of Panama or of the United States of America may be maintained in the national territory of the Republic of Panama.

Mr. DOLE. Mr. President, as everyone perhaps understands we are now in the process of discussing and hopefully responsibly amending the Panama Canal Treaty.

The Panama Canal Treaty extends from the date of ratification until the year 2000 and, as the preceding Neutrality Treaty, contains many important provisions, and some are controversial.

There will be disagreements and there will be efforts by some to clarify through amendments whether we are talking about payment guarantees to Panama, the so-called sea level canal restrictions, transition provisions for Canal Zone, employment provisions and mutual defense arrangements. All these areas are highly controversial.

The Senator from Kansas would point up at the outset that while the first, the so-called Neutrality Treaty, was highly important, it is this treaty, the Panama Canal Treaty, which, in effect, transfers the canal and all property to Panama. This is the big one. This is the one that the American people have been focusing on for many, many months.

And having had the opportunity to visit in Indiana, Kentucky, and Ohio this past weekend I can say that the American people and my own State of Kansas are still very concerned about the action taken by the Senate last Thursday and are seeking leadership, asking questions, and hoping that there are some in this Senate who may have voted for the first treaty who will find it

possible based on good faith and conscience to oppose the second treaty.

Mr. President, the Senator from Kansas from the outset has been trying to suggest amendments. As this Senate looks over the history of what happened in the first treaty starting last September and then in October with amendments offered by the Senator from Kansas, which later became the leadership amendments, after the Senator from Kansas released a cable which indicated the Panamanians had one view and President Carter had another view, the Senate will find that following the release of that cable there was a meeting between President Carter and General Torrijos. Following that meeting there was a memorandum of understanding issued, and following that there were amendments offered by this Senator which incorporated the memorandum of understanding. Through the process of trying to put the package together in an effort to secure the necessary votes for passage, these amendments became known as the leadership amendments, and they did in some small way strengthen the Neutrality Treaty. But there were other amendments, responsible amendments, which were rejected time after time after time on this floor, and only when it became apparent in the closing days of the debate during the so-called accommodation time that certain reservations would have to be accepted, not amendments but reservations, was there any yielding by the proponents of these treaties.

So it seems to this Senator that now we are starting chapter 2. We are now on the real treaty, the Panama Canal Treaty, the giveaway portion, which will now be discussed, and this Senator has no way of predicting what the vote may be or how long the debate may last.

But it does seem to this Senator that we should consider this treaty very carefully, and if appropriate amendments could be adopted maybe this treaty could be ratified rather easily. But if the treatment of those who offer amendments on the first treaty discussed and debated by the Senate is any precedent, I assume they will be stonewalling throughout the debate on this particular treaty.

Many colleagues just could not vote for that treaty, the Neutrality Treaty, without some changes, and as many as 41 votes against tabling demonstrated the widespread concern.

It seems to this Senator we still have some responsibilities; we still have the right to add amendments that are in the national interest.

It is not this Senate's duty to worry about the need for a new plebiscite in Panama. At least the Panamanians had a right to vote on the treaty. The American people do that through their elected Senators, and I would suggest the great majority of Americans are wondering what happened when they have a preponderant and dominant view which is opposed to the treaties, and the treaties are approved by a 68-to-32 vote.

There are some who, in an effort to excuse, I guess, those who accepted reservations or weak understandings or whatever have attributed the opposition to the so-called far right; that somehow those who raised any questions about the treaties are involved in

some right-wing organization of right-wing effort to destroy the treaty.

Well, the Senator from Kansas would only say that is a rather lame approach to the problem. I would hope we could oppose and try to strengthen these treaties without being characterized as some far-out group or some right-wing Member of the Senate. But those efforts will be made by certain writers who were never disposed to make any changes, who were pro-treaty from the outset, and who saw every change and every effort by those who wanted changes for the better not as an effort to improve but as an effort to destroy.

That is a right of those who have that bias, who never look beyond that bias, but the Senator from Kansas does not associate efforts to improve the treaty with any right-wing effort by anyone.

So we are in the process now of considering the first amendment, amendment No. 69, and there will be others. The Senator from Kansas, as in the first treaty debate, Neutrality Treaty, offered only two amendments, and I will offer only a few amendments to this treaty.

The Senator from Kansas time after time agreed on time limitations, and I am willing to do that insofar as this treaty is concerned. So it is not my intention to prolong the debate. It is not my intention to abuse my right as a Senator to extend and extend and extend the debate. But I do hope we will have a chance maybe during this debate to have our amendments voted up or down rather than being tabled.

It seems to me if the votes are there for tabling, the votes are there for defeating our amendments on their merits.

So this Senator will be discussing not just amendment No. 69 but an amendment to reduce payment guarantees to Panama; an amendment to allow the United States to keep bargaining options open for construction of a new oceanic canal; and an amendment to extend the transition period for canal operations; and a reservation which would guarantee human rights.

This Senator may not call up all these amendments because other amendments have been offered that cover the same ground. But all of these aspects should be addressed and discussed. This Senator, however, does intend to call up an amendment to eliminate restrictions against America's freedom to build a new canal anywhere we deem it more suitable.

I trust that the leadership would agree either to support my amendment, which is amendment No. 10, or to support some similar amendments, because it occurs to this Senator that this amendment is one in which there is a great deal of interest.

With reference to amendment No. 69, as stated it would add the following language to the end of article I, and that language would be:

> For the duration of the Treaty and consistent with the provisions of article IV, the Republic of Panama and the United States of America agree that, subject to the other provisions of this Treaty, only the military forces, defense sites, or military installations of the Republic of Panama or of the United States of America may be maintained in the national territory of the Republic of Panama.

Mr. President, this amendment has just one purpose in mind, and that is to insure that no foreign military presence other than

that of the United States will be established within the Panamanian territory between now and the year 2000.

In particular, this amendment is designed to prevent the stationing of Soviet forces or Cuban forces or the forces of any other nation within Panamanian territory, which could clearly run contrary to the interests of the free world in maintaining a peaceful and stable environmental surrounding the canal.

It is obvious from the international situation today, in fact one that President Carter has just recently commented on, that the Soviet Union has not abandoned its traditional policies of intervention and destabilization, particularly around the principal water arteries of the world.

Beyond that, the practice of enlisting and arming mercenary troops to create regional havoc appears to be in full swing. The Cuban Government, which has long sought to broaden its influence in Central and South America, would be a willing tool of Soviet intervention on Panamanian soil.

I might suggest that, perhaps, sometime later this year we might reconsider what we did last year with reference to Cuba when all this big rush to normalize relationships with Cuba was in full swing, and I believe now the administration has learned that is not the proper course and, hopefully, under a proper appropriations bill there will be some limiting language on what we may or may not do so far as normalizing relations with Cuba are concerned.

We do not have to look very far. We just look at the outrageous military intervention of the Soviet Union and Cuba within Ethiopia within the past several weeks to recognize what threats the future holds.

I might say again the Senator from Kansas considers this to be a very significant amendment, and I would think that just what has happened in the past few weeks as far as the Russians were concerned and as far as the Cubans are concerned would alert the American people and my colleagues to the real danger, and the need for this kind of an amendment.

If the Cubans can go to Angola, and if the Cubans can go to Ethiopia, thousands and thousands of miles away, then I would suggest that Panama must be a very tempting target. I propose we undercut that threat before it ever happens, and now is the time to do it.

The frank reality of the situation is this: Unless this provision is adopted, the Government of Panama will be entirely within its rights under the new Panama Canal Treaty to allow foreign troops to be stationed anywhere in Panama regardless of whatever misgivings or objections the United States may have. Foreign troops could be based not just in remote areas of Panama but even within the present Canal Zone because we are giving up over 50 percent of that territory.

They could be right on the banks of the canal in some places—right up against remaining American military bases and within close proximity of the canal.

Because the Canal Zone immediately becomes Panamanian territory upon ratification of this treaty, and because the remaining U.S. presence is limited to certain designated areas for military bases and housing, there will be nothing to prevent Panama from

doing whatever she likes with large portions of the Canal Zone. She may grant permission to whomever she likes, to move right into the American military base areas transferred to Panama under this treaty, for example. And the sad fact is that we have no legitimate grounds for objecting or blocking such a move.

The Senator from Kansas simply suggests that now is the time to confront this dilemma and seek a simple bilateral agreement that no foreign troops or bases will be maintained anywhere within Panama during the next two decades. An unwillingness to agree on this matter now makes later agreement all the more unlikely. In fact, failure to secure such a mutual agreement now will make future confrontations over this matter all the more likely. For, if we raise an objection or seek to block the stationing of foreign troops in threatening positions, Panama will inevitably charge that we are challenging her sovereignty. We will be accused of interfering in her internal affairs.

JUSTIFICATION FOR AMENDMENT

Mr. President, this is neither an impractical nor an unreasonable assurance to seek from Panama under the terms of this treaty. I think it is both practical and reasonable to ask for this assurance. My colleagues are well aware that the Panamanian Government has already given us a similar assurance under article V of the Neutrality Treaty—that "only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory" after 1999. Clearly, Panama did not consider such a guarantee to seriously challenge her sovereignty, or she would have never agreed to that provision.

In fact, if anything, the assurance contained within this amendment should enhance Panama's public commitment to national "sovereignty," for it would stand as a clear statement that Panama does not intend to allow others—such as Cuba or the Soviet Union—to intervene within her territory. I do not suspect that the United States, or any other self-respecting government, would hesitate to make such a proclamation, if it were as concerned about sovereignty as the Panamanian Government seems to be.

So this, as I have indicated, is neither an unreasonable nor an impractical demand upon Panama. In fact, it is not a demand at all. By approving this amendment, the Senate will simply be proposing a simple bilateral agreement between our two governments on this point. It will then be up to Panama to decide whether or not she will agree to this proposal.

So it is clearly within our right and our realm of responsibility to propose, and to approve this amendment. I hope the floor managers do not argue otherwise. And I would hope they will permit the Senate to have a direct, up-or-down vote on this amendment, rather than on a motion to lay on the table.

Mr. President, I do not have a large map, but I can display to any Senator who might be interested all the territory we surrender immediately upon ratification.

It is easy to see that well over half that territory which is now within the zone will be turned back to Panama. Unless this amendment is adopted, there is nothing to prevent the Panamanians, a

week after ratification, from inviting in the Cubans or inviting in the Russians; and I just suggest that if we are really serious about the canal, if those who voted for the first treaty really believe that the canal has any interest insofar as we are concerned, then I ask them to look very carefully at this amendment, because it is offered in good faith. It is offered in an effort to strengthen the Panama Canal Treaty. It is offered as a way to protect and preserve the Panama Canal between now and the year 2000, and it does not take any genius to understand just how close foreign troops can move to the canal itself without this amendment.

I know we are going to hear all the arguments that they can do that now. But that is not the case now, because they cannot move them within the Canal Zone. Then we will hear the arguments about General Torrijos. We will hear the argument that we cannot have another plebiscite.

I think we have considered those arguments, and I would hope that by now we understand that we have some rights in this country. We have some rights to preserve in the canal because of our interests as well as Panamanian interests, and they may not coincide with General Torrijos' interests, the Cuban interests, or the Russian interests.

I would only say, as I indicated a few moments ago, that if President Carter is so concerned about Russian influence, as he indicated in his strong statement just 2 days ago, then I think he might want to take a look at this amendment. He might want to react favorably to this amendment, because it goes to the very heart of the problem he is now having with the Soviet Union.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. DOLE. I am happy to yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, it is absolutely essential, if commonsense in the ratification of these treaties is to prevail, that the amendment of the Senator from Kansas be adopted.

I strongly support the amendment of the distinguished Senator from Kansas. There is absolutely nothing in either of these treaties, anywhere, which prevents the Republic of Panama from inviting foreign troops into her territory—and that is true whether we speak of the period before the year 2000 or the period after the year 2000.

Some Members of the Senate are under the impression that the Neutrality Treaty prevents the introduction of foreign troops after the year 2000. As we know, in the treaty which was approved last Thursday, it provides in article V that—

> After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

This has been interpreted by the proponents of the treaties as meaning that only Panamanian troops may be maintained on Panamanian soil.

But, as the Senator from Kansas has indicated, if we look at it carefully, we note that the language says nothing about "Panamanian" troops. It says that only Panama may maintain military forces. Thus it is quite clear that Panama can maintain military forces of another nation if Panama so chooses. This is not merely

the interpretation of the Senator from North Carolina or the Senator from Kansas; this is the official interpretation of the U.S. Department of State.

Mr. President, I direct the attention of my colleagues to an exchange of correspondence between the Panama Canal Subcommittee of the House Merchant Marine Committee and Mr. Douglas J. Bennet, Jr., Assistant Secretary of State for Congressional Affairs, under date of January 30, 1978. This is not some offhand opinion, or a garbled statement appearing in the newspapers. This is premeditated, official correspondence in which the Department of State responds officially to a duly constituted committee of the Congress.

Mr. DOLE. Mr. President, may we have order in the Senate?

The ACTING PRESIDENT pro tempore. The Senate will be in order.

Mr. HELMS. First, the question put to the State Department:

> Does article V of the Neutrality Treaty after the year 2000 prohibit training of foreign troops in Panama? Temporary military exercises by the United States in Panama? Temporary military exercises by Cuba, or other non-U.S. or non-Panama military Units?

That was the question. Now here is the official answer from the State Department:

> Article V of the Neutrality Treaty would not prohibit Panama from inviting foreign troops, including those of the United States, to Panama for temporary exercises or training. The Treaty does provide that only Panama shall maintain military forces, defense sites and military installations within its territory. Any exercise or training by foreign troops that we judge constitutes a threat to the Canal would be a violation of the Treaty, and as such it would allow the United States to take appropriate countermeasures.

Now, Mr. President, our present debate is about the Panama Canal Treaty. But those Senators who are relying on the Neutrality Treaty to prevent the introduction of foreign troops in Panama are making a grievous mistake. For the State Department is admitting freely that Panama can legally bring in other foreign troops, including troops of Cuba or any other nation that may be hostile to us.

What would be our recourse if thousands of Cuban troops were brought in for alleged "training" or alleged "temporary exercise"? The State Department spells that out. The State Department claims that we have the unilateral right to use force against Panama, if in our judgment—that is, in our unilateral judgment—the introduction of Cuban troops would threaten the neutrality of the canal.

So we see what could happen, Mr. President. We have the makings of a potentially explosive situation, which the Senator is trying to avoid. For if there is nothing to prevent Panama from bringing in Cuban troops after the year 2000, there is obviously nothing that prevents Panama from bringing in Cuban troops before the year 2000. That is why the amendment of the Senator from Kansas is so essential.

The presence of U.S. troops in the U.S. bases in Panama, right next to troops of a foreign nation, troops that might be hostile to ours, would create a tinderbox in international relations. We would have to use force, or withdraw. Would we take action to prevent the introduction of, for example, Cuban troops? Would we blockade

Panama? Would we blockade Cuba? The answers are so obvious—and this is in response to what the Senator from Indiana is about to say, I am confident—that I need not spell them out. Indeed, our military rights might even be more of a danger, than a protection.

Mr. President, once we give up the exercise of sovereign rights in the Canal Zone, then we are shut out under international law from taking whatever steps we deem necessary. We might decide that, to protect our rights and to protect the canal, we must use force anyway. But to do so would be illegal, and would fly in the face of all the solemn international obligations that we have undertaken. These treaties, frankly, are putting us in an untenable situation.

The amendment of the distinguished Senator from Kansas would, at least in a small degree, prevent the development of an explosive situation. Of course, Panama could still abrogate the treaties. But the amendment of the Senator from Kansas would set up a situation where Panama could not let a dangerous situation develop by degrees. Her alternatives would be to abrogate the treaties, or to violate them outright. Thus it would prevent the backdoor growth of confrontation. It would be a deterrent to the more drastic actions of abrogation or violation.

Moreover, the Senator's amendment amends article I. It is in effect a restriction on the return of the exercising of sovereignty to Panama. In other words, Panama would legally be prevented from exercising a certain sovereign right, the right to have troops from other nations on her territory, for the next 22 years. This restriction is essential if these treaties are going to work.

I commend the Senator for proposing his amendment.

The ACTING PRESIDENT pro tempore. The Senator from Kansas.

Mr. DOLE. I thank the distinguished Senator from North Carolina. I think he indicates very briefly and very well what the problems could be. I defy anybody who opposes this amendment to tell us what they are going to do if Cuban troops are invited into Panama—I still want some answers—and what they intend to do if Russian troops are invited into Panama.

I think we are getting down to the hard ball of this debate. We have had all the preliminary rounds on neutrality, but now we are down to that part of the treaty that really concerns the American people, and it concerns a number of Senators who voted for the Neutrality Treaty. It is time we started getting some clear answers to the hard questions, instead of a lot of rhetoric in an effort to console some Senators to get their vote.

I would guess if we asked the American people this question—of course, we do not have the right to ask the American people to pass on these treaties as that only applies to Panama. The Panamanians have a plebiscite. Ours is indirect, through our elected Senators. But I would guess if we asked the question, would the canal be threatened if there were Cuban troops stationed there within a mile of the water, or less, between now and the year 2000, most Americans would at least think there might be some threat to the canal itself and to its neutrality between the day of ratification and the year 2000.

I do not know the answer. I would not know how to respond to someone who would ask me what would be our reaction. I would

not know how to respond based on President Carter's recent statement about détente, and his warning to the Russians.

It seems to me, as I have indicated earlier, that if the Cubans are willing to go thousands of miles to interfere in Angola and the Horn of Africa, and who knows where else, the Panama Canal is a fairly attractive target.

Maybe there is some foolproof answer that the treaty proponents have. Maybe it is time that we take a look at what we are about to do and then step back and suggest amendments might be in order.

It does not really answer the question just to have the stonewalling we have had for the past 4 or 5 weeks on every amendment. It does not really satisfy those Americans who are concerned about the canal. As I have indicated before, they do not all belong to some right-wing nut club. They are concerned Americans, they are Democrats, they are Republicans, they are independents, who have an interest in what we do.

I would hope that we have some clear and compelling answers from the treaty proponents.

I pay tribute to those who were able to secure the 68 votes, the leaders of the Republicans and the leaders of the Democrats, the leaders of the pro treaty forces. I am not certain what was accomplished, but they had the votes. It seemed to some of us that we could accomplish more with appropriate amendments, but the leadership operated to table every amendment.

Maybe that is the statesmanlike approach. Maybe we should abandon or abdicate our responsibilities as Senators for 1 week or 2, or 3 or 4 or 5, so that we do not disturb General Torrijos, so that we do not embarrass General Torrijos with another plebiscite. This Senator is convinced that there is a great deal of concern across America—not anti-Panamanian, but sort of pro-American concern. You know, there is really nothing wrong in talking about the rights of America. It really is not unpatriotic to talk about our rights in the canal.

The Senator from Kansas never understood the great rush by this administration to normalize relations with Communist Cuba, to normalize relations with Communist Vietnam, to give away the Panama Canal without any amendment that might be meaningful. I hope that in the next 2 weeks, or 3 or 4 or 5 weeks, as we debate thoroughly the Panama Canal Treaty, the American people, the thoughtful American people who vote for us and send us to the Senate, will have a chance to be heard. They do not all speak with one voice. There are some differences of opinion. Some do not think we ought to do anything to the treaties, that they ought to be ratified.

I hope that, when we offer responsible amendments—and I believe this is a responsible amendment—unless the questions can be clearly answered by the pro-treaty forces in the Senate, those who are willing to give it to Panama without any amendment, those who are willing to give the canal to Panama without any assurance, at least ought to clarify for the American people, for their own constituents and their own States, the answers to some of these questions that have been asked us time after time.

I hope that an amendment like this could be adopted, could be accepted. I am not optimistic, but I do not really see any real reason for its rejection.

I am happy to yield to the distinguished Senator from Nevada for any comment he might have. I yield the floor.

Mr. LAXALT. I thank the Senator from the good State of Kansas. I rise in support of the amendment. I commend the Senator from Kansas for raising a point that has been raised many, many times over to each of us by thousands and thousands of constituents out in America. They are concerned about the proposed Cuban influence. Time and again, I have been asked the question, "How can the Senators be so naive as to think that if Cuba, at the behest of the Soviets, will travel thousands and thousands of miles away to Africa and is now in the Horn of Africa, if the canal comes under the power of General Torrijos, an admitted friend and associate of Mr. Castro, the Cuban presence very quickly would not be keenly felt within Panama itself?"

In that regard, I think one of the finer statement that has been made during the course of the hearings was made by none other than Adm. Thomas Moorer in testimony before the Committee on Foreign Relations. For a moment, if the good Senator from Kansas will permit me, I should like to read from that testimony so that our colleagues and the American people can see the strong concern of this man who is totally independent, not responsive or responsible to the administration or anybody else. He is an independent, dedicated American. The depth of his concern was expressed in his testimony to the Committee on Foreign Relations:

> As Chairman of the Joint Chiefs of Staff, I became even more sensitive to the strategic value of this U.S. canal as a means of protecting the security of the United States. My job as Chairman involved all of the Armed Forces of the United States—their collective requirements—and I was primarily responsible to the President for their ability to carry out their roles and missions as assigned by the Congress. Any naval commander acting in that role in wartime will immediately perceive that it is vital to U.S. interest to retain complete ownership and control of the Panama Canal.

That is what this second treaty is all about. We are trying to determine, as the Senator from Kansas said, the gut issue: Is this country trying to give up control and ownership of the Panama Canal? We have dealt now with the sequel, the Neutrality Treaty, what happens after we give it away. Admiral Moorer has confirmed, in his statement and his testimony before the Committee on Foreign Relations, the concern of many of us on this side of the aisle as well as the other side of the aisle.

Quoting again from Admiral Moorer:

> In view of the above, I am very much concerned about the proposals to surrender the Panama Canal to a leftist oriented government allied with Cuba. There exists the potential danger for giving this U.S. advantage to a man who might allow or might be persuaded that it was in his best interest to permit Soviet power and influence to prevail by proxy over the canal, in much the same manner as happened in Cuba.
>
> I was convinced as Chairman of the Joint Chiefs of Staff, and I remain convinced today, that if the Soviet Union ever gained even proxy sovereignty and control over the U.S. Canal Zone and canal through Cuba. U.S. security as well as U.S. prosperity would be placed in serious jeopardy.

That is what this is all about. We have contended here that having full control over the ownership and the operation of that

canal is vital, not only to Panamanian security and hemispheric security, it is vital to our own security. That is precisely what Admiral Moorer was saying in his statement.

Going further into the statement:

The United States would be placed in jeopardy because interocean mobility would be threatened. The mobility of allied commercial lifelines of the entire Western Hemisphere would be needlessly jeopardized, and the point is: There is no point in surrendering this vital interest. Also, by relinquishing control of the Canal Zone and the canal, we would force all those nations who depend on our power and leadership to accommodate to the adverse implications of such action on our part. Recent history clearly indicates that the Canal Zone could quickly become the satellite base of an adversary. The advocates of this proposed treaty do not appear to take this factor into account.

That is what this is all about. That is precisely the concern that the Senator from Kansas expressed through this amendment, that between now and 2000, for the next two decades plus, we safeguard against the possibility of having foreign troops placed in Panama on a proxy basis.

Quoting further:

The Panama Canal is one of the four maritime gateways of the world, together with the Malacca Straits, the Suez Canal, and the Gibraltar Straits.

Anyone who reads Soviet literature concening maritime affairs soon learns that the Soviets fully understand the strategic importance of the Panama Canal, even if some here in Washington do not. In my view, the prime reason for the burdensome support of Cuba by the Soviet Union is related directly to the interest in the canal as they greatly expand their maritime capabilities in the form of both warships and merchant ships.

We have, in fact, in my view a Torrijos-Castro-Moscow axis.

That is critical to this discussion. This amendment would preclude that type of axis from implementing whatever agreement or understanding they may have to the extent of a visible military presence within Panama. That is precisely what Admiral Moorer says in this. I repeat that statement:

We have in fact, in my view, a Torrijos-Castro-Moscow axis. Castro has sent thousands of troops to Africa aboard Soviet ships. He has been to Moscow where he has been greeted with open arms. Torrijos has been to Havana where he has been decorated by Castro while both extolled the success of their respective revolutions. He has also been to Libya to visit Qadhafi who, next to Castro, is the most active international revolutionary in the world.

When Torrijos overflew Havana on his return from Washington to Panama after the ceremonies last month, he sent the following message to Castro, and I quote:

"On my return trip to my country and flying above the sky of Cuba, I salute you with friendship always. I wish that the Cuban people under your skillful leadership continue its ascendant march toward progress. In Latin America your name is associated with feelings about dignity that have been channeled toward the ending of a shameful period of colonialism."

In addition, I would note that a large Russian commission has recently visited Panama seeking concessions and offering economic assistance.

Mr. Chairman and members of the committee, do not be surprised if this treaty is ratified in its present form, to see a Soviet and/or Cuban presence quickly established in the country of Panama. Such a presence will seriously complicate the exercise of the claimed "right" of the United States to intervene. I can find no such specific right contained in the treaty, however.

It has been stated time and again on this floor that we need not be concerned, that we are breast beating, that we are fighting ghosts sitting out there, that there will be no Cuban presence, be no Soviet presence.

General Torrijos, if the good Senator from Kansas will remember, told us personally that this was no problem. He would not permit it.

Well, if it is no problem, why do we not express it? Why do we not make sure there is no problem by adopting an amendment that will be within the four corners of this treaty, so that at least within the next 22-year period we can all be assured that there will be no Soviet presence there through the Cubans as a proxy?

So I commend the Senator from Kansas. I think that this is an amendment that is as purposeful and substantive as anything we have treated on this Senate floor, in all probability, despite their merits, which have not seemed to mean much around here.

We have the responsibility of advice and consent. So far, it has been all consent and very little advice—that is what I have observed on this floor. But I think that if there is a substantive amendment with merit, this is it. It is absolutely essential that we protect our rights as a country by adopting this kind of amendment.

If we are stonewalled, as we probably will be again, by people against this amendment, I think it will render a great disservice, not only to the Panamanians and the treaty, but to the American people.

So I strongly support the amendment of the Senator from Kansas.

Mr. President, I yield the floor.

Mr. Bayh addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Indiana.

Mr. BAYH. Mr. President, I have not participated often in these debates. I have listened carefully and, as my colleagues recall, I have, when asked, been prepared to supply certain very sensitive information to Members of the Senate, which was made available to the Intelligence Committee, so that my colleagues could best render judgment on the particular question in mind.

Inasmuch as I feel it is important to maintain the objectivity, inasmuch as it is possible to maintain it in the eyes of those who might reach a different conclusion, but as much as I feel it is important to maintain the objectivity of information coming from the Intelligence Committee, I think it is important for me at this moment to say I am not speaking as chairman of the Intelligence Committee, but I am addressing my colleagues as one of 100 Members of the U.S. Senate who feels very strongly about the obligation that we have here.

I have listened previously, and as I listen this morning, somehow or other, the inference slips into the words of those who seem to oppose the treaties and those who, for what would appear to them to be very good intentions, offer amendments, that if a Member of the U.S. Senate dares to disagree, feels that the treaties are important and that the amendments are not necessary, that we are part of some sort of stonewalling cabal, that we are really not sensitive to our responsibilities as Members of the Senate.

If, indeed, that inference has been sensed by others, I think it is most unfortunate. It is sad when Members of the U.S. Senate cannot disagree on the merits of an issue without suddenly being accused of being irresponsible in the fulfillment of their obligations

under the advise and consent treaty ratification provision of the Constitution of the United States.

Frankly, I do not think there is sanctity in the treaty wording. I have been prepared to support those amendments which were proposed which I thought went a long way to clarify the rights of the United States, as well as the obligations of the United States under the defense and neutrality provisions of the previous treaty.

But I think it is important for us to understand just what we are talking about here, and I do not want to impugn the motives of my distinguished colleague from Kansas, or others.

But I think on any amendment which goes to really change the understanding of the words that are now there, the proposer or the supporter of those amendments needs to realize the consequences.

I suppose that any one of us, collectively, in the committee sitting around here, could make changes in wording that might look, in retrospect, to be a bit better or more clear.

We have had a good deal of air, both fresh and hot, flowing through and around these treaties since they have been signed, and hindsight is always much clearer focused than foresight.

The fact of the matter is that these treaties have been under consideration and negotiation for 14 years. We have had administrations of both political parties, reaching back almost a generation, trying to resolve differences of opinion between our two countries.

Now, if one is to negotiate a settlement, almost by definition neither side is totally satisfied with the final results.

But the final results look better to both sides than the alternative of no resolution of significant, outstanding differences.

So we are given the language of the treaty which, as far as the Senator from Indiana is concerned, clearly protects the two basic rights that are important to the United States, the two basic circumstances that are important to the United States; that is, the absolute necessity of seeing that the canal remains neutral and accessible and available, not just to our ships and our merchants, but the ships and merchants of the world.

It also guarantees in my judgment, our right to defend that canal against those adversaries who would not want it to remain open.

As I look at this treaty, I recall some of the remarks that have just been made which suggest that some of us, who might look at this particular amendment from a little different perspective or, indeed, the entire treaties from a little different perspective from that of the Senator from Kansas, the Senator from Nevada, or the Senator from North Carolina, might be afraid to embarrass Mr. Torrijos.

I do not see how anybody can direct that particular comment to the Senator from Indiana because if there has been anything that has been the cause of embarrassment to the government in Panama, there has been the very frank and open disclosure for the first time of certain facts, certain undertakings, by members of the Torrijos family.

Sure, they are embarrassing, but they are factual and they came out. The Senator from Indiana not only supported that, but was one of those who initiated it.

To suggest, as I mentioned a moment ago, that by having a different perspective of this amendment or the treaties is an abrogation of our responsibilities as Senators, I think is a bit unkind as well as totally inaccurate.

I have been out in my home State over this last weekend. I am glad that my colleague from Kansas was there and having a chance to address the members of the other party at a festive occasion. I am glad they chose one of the best orators to grace their festivity.

I might disagree with them and with my colleague from Kansas, but I like for them to have the best, and they had one of the best in Indiana.

I had a chance, of course, to renew the rather constant communication I have with my State. I must say the Senator from Kansas is accurate, there is a great deal of concern out in Indiana, and I think perhaps in every State, about the Panama Canal treaties.

(Mr. Sarbanes assumed the chair.)

Mr. BAYH. I must also say there is a great bit of misunderstanding about the Panama Canal treaties. I sent out a questionnaire at the end of last year, which I think pretty well reflects this. It has been proven by those who are a bit more professional than I in the past few days, but one of the questions I asked was did my constituents support the Panama Canal treaties, and not surprisingly, by almost a 3-to-1 margin, the answer came back "No."

Then I asked a second question, which said, if you believe the treaties gave the United States the right to defend the Panama Canal, would you support the treaties? Whereupon, an additional percentage answered in the affirmative, which just on those two questions showed that a majority of the people of Indiana would support the Panama Canal treaties, if they believe the United States had the right to defend the canal.

We have the right to defend the Panama Canal, yet the treaty opponents have constantly harped away, and drummed away, at the fact that we do not have the right to defend.

Admiral Moorer suggested that suddenly there will be a massive infusion there of Communist troops and ammunitions. The fact of the matter is anybody who bothered to read the fine print of the treaties, particularly to read the amendment that was adopted, presented by both the Republicans and the Democratic leaders—and this is not a matter of dispute where we have all Republicans on one side and all Democrats on the other—has to come to the conclusion that the treaty does indeed give us the right to defend the canal.

As I listened to the testimony read by our distinguished colleague from Nevada about what Admiral Moorer said, I would suggest that maybe the people of the country ought to have a chance to read all of Admiral Moorer's statement that was given before the Armed Services Committee because there can be no question about Admiral Moorer's patriotism and his service to the country as an outstanding naval officer. There certainly can be some rather significant questions raised about whether he knows what he is talking about from a legal standpoint, if one looks at the way he addressed the legal and constitutional question of the treaty that was before us.

But Admiral Moorer seems to suggest that being for or against this treaty divides us into camps in which we are either for or against the continued use of the canal. I would like to suggest that certainly is inaccurate. I have not had a chance to discuss this particular point with all of the other 67 Senators who voted "yes" the other day, but I would doubt if a single one of them was prepared to endorse any proposition that would lessen our ability to use the canal or that would signal that the canal was less significant to the United States, from a standpoint of national policy.

Now I think it is important to look at this amendment, not only from the standpoint of the language of the treaty which the Senator from Kansas attempts to clarify, but I think it is important also to look at it in terms of what the situation is now without a treaty.

All this talk by Admiral Moorer about the Torrijos-Castro-Russian axis somehow or other totally ignores the fact that the Panamanian Government does not even recognize this and does not recognize either Moscow or the People's Republic of China. The Panamanians do not have relations with the Soviet Union and the Panamanians, interestingly enough, still recognize Taiwan as the mainland government of China. It is rather unusual now to suggest that suddenly they are going to have the Kremlin send in large numbers of surrogate armed forces wearing Cuban uniforms.

I think if we are going to address ourselves to what is going to happen between the time of signing the treaty or the ratification of the treaty and the year 2000, as far as the absence of foreign troops adjacent to the canal in Panama is concerned, maybe we ought to ask ourselves what the present status is. What is the present status under the 1903 treaty? I have not heard Admiral Moorer discuss this concern. Under the present status the Panamanian Government could invite the Russians and the Cubans to come in. The fact of the matter is they have a legal right to do that now under the 1903 treaty. They have not done it.

We are told by our distinguished colleague from North Carolina, as well as the Senator from Kansas, and others, that the fact that the Cubans have gotten on Russian ships and airplanes and gone to Ethiopia and Angola is good reason to believe they are going to go to Panama. Quite the contrary, in my judgment. The fact that they do go to Ethiopa and they do go to Angola is predicated on the understanding, in my judgment, that they know that those places are not just that important to the United States and they are not going to have to deal with the United States.

If they have to look at the record, not just to rhetoric of what happens when you get to fooling around in Uncle Sam's backyard, they are not going to sleep very easily if they are thinking about undertaking any such misadventures.

What happened when they put Russian missiles in Cuba? It did not take very long for John Kennedy and the U.S. Navy to get them out of there. We had no hesitancy in sending large numbers of troops into the Dominican Republic. There was no treaty. We sent military forces into Guatemala. There was no treaty.

The fact of the matter is, when you are in the Caribbean, you are in the U.S. backyard, and if you are inclined to do the United States ill you better stay out of there because if you come in there

and it begins to look as if this is going to jeopardize the security of the United States and the safety of the people of America, Uncle Sam has unequivocally undertaken to do what is necessary to get those foreign powers removed.

We have not been bashful. And frankly, we have not looked for a whole lot of treaties and international precedent to rely on. And I suggest to anybody who thinks otherwise that once this treaty is ratified or is not ratified, we are going to take whatever steps are necessary adjacent to that canal in order to protect it.

I must say that contrary to the interpretation of my distinguished colleague, my friend from Kansas and I come to a different conclusion. Certainly, I do not impugn his motives at all but, as I see it, we do not have a treaty right to act if the Panamanian government now invites Russian or Cuban troops in there. The Senator from North Carolina talks about the thousands of Cuban troops. Well, that is sort of ridiculous, but suppose the Panamanian Government did undertake this. While we do not have any treaty right to intervene now, I think we would. The 1903 treaty does not give us that right, but, in my judgment, if this treaty is ratified we would not only have a right but we would have a responsibility to act. There is no question about what the prohibition is after the year 2000.

But let us suggest that Mr. Torrijos or someone who comes after him might be so naive and such a poor student of history as to not understand what the United States is going to do and thus they invite the Russians to have a training activity or the Cubans to set up a training camp within a mile, within the very sight of the canal, as our colleagues suggest might happen.

Well, in the very document that our colleague from North Carolina used to try to prove his point, and which he was quoting the State Department's response, it seems to me he answered the question. He should have allayed his own fears because in that very document it says that would happen. The United States would unilaterally decide on two basic points: one, whether the neutrality of the Canal Zone was being threatened by the presence of those troops, and; two, whether our right to defend the canal was going to be put in jeopardy by the presence of those troops, and that at any time the presence of those troops ran contrary to both the obligation of neutrality and the obligation and the right to defend the United States would act. And I suggest anyone who feels otherwise perhaps should get out the history book and look not at what we have said in the past but what we have in fact done in the past.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. BAYH. I am glad to yield.

Mr. CHURCH. I commend the Senator for his well-reasoned argument. I wish that we could conduct this debate without resort to fantasies. It is easy enough to concoct dismal versions of the future and to base one's arguments upon worst case situations.

But reasonable men and women must ask themselves the question, what likelihood is there, between now and the end of the century, that the Government of Panama will provoke a confrontation with the United States by inviting foreign troops onto Panamanian soil?

The answer to that question is that the chances are practically nil, given the fact that Panama has had such an option under the existing treaty and never, in three-quarters of a century, has seen fit to invite foreign troops onto Panamanian soil.

So if the past is any measurement of the future, and I know of no better way to gage the future than from the past, there simply is no reason to fear that the Panamanian Government is going to do anything so foolish as invite foreign troops into Panama.

Having said that, will not the Senator agree that the best way we can assure ourselves that nothing so fanciful will ever occur is to ratify this treaty? That would preserve the good feeling which now exists between the two governments and, indeed, the two peoples. For then we would have followed through with a commitment we gave to Panama 14 years ago, the last time bloody riots occurred in the isthmus, that we would honor the Panamanian right to recover jurisdiction over their own soil.

It seems to me that security for the canal cannot be perceived through midnight fantasies, or nightmare visions of the future, but rather through preserving the existing friendship between Panama and the United States which, for the past 75 years, has worked to keep foreign troops off Panamanian soil.

Will not the Senator agree that, from the standpoint of the canal's security, it is the preservation of the friendship between our two countries that forms the best basis for preventing foreign intrusion in Panama between now and the end of the century?

Mr. BAYH. I think the Senator stresses a good point that the better the relationships between our two countries the less likelihood this is apt to happen, and should there be a change in the regime, which of course is another of the nightmares and it is a very real possibility, I suppose, that there could be a change of regime, but whether it is the present regime or a new regime, they cannot be totally oblivious of the United States' resolve to undertake whatever steps necessary to protect what we consider our national interest with or without every dot and every title of an international precedent to give us the right to do what we did. The Senator will recall—my friend from Idaho is one of the experts in foreign affairs in this country—the steps that we took at the time we were concerned about what was going on in the Dominican Republic. We really did not take a lot of time to prepare the legal groundwork for that. As I recall, we acted and then it became an Organization of American States undertaking, which had a broader effect, but we were not so concerned about the legal niceties at the time this all started. And one would assume we will continue to do what is in our national interest. That is a cold fact of international relations.

Mr. CHURCH. Of course, I agree that in an emergency any nation does what it finds necessary to preserve its vital interests. The United States has done that in the past and will again in the future if it should become necessary.

But the point I stress is that we enjoy today a friendly relationship with Panama and her people, and nothing is more important to the future than the preservation of that good feeling.

The memebers of our Chiefs of Staff and a number of our retired generals and admirals familiar with the situation on the isthmus

all stress that the security of the canal depends, more than on any other factor, on the cooperation, the friendship, and the good will of the people of Panama.

Mr. BAYH. The Senator is absolutely correct and I wish to suggest and ask his thoughts on this. I happen to have the opportunity to chair that subcommittee of appropriations on transportation which handles the Panama Canal budget and, as he knows, the last couple of years we have had a deficit and the taxpayers of America have theoretically been supporting some of the Panama Canal operation, and the Governor of the Canal Zone has pointed out in testimony before our committee that we are going to have to increase tolls in the future anyhow. The question is by what amount will we increase them. But the one ingredient of this treaty that I think has not been stressed as much as I think it should be stressed, along the lines of the reasoning of my colleague from Idaho, is that under the new treaty the Panamanians will have an incentive to keep the canal open.

Mr. CHURCH. Yes, even more so than they had in the past.

Mr. BAYH. Even more so than they have now. As the Senator points out, this thrust of concern as far as defense goes has been commented on by General Brown or Admiral Holloway, and I assume even Admiral Moorer. They could not really believe the Russians or the Cubans are going to be able to mobilize divisions to come in and take over the canal.

What we are concerned about is the sabotage, one bomb in the bottom of a ship that is triggered by some nationalist sitting on a hill with an electronic device, and the canal is useless no matter what the language of the legal documents say.

Mr. CHURCH. The Senator is quite right. The nature of the threat most to be concerned about is sabotage, harassment, and guerrilla warfare.

Again and again, our best informed military spokesmen pointed out that if we want a secure canal, an open canal, a usable canal, an operating passageway between the seas, then the best assurance for getting it is in partnership with a friendly Panamanian people.

Indeed, they went further and stressed that without the support of the Panamian people, if the military were forced to keep the canal open in a hostile environment, it could require as many as 100,000 American troops, at an expense that would make the costs associated with these treaties pale in comparison.

Mr. BAYH. Will the Senator permit me to interject here a rather succinct observation? Secretary of Defense Brown in committee hearings on this point said:

> The canal was built for shipping, not slogans. We seek to guarantee transit of vessels, not theoretical claims of title. These goals we have sought, as I said at the beginning, are practical. The issues before you are practical ones. Our negotiations have obtained instruments which, more certainly than thousands of forces and their armaments on the spot, will assure those practical objectives for generations to come.

In other words, what we want to do is to try to keep the canal open without having to prove we can fight, but leave that as a last alternative which, of course, will always be there.

Mr. CHURCH. Absolutely. The question is extremely apt and makes the point most forcefully.

I would just like to say one other thing, with the Senator's indulgence. I wish we would be mindful that this debate is being carried in Panama from gavel to gavel, translated simultaneously into Spanish.

Everything we say on this floor is being broadcast not only to the American people through public radio, but also to the people of Panama as well.

I, for one, wish them to know in Panama that there are Americans who appreciate the long, the faithful friendship that Panamanian people have shown toward the United States for the past 75 years.

I, for one, want them to know that there are Americans, and I believe them to be in the great majority, who appreciate the fact that Panama stood by us as an ally of the United States in both world wars of this century. Indeed, if my information is correct, the Panamanian Government, following Pearl Harbor, actually declared war against Japan before the Congress of the United States did.

When I hear some of the deprecating arguments directed toward the Panama and the Panamanians, I think we ought to remind ourselves of that long period of friendship between this small country, Panama, and the United States of America.

It is to preserve the basis for that friendship that we have this treaty now before us. To do right by the people of Panama will enable us to preserve that close and friendly tie in the future.

Mr. President, nothing could be more injurious to such an objective than to adopt the amendment offered by the Senator from Kansas. It suggests that we have no memory; that 75 years of fidelity mean nothing to us.

The Senator from Kansas says, "Oh, but look, the Russians are in Ethiopia." Well, Mr. President, whatever that may have to do with Panama, it is at least useful to remember that the Russians did not enter Ethiopia until after the Ethiopian Government invites us out. It was only after a complete breakdown in our friendly relations with Ethiopia, that the Russians moved in.

I do not want to see the close ties, the friendship between the United States and Panama jeopardized, because that is what has kept hostile forces out of the isthmus all these years. It is a relationship to be preserved, and it is the basis for keeping foreign troops away from the canal in the future.

I must say it is a matter far more important than the size of our Armed Forces or the numbers of weapons that we concentrate on the isthmus to protect the canal if the attitude of the Panamanian people were to turn against us, an environment of hostility and violence were to replace the present peaceful relationship that exist between our two countries.

Again I commend the Senator from Indiana for the splendid argument he has made against this amendment, and I hope the Senate will see fit to reject it.

It is my intention, as soon as the Senator from Kansas has had an opportunity to complete his remarks, to move to table the amendment.

Mr. Dole addressed the Chair.

Mr. BAYH. Who has the floor, Mr. President?

The PRESIDING OFFICER (Mr. Nunn). The Senator from Indiana has the floor.

Mr. BAYH. Mr. President, if the Senator from Kansas has no objection I would just like to finish my remarks and then I will yield the floor. I am nearly finished. Of course, he is the principal proponent of this amendment.

Before the Senator from Idaho leaves, I would like to share one other thought with him to see if the Senator from Indiana shares similar concerns with him.

He stresses, quite undertandably, the importance of a good relationship between the United States and Panama. I wonder if we are not dealing with a much broader perspective here.

I recall, back in the time when the Nixon administration had started intensifying the negotiation process, having lunch with a mutual friend of ours who is now the Secretary General of the Organization of American States, Alejandro Orfila.

At that time, Ambassador Orfila was the ambassador to the United States from Argentina. To those who have not had the chance to meet him, I say he is one of the most personable human beings I have ever met, and he is a very good friend of the United States. While he was ambassador from Argentina, he did yeoman service in trying to convey to both Argentina and the United States the importance of a mutual friendship.

My reason for wanting to have lunch and to discuss certain problems with Ambassador Orfila was based on my feeling that at that particular point we were in the process of losing about 55,000 American boys in Vietnam, we were concerned about what was going to happen along the DMZ in Korea, we were concerned then as we are now about the prospects for peace in the Middle East, we were concerned about our ability to respond to the Warsaw Pact in Europe, and it seemed to me we were having a great deal of concern about every other part of the world except that in which the United States is located.

It has been a good long time since we have had anything approaching a "good neighbor" policy so far as our neighbors in this hemisphere are concerned, although, from a practical standpoint, the Western Hemisphere is the most important part of the world to us, because that is where we are.

I asked Ambassador Orfila what he would think about undertaking steps to improve our relations with our neighbors in the Western Hemisphere.

As I recall, his general response was as follows: "First of all," he said, "you have to recognize that we are not all alike. We are different. We have leftwingers and rightwingers, and some of them are not talking with one another and are in the processs of fighting one another. The second point is that there is only one thing upon which all of the nations of the southern part of the Western Hemisphere can agree and that is that they are extremely unhappy with the United States because of the present relationship with the governing and running of the Panama Canal. They all look at that as the last vestige of gunboat diplomacy, of colonialism."

The ambassador said then—and that has been, really, a number of years ago—"If you really want to develop relationships in this

part of the world, you have to deal with the Panama Canal situation, because it affects your relationships not only with Panama, but with every other Latin American nation."

I say to our colleague from Idaho that I get just a little tired of hearing some of the speeches here that tend to divide us into two groups, those who are really concerned about Communists and those who are not really concerned about Communists. It seems to me that some of the strongest anti-Communists we have here, in expressing their support or lack thereof for the treaties, do not understand that the continued existence of the relationship that now exists in Panama gives the Communist subversives in this hemisphere the best ammunition we can give them.

It seems to me that one thing this treaty does is take away that opportunity of every guerrilla band in the hemisphere, in any country, of pointing to the Panama Canal as a vestige of American colonialism, and that we can, by ratifying these treaties, turn this around. We are guaranteeing our right to defend it, and that it will say neutral, but at the same time saying to Latin America and all the developing nations of the world that the United States is willing to let a small, developing nation run its own affairs as long as it is not inconsistent with neutrality and open access to the canal.

It seems to me that that is something we had better consider here, because our inability to ratify these treaties will have consequences much beyond the immediate relationship between ourselves and Panama, in my judgment.

Does the Senator from Idaho care to comment? He does not necessarily have to, but he has looked at world affairs, as a ranking member of the Foreign Relations Committee, soon to be the chairman, from a much broader perspective than the Senator from Indiana has had an opportunity to do.

Mr. CHURCH. I thank the Senator. I concur wholly in what he is saying. The old 1903 treaty under which we have governed the Panama Canal Zone and administered it as an American colony, even though it bisects this small country and, in effect, cuts it in two, has been a bone in the throat of Latin America for three-quarters of a century. I can think of nothing that would be more conducive to improving our relations with all of our neighbors south of the border than ratifying this treaty, which puts an end to that old resentment. The Senator is absolutely right when he says it is a resentment not confined alone to Panama, but one that has rankled all of Latin America.

Today, it rankles more than ever, because in 1903, the remnants of empire still existed in this hemisphere—though the Latin American wars for liberation had emancipated much of South and Central America before the time—still and all, there were colonies in the Western Hemisphere in 1903. Since then, they have nearly disappeared, along with the colonial empires elsewhere. Today, in their places, are independent governments. Even in the Caribbean, the small islands have achieved their independence. And so the Panama Canal Zone, to South Americans, appears to be the last vestige of colonial control.

We received some very eloquent testimony on this point during the hearings, and it usually came as a result of some member of

the committee asking a witness to explain why it was that leftist elements, the Communist elements in Panama, such as they are, and in other countries in Central America, were the most adamant in opposition to the treaties, the most strident. It always seemed to me to be ironic that the leftist elements, the pro-Communist elements in Central America, are the most extreme in their opposition, the most vocal and militant of all against these treaties, while it is the rightwing in this country which takes that position. There is a strange dichotomy here.

In any event, when such questions were put to witnesses before the Foreign Relations Committee, the answers typically took the following form—and I will quote two witnesses to exemplify those answers. One was Gen. Maxwell Taylor, who was a former Chairman of the Joint Chiefs of Staff, as the able Senator from Indiana will remember. He had this to say:

> The Soviet Union always intriguing for leadership in the have-not world has taken as a primary objective the undermining of our Latin American relations, particularly those with our trade partners.
>
> It will always assure to Panama a large allocation of troublemakers to complicate our problems. Turbulence there is always good news to Moscow—so also are American blunders. In this connection, let us hope that we do not give the Kremlin chiefs the occasion to rejoice which our rejection of these treaties would undoubtedly afford.

Then let me quote from our Secretary of Defense, Secretary Brown, who, in a similar vein, said:

> I cannot speak for Mr. Castro, but if I were Castro and I wanted to do the most that I could to increase the influence of Cuba in the Caribbean and in Central and Latin America, and decrease and harm the United States psychologically, politically and diplomatically, I would do all I could to see the treaties rejected.

I find it strange to hear such amendments as the one now pending urged upon as in terms of dealing with the Communist threat. The most effective means for dealing with the Communist threat, now and in the future, would be to reject such amendments and get on with the ratification of this treaty. I thank the Senator very much.

Mr. BAYH. I thank my colleague. I appreciate his observations. I might just make one or two concluding remarks before yielding the floor.

Let me direct attention once again to the specific matter before us, the amendment of the Senator from Kansas, which I think, of course, is designed to accomplish a worthy purpose, but it just so happens that the Senator from Indiana feels that that purpose is pretty well inculcated in the treaty as amended earlier.

I would call to the Senate's attention that the specific wording of the leadership amendment talks in terms of the right of the United States to defend the canal against any—and let me emphasize "any"—threat to the regime of neutrality, and, consequently, shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

I do not see how anyone can reasonably interpret those words—"shall have the right to act against" anything that threatens neutrality or shall have the right to act against any forces, any aggression or threat, which would impede the transit of vehicles—any other way than to say that if the presence of invited troops into

Panama does, in fact, create a threat to neurality, does, indeed, raise a question of our right to defend, that at that particular instance the United States shall act in such a way as to guarantee neutrality and exercise its right and solemn obligation to defend that canal to open access.

It is my concern that this amendment, if, indeed, it is designed to create any other interpretation, is going to cause a great deal of problems as far as finally getting a treaty. I would urge my colleagues to oppose it.

Frankly, I want a treaty. That is not because I am unhappy with the situation as it exists now. In fact, I must say I find myself in a great deal of sympathy with the statement of the present Chief of Naval Operations, Adm. James Holloway, when he said:

> As I said, my initial position is I would like to see the United States stay in Panama in perpetuity, both to defend and operate the canal, and having the Panamanians want us there. That is not the real life situation that prevails. The Panamanians don't want us there.

Given that situation, it seems to me that a treaty which legally protects legitimate United States and world rights to use the canal, and gives the United States the right to defend the canal, is better than the alternative of the status quo. The status quo, as most conversant military leaders are quick to point out, will not remain the status quo very long. Although I have had some constituents talk to me in terms of the cost of implementing the treaty, the present status quo costs are not going to remain the same status quo costs very long. In my judgment, the obligations and the costs are much more in the national interest of the United States than the costs and repercussions of no treaty

When I think in terms of having to send—and I use the figures of the military experts, not my figures—100,000 American sons to Panama as a consequence of us having no treaty, then I say, heaven help us from this shortsighted approach to efficiency. Let us have a treaty. Let us be sure that it is adhered to and enforced, and then let us get on with the business of the Senate.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I want to respond to the arguments of the distinguished Senator from Idaho, but I think first I would like to ask the Senator from Indiana one question.

Let us just assume the worst, as now described by the treaty proponents, that the treaties are ratified and next year or 2 years from now Cuban troops are moved in to what now is the Panama Canal Zone area, or let us say within a mile of the canal itself. Would the Senator consider this a threat to the security of the canal?

Mr. BAYH. Yes, I think it would be the same threat as would now exist without a treaty. We would have to respond the same way whether we had the treaty or did not have the treaty, because Cuban troop access would be the same. We do not have that right now. We have a greater right, it seems to me, under this treaty, to respond to those troops than under the 1903 treaty.

Mr. DOLE. We have a 5-mile corridor on either side of the canal which gives a little more protection. As the Senator know, they could come right to the water's edge with foreign troops, if they so decided. I agreed with the Senator, that it would be a threat to the

security of the canal. I am just trying to avoid that possibilty with this provision. We might avoid a confrontation later on.

If it is prefered to have the confrontation, and I am not suggesting that the Senator from Indiana is saying that, my point is that the amendment is not offered as a killer amendment or as a far-out effort to destroy the treaty. I think we can cite examples. It could happen or maybe it would not happen. Maybe the Senator from Idaho feels that it would not happen. I appreciate the Senator's response to the question.

Mr. BAYH. Of course, the Senator was speaking and I did not want to interrupt him. I think what the Senator from Idaho was pointing out was that there have been troops sent to Angola and Ethiopia, and other places. Nobody has ever tried that with the Panama Canal. I think that is basically because they realize, first of all, the Panamanians do not want to do that, and I do not see why they should want to change. Second, and equally important, I think they have seen that when someone tries to play that kind of international game in our own backyard, they end up getting a bloody nose. Anyone who tries it after the treaty is ratified will find the same thing happening to them in the future.

I share the concern of the Senator from Kansas, but I think that is pretty well handled under the treaty provisions, particularly under the amendment of the leadership which has been adopted by the Senate.

Mr. DOLE. I thank my friend from Indiana.

Ethiopia was cited as a good example. I think it is a good example. We probably could not have perceived 8 years ago that an ally such as Ethiopia today would be in some adversary role and would invite the Cubans and Soviets into their country. I assume if we had a canal there we would be in big trouble.

They cannot understand why some of us who have raised our concerns have them shot down as rapidly as they are raised. They cannot understand why their views are totally ignored.

This is an American proposition we are discussing in the Senate. We are not standing in Panama. We are not dealing with a dictator. We are in a free country. We are expressing our views and offering our amendments in the hope that some might be adopted; in the hope that we might improve the treaties for the American people, at least allay some of their fears and improve the treaties for the Panamanian people and, perhaps, allay some of their fears.

We understand the strategy of the protreaty forces. I commend the protreaty forces and the leadership of the protreaty forces: the minority leader, the majority leader, the distinguished Senator from Idaho, the distinguished Senator from Maryland, and others who have been able to secure enough votes for passage of the first treaty.

I might say to my distinguished friend from Indiana, with reference to embarrassing General Torrijos. I share his views. Certainly, I think he has done his share. I might add that it was done after a great deal of pressure was exerted by some of us who wanted to resolve the question of drugs, I say to the credit of the Senator from Indiana. As far as the Senator is concerned, those were resolved and they were never mentioned after the date we had our closed session and the report was reached by the Intelligence Com-

mittee. I think that, in itself, was an outstanding service performed by the Senator from Indiana, the Senator from Arizona, and others.

Mr. BAYH. Will the Senator yield?

Mr. DOLE. Yes, I yield.

Mr. BAYH. Let me say briefly that I appreciate the thoughts of the Senator from Kansas. Although we do not agree on the merits of this amendment and perhaps on the treaty finally, I appreciated the thoughtful approach which he took to this drug problem, which was a matter of concern to all of us.

Although I think, perhaps, the product of it, the report, caused some embarrassment, let me say, in behalf of the committee, that the purpose of that report was not to embarrass General Torrijos or anyone else, but just to get the facts out and if the facts were embarrassing to certain people, that is the way it had to be. We felt our responsibility was not to try to cover up anything, but to give information to the Members of the Senate so they could make the interpretation they thought best on the given issues.

Mr. DOLE. I appreciate that concern. I think the facts were laid on the table as much as they could be laid on the table so the American people could make a judgment. I think they made a judgment. I think the American people decided that, insofar as the drug allegations were concerned, they probably did not deserve consideration and they were forgotten.

As far as this Senator knows, after the cooperation we had from the Senate Intelligence Committee, and, as far as I knew, everything was revealed that could be revealed, that question was laid aside, as it should have been, and we went back to the merits of the treaties themselves.

I say that not only to commend the Senator from Indiana, but to indicate that there are those of us who raised questions who try to be responsible. We are not representing any faction, we are not representing any anti-Panamanian group. We are certainly not trying to scuttle the treaties. But it does seem to us that we should have some input and some impact and, if you will, some consideration of the amendments we offer.

In fact, any movement by foreign troops into any area which is now the zone or whatever is a threat to our security after the treaties are ratified—if the treaty proponents all see it that way, then maybe that might explain why the amendment offered by the Senator from Kansas is not necessary. But it seems to this Senator that one way to avoid that possible confrontation is to adopt the amendment, which simply says, and I repeat it:

> At the end of article I, add the following:
> 5. For the duration of this Treaty and consistent with the provisions of Article IV, the Republic of Panama and the United States of America agree that, subject to the other provisions of this Treaty, only the military forces, defense sites, or military installations of the Republic of Panama or of the United States of America may be maintained in the national territory of the Republic of Panama.

That is consistent with what happens after the year 2000, because our troops will be in the area between now and the year 2000. But during this period of time between the date of ratification and the year 2000, our troops will be phased out and the bases will be phased out.

There is nothing that the Senator from Kansas can find in any of the treaty language that would indicate that Panamanian leaders—General Torrijos or someone else like General Torrijos—that would prevent them from inviting in troops of any foreign countries and putting them in the bases we have surrendered. We are giving them the right to occupy those very bases that the American taxpayers handed over to the country of Panama.

The Senator from Kansas also suggests that he considers this to be one of four or five critical amendments to this treaty.

As I have indicated before, this Senator has entered into time limitations, made no effort to extend the debate. But it seems to me that this particular amendment deserves a great deal of consideration.

There was, at least, some inference in the dialog between the Senator from Idaho and the Senator from Indiana that, without trying to characterize their comments, those of us who offered amendments or tried to change the treaties maybe did not fully understand the ramifications or the implications of that.

Perhaps some of us feel the same about some of the arguments on the other side.

Frankly, it is very difficult to explain to the American people, whether it is in Indiana, whether it is in Kansas, whether it is in West Virginia, whether it is in Kentucky, whether it is in Ohio, or wherever it may be, it is hard to explain to the American man and woman—and they are not rightwing, not leftwing, they are American taxpayers that are concerned about the Panama Canal—it is hard for them to understand why amendments are offered and never accepted, why President Carter will not accept any changes in the treaty, why we are bound by some promise, whether contained in a letter to Torrijos or not, not to make any changes in the treaties.

It is hard for them to understand. It was even the subject of some ridicule, I understand, last Thursday night on the "Johnny Carson Show," who made some reference to the goats that had been turned loose in the Capitol area—100 goats.

I think Johnny Carson said that before they noticed it, 15 of those goats entered the Senate Chamber and voted for the Panama Canal Treaty.

Now, the American people understand what we are doing here. They also understand what we are not doing here. What we are not doing here is considering seriously the amendments offered by some who want to improve the treaties.

If I had some clear and convincing and compelling argument that the amendment would somehow forever destroy our relations with Panama, or the Panamanian people, that would be one thing, or if I had some assurance from some in this Chamber who last year helped defeat my amendment, but tried to keep us rushing the normalization of relations with Cuba.

Their judgment was not too good, as I look back on it. They were opposing the Senator from Kansas on trying to put any restrictions on our relations with Cuba. They finally worked out some little language that did not mean anything.

What happened in the interim? Twenty thousand Cuban troops ended up in Africa. Even President Carter had to stand back a few

steps and say, "Well, maybe we shouldn't be in too much hurry to normalize relations."

I suggest that sometime someone in opposition might be right. That could happen.

It happened with reference to the Cuban amendment on the appropriations bill last year, which was successfully shot down by many of those who now support the treaties. It was characterized by some meddlesome, interfering in foreign policy.

Maybe somebody on that side, the protreaty side, has some inside information about Castro. Maybe there has been some assurance paid during a personal visit to Cuba about whether or not he has any designs on Panama.

That is the question that this Senator wants answered. What happens if, in fact, Cuban troops do go into Panama in 1 year, 3 years, or 5 years, and we have a confrontation? Does that help the people of Panama? Does that help preserve the neutrality of the canal? Does that keep the canal open for American ships and other ships?

I think we have a right to raise those questions without being, literally, accused of looking under a rock, of always looking at the dark side, because the Senator from Kansas would just remind Senators again about the Cuban situation. Almost a year ago in this Chamber there was a big rush by some to defend Cuba, to defend their intentions, and it was said that we did not understand. We were not on the Foreign Relations Committee, so we did not understand.

The American people are not on the Foreign Relations Committee and they do not understand. The American people are not Senators and they do not understand.

But they do understand that something is happening to the Panama Canal and they do not like it. They do not like the fact that their Senators can stand up and offer amendments and not even be seriously considered.

So we have a problem, those of us who have amendments. We have a decision to make, those of us who have amendments. Should we go through the exercise of offering our amendments only to have them tabled? Is that the way we ought to react? Is that responsibility in the Senate on either side? Because, certainly, this Senator knows, and any other Senator knows, that there are enough votes to table any amendment, and maybe a day or two before the final vote, if the head count shows they are one or two short, maybe a few reservations will be adopted, we will have the accommodation and the visits to the White House, the phone calls, the minority leader and majority leader winding up undecided, and then we will vote.

Or should we, on the other hand, adopt the view that one way to protect the rights of the American people is to offer so many amendments that we will have a vote until maybe May or June?

So if the American people can fully understand what is happening, is there interest in reaching some time arrangement now just because the pressure is on, just because we have been threatened with no Easter recess?

Who cares? Is that such a strong incentive, that those of us in the Senate must give in or lose 4 days' vacation when we are

talking about the future of the Panama Canal, which is vital to America's military interests and her economic interests?

Perhaps the protreaty Senators and the protreaty forces and the protreaty press are right, they are in the minority in this body—in this body, not out on Main Street, not out on Main Street that this Senator can find, but they are in the majority in this body. Maybe we should accept their decision.

Maybe we should suggest, as has been suggested, that everybody is going to live in peace and harmony, if we do not upset General Torrijos he will not upset the present relationship with reference to the canal.

Well, if he gets the canal, he will be in power for a long time. This is a big bonanza. This is the big bonanza for Torrijos.

If he is in any danger now of losing power, he will be shored up forever if this treaty is passed without amendment.

How many billions of dollars will this mean to Torrijos? How many dollars does this mean to Torrijos if this treaty is passed? A great many. If we talk about replacement value, or even if we talk about book value, it is millions and millions and millions of dollars.

We are going to be stuck with a bill for maintenance and operation and repairs and we are going to turn over one base after another to Torrijos.

Maybe that is all right in the present day, modern day concerns for Latin America and the people of Panama. Maybe we should not quarrel about value of the canal itself. One billion dollars, $10 billion, $50 billion. Who cares?

Well, the American people care, for one. But their views are not being heard. Their views, for the most part, are being ignored.

But if, in fact, we are going to make the transfer—and this is the transfer, this is it—then what is so wrong with trying to add some amendments that strengthen the treaties? What is so wrong with saying, "I am going to stand up for America," without somebody looking down his nose and suggesting that we are some rightwing nut?

If that is the case, there are a lot of them across the landscape. There are a lot of people saying, "Why doesn't somebody stand up for our rights as taxpayers, why doesn't somebody stand up for our rights and our interest as Americans?"

They are not suggesting we are some big, powerful Nation that cannot deal with the country of Panama. But I think they are suggesting that there should be some safeguards in the treaty.

All we are suggesting in this amendment is what is going to be carried on after the year 2000, when our troops are gone and only Panamanian forces shall have any rights. It seems consistent.

Why do we invite foreign troops to the water's edge? Why the invitation of Cuba to the water's edge? This map cannot be seen, but once the treaties are ratified, not a year from now or 10 years from now, Cuban troops can move right up to the water's edge.

I know we are going to hear that that is not going to happen. Neither were they going to send any more troops to Africa last year, but they have sent 20,000 to Africa. That was not going to happen, either.

Frankly, I do not know what is going to happen, but it seems to this Senator that we should at least try to have a little insurance;

we should try to preserve and protect the interests we have. It is not enough to say that we do not have the authority now to keep foreign troops out of Panama.

There was some change in the 1936 treaty. But the point the Senator from Kansas makes is that this new treaty will enable foreign troops to move up within the Canal Zone area—as I have indicated, to the water's edge—and that has not been a threat under the present treaty. There is a 5-mile buffer zone on each side of the canal. That offers some protection. Besides, we now have a number of bases that we are going to surrender when the treaties are ratified.

I suppose the main reason for a new treaty agreement is to address modernday concerns, which this certainly is. The commitments we give Panama under this new treaty make it more important to obtain this guarantee in return. Panama certainly gains more under the new treaty, and we should be able to expect the same. It seems to me that it is not impractical, it is not unreasonable, to ask for this commitment, since Panama gives us a similar commitment, under the new Neutrality Treaty, for the period after the year 1999.

There is also this argument: "Don't worry about it, because we're going to have our military troops there. They are going to be there until the year 2000." It seems to me that if we were to rely on this argument, we would be inviting trouble. I think the argument underestimates the Soviet-Cuban determination, to which President Carter alluded in the past few days. He is very concerned about it. He sent a tough warning. Such an argument invites inevitable conflict over the sovereignty issue.

If Panama does approve the stationing of Cuban forces on the banks of the canal, which is within their right, once this treaty is ratified, and we use our military presence to prevent it, then we really will have a wide open conflict. At that point, Panama justly can argue that we are infringing on her sovereign rights. There is no doubt in this Senator's mind that world opinion would be with her. We leave ourselves open to justified criticism.

Can you imagine the hue and cry in Latin America? I think many Latin American countries may share a different view from that which has been expressed publicly, because they are concerned about communism, too, but imagine the hue and cry around the world if Cuban troops are invited in and we tell them to get out. I wonder what the outcome would be.

All the Senator from Kansas seeks to do by this amendment is to avoid the potential for this confrontation. Why not have some understanding and argument now on this point? Why wait until it is too late? Why not face up to the problem now, rather than to say, as the Senator from Idaho says, "Don't worry about it; you're conjuring up dark issues, problems, looking under a rock"? I would rather face up to it now than face up to it later. It seems to me that it is more of a challenge to Panama's sovereignty to use force later, if we have to use force later, than to reach some peaceful bilateral agreement now.

I wonder what would happen to those who now argue against this amendment if, in fact, Cuban forces were there, say 2 years from now and there was a show of force. I wonder if they would all

stand together and say, "There is not an attack upon the sovereignty of Panama." Or would they be on the other side, saying, "We're interfering with their rights, their sovereign rights"?

So I think the time has come to ask the hard questions and not to accept the evasive, generalized answers. This is a very important issue. It is one that concerns a great many Americans.

Whether we are right or wrong in our approach, we are making a record. We are making a record that someone 6 years or 10 years or 6 months from now may be reviewing for some guidance as to what our policy may be. But now we are told that we cannot do this because it interferes with the sovereign rights of Panama. I suppose that question is, What happens if we do not do this and the Cubans are invited in? Then, what about the sovereign rights of Panama? Then, what will be the world reaction if those who kill this amendment raise their voices?

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. DOLE. I will yield.

First, Mr. President, I wish to withdraw amendment No. 69.

The PRESIDING OFFICER. The amendment is withdrawn.

Mr. DOLE. Until such time as we can reach a time agreement on the amendment. I do not want to have it tabled while I am out to lunch.

I am happy to yield to the distinguished Senator.

Mr. SARBANES. Mr. President, will the Senator yield at that point?

Mr. DOLE. I yield.

Mr. SARBANES. I assure the Senator that no one is going to move to table his amendment while he is out to lunch. We would be happy to try to work with him to reach a time agreement on his amendment.

There has been no such conduct in the course of the almost 6 weeks we have been on these treaties, and I do not expect there to be any such conduct. I want the Senator to appreciate very clearly that there is no intent of doing anything of that sort.

Mr. DOLE. The Senator from Indiana indicated about 30 minutes ago that he intended to move to table the amendment when the Senator from Kansas finished. The Senator from Kansas is not the only one concerned about this amendment.

Mr. SARBANES. If that is the case, we will try to adjust to others who are concerned. I was not here when the Senator from Idaho spoke, but I am certain that when he said that, he had no intention of doing it when the Senator from Kansas was out to lunch.

Mr. DOLE. I do not have lunch, but——

Mr. SARBANES. The Senator is entitled to have lunch. I am not suggesting that he is not entitled to have lunch. We are not waiting for the Senator to go to lunch, to move to table his amendment.

Mr. DOLE. I will take my amendment with me; then I know it will not be tabled.

I yield the floor to the Senator from Virginia.

Mr. SCOTT. Mr. President, I appreciate the distinguished Senator from Kansas yielding. Of course, I support his amendment.

When I was in the Chamber about 30 minutes ago, I was interested in a colloquy between the distinguished Senator from Indiana (Mr. Bayh) and the Senator from Idaho (Mr. Church) in connection

with the Dole amendment. The distinguished Senator from Indiana was referring to a conversation he had had with a former ambassador from Argentina, and he was speaking of how the Argentinians felt with regard to this treaty.

I have been to Argentina twice within the past year, and I have spoken with the President of Argentina. I have spoken with the Foreign Minister, with the Defense Minister, and with other officials from Argentina.

And they have informed me that Argentina does not make very much use of the Panama Canal, being on the east coast, being down near the horns; that they use it very little; that they feel that this decision is something between the United States and Panama. It is something that they do not, from the commercial point of view, have any great interest in. And yet, they have their strong, extremely strong feelings that this might be an area for Communist domination and this is something that I heard over and over again, in speaking with the officials of Argentina.

So, I would say that my personal experience has been entirely different from the experience of the distinguished Senator from Indiana.

Now I did not have an opportunity to respond at the time that the Senator from Indiana and the Senator from Idaho were discussing this problem. I did ask at one time that the Senator from Kansas (Mr. Dole) yield to me so that I could make this statement, but he felt he had not been able to present his point of view and he preferred to go ahead when he had an opportunity and make the statement that he has just made.

I would say, that as far as Argentina is concerned, and I doubt that few Members of the Senate have talked with as many officials from Argentina as the Senator from Virginia has within the past year, because of two trips to that country, even within the past 6 months, I have gotten the definite impression that Argentina, from a commercial point of view, feels that this is a matter to be decided between the United States and Panama, but there is great concern about Communist infiltration and in fact Communist control of this vital artery that is important to us, from not only a commercial but a military point of view.

Mr. President, I appreciate the Senator from Kansas yielding. I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

Mr. SCOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LAXALT. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada is recognized.

Mr. LAXALT. Mr. President, I rise once again in support of the amendment of the Senator from Kansas, and during the course of the hearings——

The PRESIDING OFFICER. The amendment is no longer before this body.

Mr. LAXALT. The amendment is now withdrawn?

The PRESIDING OFFICER. That is correct.

Mr. LAXALT. It is going to be resubmitted, if I understand the Senator from Kansas correctly, and I would want at this time to continue speaking to the amendment because it will be before the Senate.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. LAXALT. Before us, as I indicated in my previous comments, as I think in various methods, and we have certainly had our fair share of comment as to the Neutrality Treaty and now to the Canal Treaty, that this probably makes as much and more sense than any.

We have had continuing discussions here on the floor about whether amendments would be an affront to the Panamanian dignity, as to whether any amendments would require a plebiscite, and those arguments and those contentions have been uniformly and roundly rebuffed here on the floor of the Senate, both during the course of the debate and certainly by virtue of the votes that have been taken.

We have had continuing concern here about the security of the canal, and I do not know of anybody in this body who does not have that as a principal goal. There is not a single Senator that I know of who does not honestly feel that we should take whatever steps are required to insure the continued safety and security of that canal, because I think that almost beyond question everybody recognizes that it has had great value commercially. It continues to have great value commercially, not only to Panama but to the hemispheric countries that are involved, our allies there and certainly to the United States.

It certainly has, I think, from the objective view of the experts that we have had militarily, great strategic military values. That being the case, it would seem to me that we should take whatever steps are required to insure that it is properly protected and defended.

Now there were amendments offered attempting to solve that problem and cure that difficulty. They were not adopted as amendments. We had a continuing debate here as to whether or not an amendment would require a plebiscite. I think it is rather clear from the estimation of all concerned, not only here in the Senate but in Panama, that an amendment which materially changes the terms of the treaty would require a plebiscite. That has been a problem for us because it has been uniformly felt here, and certainly the votes recognize this, that to have a plebiscite is wrong. This would submit General Torrijos to another vote of confidence, in his judgment, in connection with these treaties.

I fail to understand that because we have attempted during the course of the debates to poo poo the significance of the fact that Panama is a dictatorship, and has been for 10 years and that we are turning over a vital strategic facility to the Panamanian dictator. All we want is for the Panamanian people to be heard and yet we have been told time and time again that "No, that is wrong," that we cannot permit the plebiscite, because somehow, to have the Panamanian people heard once again, that might result in the rejection of General Torrijos.

Well, as far as I am concerned, I would rather think that is probably one of the better reasons we should have a plebiscite.

We must bear in mind that when the plebiscite was conducted last year on these treaties there was a rather strong opposition there. It has been stated once again time and again here on the floor that they were resoundly passed.

Well, the fact is that those treaties passed about 2 to 1. The fact is that apparently at least one-third of the Panamanians who voted at that election find objection to the treaty, for whatever reason. Many of them, as we know, who worked with us in the canal zone feel the treaties are bad. They resort to the same type of argument that millions of Americans resort to: There is no justification whatsoever for us to give away the canal. None. And certainly there is no justification, not only to give away the canal, but thereafter to have to pay the Panamanians in excess of 50 million a year for the next 22 years. That to them makes absolutely no sense.

I might say this: In the meetings we had down there I was greatly impressed by the sincerity and strength of their opposition. These are not only Americans working there; these are Panamanians who are citizens of Panama who work within that zone, and who know from a firsthand knowledge what that canal means, how important it is to shipping, how important the whole area is militarily.

More important than that they know Torrijos. They know the kind of government he has. They know it has been a dictatorship. They know that human rights have been constantly violated.

They have indicated to us, many of us who opposed these treaties, "Please keep the debates on as long as possible because we have never had it so good in Panama under Torrijos. As long as these debates continue, as long as their passage remains in doubt, we are in better shape in terms of our own human rights."

So we have a situation here in Panama, it seems to me, where the situation cries for a plebiscite. I think the American people would like to know how the Panamanians feel. I think the American people would like to be heard on these treaties.

It has been suggested often that, perhaps, these treaties should be subjected to a nationwide referendum. It is appealing at first blush. I would rather think if these treaties were submitted to a nationwide referendum the American citizens would vote them down resoundingly because the American citizens have different perceptions and a clarity of thought concerning these treaties that I think we presently do not have here in the U.S. Senate.

Be that as it may, it is my feeling that if an amendment is worthwhile it should be adopted.

General Torrijos during the last 5 weeks of debate in this Chamber has had a power of veto over us as Senators here, a power of veto because time after time when we presented amendments on this floor that should have been seriously considered, should have been adopted, they have not been because General Torrijos, with his silent hand hanging over the Senate Chamber, has killed that particular amendment.

In my judgment, that is a sad state of affairs because we, as Senators here, have a prime constitutional responsibility, and that is in the matter of treaties of this kind to advise and consent.

As I indicated earlier, all we have been doing here for days on end into 200 hours of debate here on the Senate floor is consenting, consenting, and consenting with very little advice.

It seems to me if these votes continue, if we run into what appears to be a clear stone wall every time so that we cannot pass an amendment, it is going to be an affront to our constitutional responsibilities.

We must remember that under the terms of the Constitution the President only has the power to negotiate. We heard here in these halls during those last few critical hours before we took the vote the other day Senator after Senator was told, "You cannot do this to our President. It is going to hurt our President, if you vote down these treaties. It is going to impair him in the conduct of his foreign relations."

I submit, Mr. President, that if the President of the United States is in difficulty presently in the conduct of foreign relations it is not the fault of the Senate. It is certainly not the fault of the U.S. Senate. I, for one, as a Senator from Nevada do not take on any bit of the blame in that respect because I feel we have to undertake our constitutional responsibilities seriously.

The only power that he has, the only power that any President has, in this country under the terms of our Constitution is to negotiate with a foreign country like Panama. That is all. Once he has completed his negotiations through his people, under the constitutional process it properly comes to us in the Senate, as representatives of the people.

You must consider that that constitutional responsibility, as indicated in the original debates, is not to be taken lightly by us.

They insisted not that a majority of us here as Senators would be able to ratify a treaty, no. Two-thirds of us must ratify it. That is the kind of serious responsibility we have. That indicates very clearly in the minds of the framers of the Constitution that checks and balances in this Chamber are going to be effected by us in the Senate—by us.

Yet we have not been permitted to exercise our constitutional responsibilities because we have been given treaties here which are sacrosanct, they are beyond amendment.

Last week we indulged in an exercise here in order to curry favor and get the few votes necessary for passage in taking amendments that were in the name of reservations and understandings, and we suddenly have three or four votes that were not there before.

If we would have had the same treatment in connection with the reservations and understandings that we had on the amendments, I would say we would not be on this floor today because that Neutrality Treaty would have been voted down.

So we have indulged, I think, in great part in an exercise in hypocrisy from the standpoint that the reservations and understandings in the view of the lawyers we have had looking at this are not binding on Panama.

Their own constitution provides that when the terms of a treaty are changed, as they were by the reservations and understandings, they must go back to a plebiscite. That has been keenly ducked here, keenly, because now it has been stated, apparently to the

satisfaction of several Senators, that if the same material that was voted down, the same subject matter that was voted down, in an amendment was taken in a reservation or understanding suddenly that is binding on Panama and does not require a plebiscite. That is unbelievable doubletalk—unbelievable doubletalk because the legal effect is the same.

I submit to my colleagues, because I know this troubles a number of them, that the best thing they can do in the next several days before we take the vote on the main treaty here—and we are only two votes short of killing these treaties—I submit to those who are genuinely undecided, to take a look at the legal opinions presently on record here because they indicate, perhaps not with certainty but they indicate, that there is a great doubt as to whether or not a reservation or an understanding that materially changes the terms of the treaty may be binding on Panama.

If it develops that that is not the case, I think what we have done here may be very counterproductive.

Mr. BARTLETT. Mr. President, will the Senator yield?

Mr. LAXALT. Yes, the Senator yields for the purpose of a question.

Mr. BARTLETT. I certainly agree with what the Senator said that the approval of the treaty by Panama which was submitted to us was changed in a very substantial way, which was agreed to by the majority leader as far as his first amendment was concerned, one of the leadership amendments, in a short dialog with the Senator from Oklahoma.

So when we acted with amendments, reservations, and understandings we did change in a substantive way the treaty we received and, in doing so, we turned it down.

Then we are in the process now of considering the resubmission of the two treaties back to the Panamanians. If these are both ratified, as one has already been, as the Senator said, this would have to be subject to approval by a plebiscite voted in order to be approved by Panama.

But if there is not a plebiscite, then is that not itself tantamount to turning down our resubmission? In other words, if they do not approve it, are they not disapproving it by not having a plebiscite, in the Senator's opinion?

Mr. LAXALT. I think that is the effect of it.

I have been wholly unable to comprehend here why we are so deathly afraid of submitting changes in the treaty to the Panamanian people. We have had great concern, and rightly so, for hours and hours and hours that we must keep in mind the dignity and the feelings of the Panamanians.

Yet here we are, we are on the verge, or we were on the verge the other day, of passing a treaty, a Neutrality Treaty, provisions of which were clearly outside of the terms of the plebiscite, clearly, and indicated here on the floor by Senator after Senator that this is binding on the Panamanians. Yet we are not going to submit those material changes affecting them individually and as a country to them for a vote.

What kind of hypocrisy is that? I agree completely with the Senator from Oklahoma.

Mr. BARTLETT. Mr. President, will the Senator yield further?

Mr. LAXALT. Certainly.

Mr. BARTLETT. I agree with the Senator's choice of words because I think it is hypocrisy for the Senators, the Members of this body, to want to make and actually make substantive changes and then not want that to be considered as our resubmission of the treaty to the Panamanians.

For one thing, it appears to me—and I would ask the Senator's thoughts on this—that as far as the Neutrality Treaty is concerned, we do not know, really, even assuming that the other treaty is ratified, we would not know where we stood with the Neutrality Treaty, because we have made substantive changes, and if the Panamanians do not have a plebiscite, then where are we? In a sense, we could say that they turned it down because they have not accepted our version of the treaty on resubmission.

Mr. LAXALT. The Senator has stated the issue clearly and well. That is, where are we? I do not know where we are. The Senator from Oklahoma does not know where we are. There is not a Senator on this floor who can state with certainty that he knows where we are, because we have an unanswered question of resubmission hanging over those amendments adopted the other day. Nobody knows.

Mr. BARTLETT. How would we know whether they have accepted the amendments, the reservations, and the understandings that have been added?

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. BARTLETT. I do not have the floor.

The PRESIDING OFFICER. The floor is held by the Senator from Nevada.

Mr. LAXALT. I am happy to yield to the Senator from Maryland for an observation or a question, without losing my right to the floor.

Mr. SARBANES. Did I correctly understand the Senator to say he does not know where we are?

Mr. LAXALT. That was my observation in response to a similar statement by the Senator from Oklahoma.

Mr. SARBANES. I appreciate the Senator's observation. It seems to me that one of the things you are trying to do is to make the decisions for both the United States and Panama. I assume it is up to the Panamanians to determine where they are, and up to us to determine where we are.

Mr. BARTLETT. Will the Senator yield to me for a comment?

Mr. SARBANES. It is not my time, but if the Senator from Nevada wishes to yield, it will be fine with me.

Mr. BARTLETT. Will the Senator from Nevada yield for a comment?

Mr. LAXALT. Yes, I do.

Mr. BARTLETT. That argument was made last week, and to me it is a very ridiculous argument. The first thing of paramount importance to us in negotiating or ratifying a treaty, as we are doing, is to know whether or not both sides agree to the same provisions. Do they agree with the changes we have made? We do not know that. But it is of paramount importance to us that we do know where we stand, that we know whether or not they agree with our changes or if they do not agree with them. Do they agree to them?

Mr. SARBANES. Will the Senator yield?

Mr. BARTLETT. The Senate had made some very substantial changes. I think it is of paramount importance that we do know what route they take in either ratifying or not ratifying the treaty, under constitutional provisions which require a plebiscite on matters dealing with the Panama Canal.

Mr. SARBANES. I suggest to the senator from Oklahoma that we have been trying to make some judgments in terms of what we think is necessary so far as American interests are concerned and not how Panama will respond to what we have tried to do here on the floor of the Senate in considering the permanent Neutrality Treaty. I assume we will do the same in considering the Panama Canal treaty, which is to make the judgments that we think are necessary to protect American interests.

I find the argument interesting that the Senator from Kansas raises if his amendment is rejected; he assumes it is being rejected for some reason other than the substance of the amendment. I would like to suggest to the proponents of amendments that maybe one reason why they are being rejected is that they are deficient in one respect or another, substantively deficient. I would like to suggest to the Senator from Oklahoma and the Senators from Kansas and Nevada, who are now on the floor, that I take all the amendments they bring forward with a great deal of seriousness, and that we have to reject them on the basis of their own substantive merits.

Mr. LAXALT. Will the Senator yield for an observation?

Mr. SARBANES. Surely; it is the Senator's time.

Mr. LAXALT. If that be the standard, that the amendments that were voted down to the Neutrality Treaty were voted down on the basis of substance, how do we take those same amendments and adopt them as reservations or understandings, if they did not have substance to begin with?

Mr. SARBANES. Of course, if the Senator will yield, I do not agree that that is precisely what happened, and I think a careful reading of both the proposals made as amendments by the opponents of the treaties and the proposals subsequently adopted will reveal that that is not the case.

Mr. LAXALT. Will the Senator yield so that I may make a point?

Mr. SARBANES. Surely.

Mr. LAXALT. We discussed here the language, you and I and Senator Church and several other Senators, that for us to think of military intervention unilaterally by the United States was unheard of. I heard you and Senator Church, time after time, state that this would be an affront to Panamanian dignity.

Mr. SARBANES. What would be an affront?

Mr. LAXALT. Unilateral military intervention on the part of the United States.

Mr. SARBANES. If I may respond to the Senator. I do not think he ever heard me talk in those terms. I have stated on the floor of the Senator that the term "intervention" is a term which carries with it such an overlay of meaning in all Latin American countries that we ought to cease and desist from using it in our own discussion of this issue. I would hope that the senator, with some appreciation

for Latin American history, would understand the thrust of that point.

In fact, I have underscored that the United States can take any action that is necessary in order to maintain the regime of neutrality which is called for by the Neutrality Treaty.

Mr. LAXALT. But the Senator must admit that time after time, when we unsuccessfully offered amendments to clearly specify the right, that we had the right to unilaterally intervene militarily we were eminently unsuccessful: those amendments were voted down. Yet that was the thrust of the so-called DeConcini amendment, and I think that met—for the reasons that the Senator from Maryland states, because the word "intervention" was used, that met with profound disapproval in Panama. If the press accounts are true, as recited in the Washington Post on Saturday and Sunday, there was no celebration in Panama after the vote here on Thursday. There was no celebration.

Mr. SARBANES. May I correct the senator? The Senator just stated that the word "intervention" was used. That is not true.

Mr. LAXALT. That was essentially the thrust of the amendment.

Mr. SARBANES. No, that is not the statement the Senator made. He did not say "in effect"; he said it was used, and it was not used.

Mr. LAXALT. I suggest that the Senator read the amendment.

Mr. SARBANES. To keep this debate on some rational ground, I think we ought not to misstate what has taken place.

If the Senator will yield further at that point—Mr. President, is there an amendment pending at the desk?

The PRESIDING OFFICER. There is no amendment pending.

Mr. SARBANES. Then, if the Senator will yield further, I have been fascinated by some of the discussion that has taken place on this floor today, and I have listened to it quite carefully, both the comments of the Senator from Nevada and the comments of the Senator from Kansas (Mr. Dole). Both are, of course, very skillful, and I have found it intriguing to listen to their assertion that someone has to stand up for America, and then the assertion that that is being done by the opponents of these treaties, and that the proponents of treaties are not standing up for America.

I want to underscore, speaking for one proponent—and I think I fairly reflect the views of my colleagues—that we support these treaties because we see these treaties as protecting American interests and American rights; as being the most wise, sensible, and prudent way to stand up for America. And I would suggest that some of those who are so quick to use this rhetoric ought to stop for a moment and think seriously about American interests and American rights and how we protect them.

The fact of the matter is that these treaties give to the United States a legal and a moral basis on which to use our strength to protect our interests should that prove necessary. Second, it opens up the prospect of developing a new relationship with Panama.

Someone said earlier, an opponent of the treaties, "Well, people are terribly worried about what the Panamanians think." The fact of the matter is that if we are concerned about American interests including the relationship between American and Panama, a part of that relationship involves, of course, what the people of Panama

think in terms of the relationship they are going to have with the United States.

Mr. LAXALT. Will the Senator yield for an observation?

Mr. SARBANES. Surely.

Mr. LAXALT. Unless I misunderstood the thrust of our discussions here, the feelings of the Panamanians and their reactions toward us in the years to come is vital. We have been told time and time again that we cannot effectively operate the Panama Canal in the future in a hostile Panamanian environment.

It seems to me that how they feel, how they react to what we are doing here, is absolutely critical to what we are trying to achieve if we get to the point, if I may pursue this for a moment, and I think we are close to that point, dangerously close to it, of adopting a treaty or treaties here which are unacceptable to most of the American people, if that be the case—and it is arguable—and also, by virtue of the device of reservations and understandings we also undermine the Panamanian leadership, we literally have the worst of all worlds. I suspect we are perilously close to that kind of result.

I think all we have to do is to read the exchange of letters demanded by Senator Griffin from General Torrijos to President Carter and back to see that there may be an essential misunderstanding concerning the effect of what we are doing here.

General Torrijos still feels that we have not materially changed that treaty. I submit that, by virtue of the device of reservations and understanding, we have. I submit that that may well be the perception of General Torrijos, who has apparently put a blanket and a gag on top of all his people to preclude them from even talking to the press until we process these amendments, and also the Panamanian people.

I submit to the Senator from Maryland that we cannot have it both ways around here. If the thrust hour after hour after hour from the proponents is the fact that we must work out an agreement satisfactory to the Panamanians so that we do not operate that canal in a hostile atmosphere, if we do away with that standard and subordinate that standard to what we perceive to be right to get these treaties passed, we will, in effect, have the worst of both worlds.

Mr. SARBANES. Will the Senator yield?

Mr. LAXALT. If I may, I promised the Senator from Oklahoma I would yield first to him. Thereafter, I would be happy to yield to the Senator from Maryland.

Mr. BARTLETT. I thank the distinguished Senator from Nevada. I certainly agree with his statement. I think what we are doing here is trying to have it both ways. This is where the hypocrisy lies.

The Senator from Maryland said a few minutes ago that our job here is to look after the rights and the interests of the citizens of the United States and then, I think tying it into the same sentence, said it is up to the Panamanians to do their thing for themselves, that we should not try to tell them what to do or we should not try to become involved with their responsibilities.

Then he said we should expect out of this treaty to have a new era of relations with the Panamanians, better relations, I assume he meant. This would be my hope too.

How can we expect to improve our relations if we are not at all certain that we agree on the treaty, if we have different opinions of the neutrality treaty, apparently? We are in the process and may resubmit to the two treaties, one of which, at least, will be substantially changed. Is it not looking after American interests on the one hand to insist that both the Panamanians and the Americans have the same understanding of the meaning of the treaties? Certainly, I think this is of paramount importance. It is a matter of looking after our own interests to know what they think of our submission.

I think it is very important, too, that is we expect to improve our relations with them, that there not be a difference of opinion of where we are.

Third, we should know where we are, precisely, unequivocally, without any reservations. Today, we do not. We do not know whether the Panamanians are going to have plebiscite; whether they are going to follow their constitution, or not. We do not know officially how the citizens of Panama feel about the changes which have been made. We do not know what may happen in the future if they take no action and we assume that they agree with us. We do not know what a subsequent administration might do as far as the constitutionality of the approval of the treaty in Panama.

What we are doing is setting up a pig in a poke, not only for our citizens but for the Panamanians for now and in the future.

I think it is of the utmost responsibility on our part as Members of the Senate to know where we stand, to know what kind of an agreement we have, and that we know what the thinking of those on the other side of that agreement is.

Mr. SARBANES. Will the Senator yield?

Mr. LAXALT. I am happy to yield to the Senator from Maryland.

Mr. SARBANES. First, Mr. President, I want to say I am touched, though not quite yet moved, with the concern, as to whether the will of the Panamanian people is being reflected, in the statements of the two Senators with which I am engaged in this colloquy. They comment that the proponents want it both ways. Of course, they do not want it any way at all. They have rejected what has taken place on the floor of the Senate.

At some point I think we are going to have to recognize that we are proceeding on the premise that there are two separate, independent, sovereign countries, the United States and Panama, which are negotiating a treaty between themselves. I know it is difficult, as shown by the amendment the Senator from Kansas offered and then withdrew, for some to reflect this attitude.

Any agreement, and a treaty especially, requires, of course, the concurrence of the other side. One does not come along and lay down the terms. They try to negotiate arrangements which are mutually beneficial to both parties to the treaty. That is what we have tried to do here. We have gained some rights for the United States which I think are very important.

The amendment which was withdrawn would have required agreement from Panama to something we have from no other country in the world. It would have imposed upon them, or it would have sought to impose upon them, a condition that we do not need, because we are in a position to fully protect our interests,

and a condition whch is counter to what a self-respecting nation would agree to. We do not have that kind of an arrangement with any other country in the world. Yet we do have arrangements with Panama which, in contrast to our arrangements with other countries are quite far reaching in terms of our ability to protect American interests.

As we discuss back and forth, we must recognize that an agreement must be made between two parties; it is negotiated to be mutually advantageous. Our responsibility is to see how our interests are provided for as we make our judgment with respect to the treaties. We have very extensive and extended rights under these treaties.

The Senate has taken the action we deemed necessary before giving our advice and consent to the previous treaty. We now have Members who would like to go beyond that and determine for Panama the position of the Panamanians. Of course, that is not for us to do.

As we proceed forward with the Panama Canal Treaty, having approved the Neutrality Treaty by the very wide margin of 68 to 32, which is better than 2 to 1, and which is the margin a treaty requires in the Senate, I think we need to be sensitive to what treaties are: agreements between two parties; voluntary agreement between two parties.

Lasting treaties do not constitute the imposition of the will of one party upon the other. They are mutually arrived-at understandings which are important to the interests of both countries.

With American interests protected as well at they are in these treaties, it seems to me that what we should do is to move ahead now to approve the second treaty and begin the development of a new basis and a new relationship with Panama.

I thank the Senator for yielding.

Mr. LAXALT. I thank the Senator from Maryland.

Getting back to the basic contention I was making in connection with the Dole amendment, which has now been withdrawn but which will be momentarily, I hope, recalled for consideration, I think the point we have to remember here is the fact that these treaties as presented to this Senate, from the standpoint of correction by amendment, have been almost infallible, untouchable.

[Mr. Culver assumed the chair.]

Mr. LAXALT. The silent hand of General Torrijos hovers over this Chamber. As was indicated the other day, he literally has the power of veto and has had during the whole course of these debates upon what we can constructively pass as an amendment.

No one can convince me that the handful of negotiators who worked on these treaties have all the answers. I cannot believe that. If that were the case, we should not even be considering this at all; let it be handled by way of executive agreement. Why let us take a look at all?

Yet, that has been the essence of the discussion here. Every amendment that we have seen fit to offer here has been fought, has been argued against on the basis that it has no substance, has no merit; and yet, after they were voted down, they eventually were adopted as reservations and understandings—the very same amendments, in essence, that we offered here.

Why? Because that enabled the proponents of these treaties to pick up the two or three votes that they had to have to pass that first Neutrality Treaty. I submit that if that device had not been indulged in here, the Neutrality Treaty, last Thursday, would have been voted down. I suggested that the proponents of this treaty would not have been able to secure those two additional votes. Those two additional votes would be ours. And today, we would not be on the Senate floor because the Panama Canal treaties, and properly so, would have been voted down.

We have been asked here, in a few short weeks, to take an instrument in the form of these proposed treaties and say to ourselves, they are absolutely all right; they cover all the bases; they are perfect. There is no room whatsoever to clean them up and to protect them. That has been essentially the thrust of our discussion. Yet 14 years was spent in negotiations on the part of the executive and his people—14 years. Here we are expected, in a period of 5 or 6 short weeks, to arrive at sensible decisions without realistically being able to exercise the rights of correction by way of amendment.

I yield to the Senator from Iowa.

Mr. CLARK. I should like the Senator to yield for a question. I have heard the distinguished Senator from Nevada say, on several occasions now, that Torrijos looks over our shoulder and really has a veto on what goes in and out. I can only speak for myself, but I think I have looked at every amendment as carefully as I could, every reservation, every understanding. I voted my conscience on those. Why would the Senator feel that, somehow, I voted differently from my conscience on any given amendment simply because of the things he talks about?

Mr. LAXALT. I say to the Senator, I would not begin to suggest anything of the kind. All I can say is that I have spent 150 hours-plus on this floor. All I can say that time after time, I have been told that we cannot amend lest it result in another plebiscite and that would be harmful to General Torrijos.

All I can say is that the political stance, at least here, has been, except aside from conscience, that that should be a conclusive factor in whether or not we vote one way or another on the amendments. That is why I think the silent hand of General Torrijos hovers over this Senate Chamber. I personally do not like it a bit.

Mr. CLARK. I must say that it does not hover my head. I vote on the amendments as I see fit and the understandings and the reservations. I think that, to say that someone voted a particular way because of this or that, one would have to look into the conscience and intentions of an individual Member. I do not think that is possible.

I voted, finally, against even the socalled DeConcini reservation because I felt that way, not because it might somehow cause us to have another plebiscite. It may well be that one could argue that if there were a good amendment which was a very insignificant one and that would cause all kinds of problems to do that, there may be Members who would argue that it was not worth the effort. But I must say, I have not seen any of those amendments yet.

It seems to me that each of us here has the responsibility to vote on each amendment based on the merits of that amendment. I do not know; the Senator may have individual cases or groups of Members who voted other than their consciences on these amendments or reservations, but I, for one, certainly am not prepared to say that I did that because of Torrijos' hand hovering over me or for any other reason.

There is nothing perfect about this negotiated treaty. There is never going to be anything perfect about any other negotiated treaty. But the terms of the amendments that have been offered so far, including the one that Senator Dole has withdrawn and I think is about to reoffer, are not right on the merits as far as I am concerned. That is what I am going to vote on.

Mr. LAXALT. May I make an observation to the Senator from Idaho?

Mr. CLARK. It seems to me that the implication that some of us are going to do otherwise is at least questionable.

I do yield.

Mr. LAXALT. All I can say to the good Senator from Iowa is this: We have presented amendment after amendment, and a majority of the Senators in this Chamber have voted against all of them. That, to me, is not circumstance. That indicates to me that there has been a consensus developed by the proponents that no treaty amendment is going to be acceptable. That is more than mere coincidence.

I do not question the good faith of the Senator from Iowa: far from it. I have worked with him and I know that he votes these particular amendments as a matter of conviction and perhaps even as a matter of conscience. All I can say is that it has been quite a coincidence to be on this floor and see meritorious amendment after meritorious amendment voted down. I could say that there are over 50 Senators in this Chamber who voted against every one of the amendments. Yet the essence of some of those amendments finally was adopted by way of reservations and understandings.

Mr. CLARK. Which amendments and reservations were adopted? I would not say the DeConcini reservation is identical, but what other reservations?

Mr. LAXALT. I think the DeConcini reservation is a clear example of what I am taking about. We talked in this Chamber to guarantee the rights of military bases, talked at length for hours here. We were told this was an unacceptable amendment. We were told this was an affront to Panamanian dignity, that we could not guarantee this kind of provision within the terms of the treaty because the Panamanians would resent it, and secondly, that it was unnecessary.

Mr. CLARK. If I understood his language, and I think did, the Senator said there were several. I voted against the DeConcini reservation, I might say. But what are the other amendments that are identical or, in essence, the same?

Mr. LAXALT. The Nunn reservation was basically same as the amendment. The DeConcini is the cleanest and clearest one of all.

All we were attempting to do by way of the device of amendments was to secure our situation militarily. The Nunn reservation

was essentially in the form of an amendment. The DeConcini clearly was.

As I say, we were told that we could not do this; it was unnecessary. Yet, when the DeConcini vote was needed, suddenly, that same wording to the same general effect was adopted by way of reservation.

I know the Senator from Iowa voted against it. But the fact is that same reservation was voted in as a reservation, but not as an amendment. That meant to me that there were two ways of going here and the proponents had the best of both worlds. They have it both ways. They can stonewall us on amendments, as they effectively did, but all they have to do is offer it as a reservation or understanding and suddenly it becomes blessed and pure and perfect and we take it. That is what happened both with the Nunn and DeConcini matters.

I think that this is a sad state of events and I reaffirm that the silent hand of General Torrijos hovers over this Chamber. I, for one, resent it.

Let me refer, if I may, to another matter.

This relates to the canal treaty. This relates to our military situation between now and 2000 when the other treaty takes over. This relates to our having a positive assurance that no other country, other than Panama and the United States, will be permitted to have any military presence within Panama during that period of time.

Now, how in the world could there possibly be an objection to that? How could there be when we have written into the DeConcini amendment that we unilaterally can interfere with the affairs of Panama even if they do not operate the canal effectively?

What kind of sense does that make?

I think this is going to be a litmus test, frankly, as to whether General Torrijos' hand still hovers over this Chamber, because if this is voted down it will be, pure and simply, because of that consideration.

We have an additional fact which we have to take into consideration here, that General Torrijos is admittedly a friend and confidant of Fidel Castro.

The friendly association, by itself, does not mean much. But the fact is that they have worked together closely in matters political, they have worked together in other matters. The fact is that Cuba, as the behest of the Soviet, saw fit to send thousands of troops, over the bitter objection of America at the time the Senator from Kansas—I remember sitting on this floor—said that unless we take a firm position against Cuba, they will be sending troops to Africa.

We did not take that position, they went to Africa, not only into Angola, but now involved in the Ethiopian dispute.

So are we not naive in thinking the Cubans are friends of ours, or not doing the handiwork of the Soviet?

I am not so naive. I do not think people are so naive.

All we want to make sure through the Dole amendment is the fact that if these treaties do pass, we have absolutely guaranteed that there be no Cuban or Soviet presence within Panama.

That, to me, accomplishes several things. First of all, it assures us that we are going to have a military presence and control over

the security of that canal, No. 1. It should reassure the Panamanian people. It is to their best interests we not have a confrontation.

Where are we going to be in the next 22 years if General Torrijos, as he is now permitted to do, decides he is going to permit the Cubans to come in? Are we as Americans going to tolerate that? No way.

Then we are left with the prospect of a confrontation, an unpleasant confrontation. This obviates that. So, it seems to me that it serves the best interests of the Panamanian people, certainly the best interests of the United States, that we build into this treaty by this amendment an absolute guarantee that we do not have that kind of problem.

The Cubans have no business in Panama with a military presence. Absolutely none, because if they are there, they will be doing the handiwork of the Soviet.

Tom Moore, the former chairman of the Joint Chiefs of Staff, came to this Congress and said, "Listen, the action is Soviet. That canal is vital strategically to the future of this country militarily."

It involves hemispheric security, the security of this country, and the future of the young people of this country is at stake, because if we sacrifice that canal, which is a choke point, in time we will trade it off to the Soviet.

In the opinion of a lot of us, we just get rid of a middle man in Panama; or let us give it to the Soviet, it is only a matter of time before, effectively, they will control the operation and control that canal. This amendment would forestall that at least for 22 years and make clear that no one other than Panama or the United States would be permitted to have any kind of military presence.

I think it is absolutely essential that this be built in as a safeguard to these treaties.

I commend the Senator from Kansas for offering this as an amendment. He offered several other amendments which were worthwhile in the Neutrality Treaty. He met with the same success we did on the various other amendments.

It is going to be interesting to the Senator from Nevada to observe this vote because if it has been indicated that the silent hand of Torrijos does not hover over this Chamber, this amendment should be adopted. By the same token, if we continue to get 35, 36, or 37 votes here, it is going to mean that as we move to this second treaty we will have the same old ball game, stonewall after stonewall after stonewall. Then the Senator from Kansas (Mr. Dole), if some proponent does not beat him to it, can offer the same amendment by way of reservation or understanding, so that it will become all good, all perfect, and it will pass.

Mr. DOLE. Will the Senator yield?

Mr. LAXALT. Certainly.

Mr. DOLE. As the Senator knows, we went through that exercise a few times last week in an effort to secure enough votes for passage of the Neutrality Treaty. I would guess we will have the same exercise, if I am any judge of what might happen around here.

But it seems to this Senator that, as I have said, and I do not want to delay the vote on the amendment which I will call up

again in a few moments, there probably are all kinds of arguments against the amendment. But the basic one is, though nobody will admit to it, we do not want to change any language at all because that might upset Mr. Torrijos. That is what it is. That is the strategy on the protreaty forces. That is their strategy and they have to live with it. It is what they have told us in no uncertain terms. We cannot add one word to these treaties because it might mean another plebiscite.

I have not checked the voting record of the Senator from Iowa or anyone else, but I doubt he supported any amendments. Apparently, he is of the view we do not need to change the treaties, that they are perfect in their present form.

I suggest that perhaps if some Senator should stand up and offer the word "America" in the treaty, it would be turned down by the protreaty forces. I doubt we could add the word "America" to these treaties successfully because that might change the text of the treaty and that might mean another plebiscite.

Somehow, we are told that would be an affront to General Torrijos. Well, I am not certain what may be the final outcome, but it seems to me we are back about where we started.

I cannot really believe the Panamanian people will be so upset about that amendment. After all, it is offered for their protection as well as ours.

I have tried to point out on the map that foreign troops could be invited to the water's edge, and I stopped to think about the role the Cubans played in Angola, the role they are playing in Ethiopia. It seems to me Panama is a very attractive target for the Cubans and the Soviets in their efforts to expand communism.

Again, it is not enough to stand up as a protreaty Senator and say, "Well, those of you who are for these amendments are somehow always scrounging up these awful amendments, always looking on the dark side, always looking under a rock," because it has not been a year, not even a year has passed since this body watered down an amendment I offered to an appropriations bill to sort of slow down our normalization with Cuba. Since that time, the number of Cuban troops in Africa has gone up from 5,000 to about 20,000.

I do not know whether the Senator from Nevada or the Senator from Kansas have the answers, but I am not so certain any other Senators have the answers, either.

Why is it we always must accept their view? Does the presence on the Foreign Relations Committee give some view that the rest of us are unable to comprehend or understand?

I do not know how many Americans really know what the Foreign Relations Committee is, or how many members are on it, or who the members are. I am not certain how many Americans know how many Senators there are, or who the Senators are. But I know most Americans know about the Panama Canal and they are not so enamored about some of the arguments made in this about what might be, we have to get along with everybody, including Cuba.

It just seems to me that probably we will lose, as we have in the past. The automatic votes will come from the protreaty forces, rejecting every argument, rejecting every amendment, and only when it is necessary to secure enough votes for passage will the

other side respond at all, I guess that is the way legislation works, not just in this case but in many other cases. That gives some Members some leverage.

I would guess the reservations, though not particularly meaningful, may help the treaties in some respects, so maybe we should be thankful for that.

But if we were told at the outset that we could not offer any amendment, that we should not expect any amendment to be adopted, then perhaps we have wasted a lot of time, 4 or 5 weeks, unless we have exposed the workings of the Senate to the American people. Perhaps they understand what some of us are up against in this body. We are up against a majority. Some of that majority has voted for some amendments and against some amendments; but consistently there have been 40 or 50 votes or 50 or 60 votes that automatically were cast to table or dispose of every amendment.

So the American people, we hope, have learned just how difficult it is, because they are asking me, "Why don't you do something? You're my Senator, Why don't you do something? Why don't you stop the giveaway of the Panama Canal?"

If they are listening, they know that we do not have the votes. We may have the arguments on our side, we may have the merit on our side, but we do not have the votes. That is why we cannot do anything, I say to the American people who may be listening. Do not focus the blame on the 32 of us who have tried.

Mr. CURTIS. Mr. President, will the distinguished Senator from Kansas yield?

Mr. DOLE. I yield to the Senator from Nebraska.

Mr. CURTIS. Mr. President, I call the attention of the distinguished Senator from Kansas to a very peculiar situation we had in reference to the ratification of the first treaty.

The distinguished Senator from Michigan, in a very scholarly presentation, pointed out that a long list of authorities agree that if we amend the treaty, it is, in effect, a new treaty and would have to be accepted by the other country; and in this case, the Constitution of Panama calls for a plebiscite.

The Secretary of State, Mr. Vance, concurred with those authorities, that that was the case, that if the treaty were amended, it would have to go back for a new plebiscite. Then, at a later time, he said, "Yes, while that is true, it is not true if the leadership offers an amendment."

Is there any justification for that? If an amendment changes a treaty so that the other country is entitled to take a look at it and go through their processes, how does the situation change on the basis of who offers the amendment? What principle in international law says that an amendment offered by the distinguished Senator from Kansas changes a treaty but if it is offered by the Senator from West Virginia, it does not? Can the Senator from Kansas explain that?

Mr. DOLE. I would like to explain it to the Senator from Nebraska, but I never have really understood it myself.

Mr. CURTIS. We have gone a long way when we reach the point where a correct interpretation of a law is based upon who introduced it. Is that not right?

Mr. DOLE. That seems to be what is happening—and on whose vote may be needed and whose vote may be possible.

Perhaps in the 4 or 5 weeks we have remaining, we will have an opportunity to inform the American people who may be listening—not just in the Chamber, but listening to their radios—that this is how it really is.

Mr. CURTIS. In the light of the differences in translation of the two languages and in the light of some of the vagueness that had been pointed out on the Senate floor and in light of the apparent desire of a substantial number of Senators for amendments, does the Senator think it would be an affront to the Republic of Panama to suggest, "Let's go back and sit down and try it over again"? Would that be an affront to any country?

Mr. DOLE. The Senator from Kansas does not believe it would be; but we are told that repeatedly, that that, somehow, would be a big deterioration in our relationship with the Panamanian people.

Mr. CURTIS. A treaty is a contract. Does not clarity and exactness help both sides to a contract, if they know what it is?

Mr. DOLE. That is the normal understanding the Senator from Kansas has. That is why you negotiate.

I do not quarrel with out negotiators, but apparently the Senate does not have any role to play in this particular treaty. We can either take it or not take it.

Mr. CURTIS. Well, they have played a role, I have noticed. I am not pointing my finger at any Senator who is unable to be here to listen to the debates. There are too many committees, too many subcommittees; there is much going on. But the fact remains that the attendance at the debates of those who voted against the first treaty has been much, much higher than those who supported the treaty.

We have been faced with this: The Senator has been earnestly presenting an amendment, such as the Senator from Kansas has done; and then when the bell rings, they come in, and the amendment is voted down. There have not been many instances in which we have even had a chance to vote on the amendment on its merits, have there?

Mr. DOLE. No. In fact, except for the leadership amendments, which were cosponsored by approximately 70 Senators, I do not know of any other amendment on which we had an up or down vote. There may have been some; but certainly none of the amendments that the Senator from Kansas had were voted on as to their merits.

Mr. CURTIS. Is it not an accepted principle of parliamentary procedure that a motion to table says, in effect, "Let's not consider this at all; let's just get rid of it and not consider it at all"? Is that not correct?

Mr. DOLE. That is right.

Mr. CURTIS. Was that the way the amendments were treated in connection with the other treaty, for the greater part?

Mr. DOLE. There may be exceptions. The record would reflect that. But I do not know of any, except for the two leadership amendments, on which we had an opportunity to have a vote up or down. Every one was tabled, and the votes were automatic.

There are seven Senators on the floor now. There will be seven on the floor 2 hours from now, and seven tomorrow.

I agree with the Senator from Nebraska that many other things are happening. But I think the strategy is clear: Just to table every amendment, not upset Torrijos, not have another plebiscite, not worry about the American people. Their judgment really does not matter.

Mr. CURTIS. Does the Senator agree with me that the best legislative performance on the part of the Senate would be to consider an amendment offered in good faith, have it debated on both sides, and have the listeners to that debate decide it on its merits? Would the Senator approve of such a procedure?

Mr. DOLE. In looking around, yes, I think I would be glad to accept that. I would be 6 to 1 or 5 to 2.

Mr. CURTIS. I thank my distinguished friend for yielding.

Mr. DOLE. I thank my friend from Nebraska.

Mr. President, I indicate to the Senator from Iowa (Mr. Clark) that the Senator from Kansas will call up amendment No. 69 in just a few moments, unless others would like to be heard. I will yield the floor.

Mr. HATCH. Mr. President, will the distinguished Senator yield?

Mr. DOLE. I yield the floor.

Mr. HATCH. Mr. President, I have been intrigued by and interested in this amendment, as I have been with respect to a variety of other amendments as we have debated the Neutrality Treaty and now are in the debate on the Panama Canal Treaty.

I believe the dinstinguished Senator from Kansas has done us all a favor in pointing out that the Panama Canal Treaty is ambiguous and does not protect the United States of America as it should.

His amendment reads:

> For the duration of this Treaty and consistent with the provisions of Article IV, the Republic of Panama and the United States of America agree that, subject to the other provisions of this Treaty, only the military forces, defense sites, or military installations of the Republic of Panama or of the United States of America may be maintained in the national territory of the Republic of Panama.

I rise to speak in favor of this amendment because I think it should be acceptable to Mr. Torrijos as well as to every Senator on the floor of the Senate.

One of the developments that disturbed me about the debates on the Neutrality Treaty was the sudden rush to enact reservations and understandings toward the end of the debate on the Neutrality Treaty, as though we were really protecting the United States of America and as though these were really amendments to the treaty when they were not. They were amendments to the resolution of ratification which was the Neutrality Treaty which is a far cry from amending either one of these treaties, the Neutrality Treaty or, as is the case today, the Panama Canal Treaty.

I do not think many people realize the relationship between international law and Panamanian domestic law.

Under Panama's old constitution, title I, article 4, it is stated:

> The Republic of Panama respects the rules of international law.

Under the new constitution of Panama, title I, article 4, it says:

The Republic of Panama respects the universally recognized rules of international law, . . .

And then adds:

. . . which are not prejudicial to the national interests.

Which is an extremely convenient qualification to allow the dictatorship of Panama to do just about anything it wants to do with regard to these treaties.

The 1946 constitution, as amended in 1956, specifically provided that Panama would recognize the principles of international law. The Torrijos constitution of 1972, provides that Panama would respect the rules of international law only insofar as those rules "are not prejudicial to the Panamanian national interest."

That is a marked departure from the old constitution and a marked departure from an international rule of law or constitution which may be beneficial and reliable to others who are dealing with the Panamanian Government, such as we are here. It is interesting to note that Torrijos chose not to use the narrow words "inconsistent with Panamanian domestic law," but used the broad terms "prejudicial to the national interest."

This constitutional change vitiates the State Department's claim that Panama, as a matter of international law, bound by reservations, understandings, and declarations exchanged with the instruments of ratification. In other words, it is really a charade, which allows Torrijos to disregard valid, reasonable, and decent protective changes or clarifications for the benefit of the United States of America. And when we talk about the resolution of ratification, in connection with declarations, understandings, and reservations, we see they really do not mean very much under Panamanian domestic law and can be ignored at will by Mr. Torrijos and anyone else for that matter. In other words, the way to have the treaties become binding on Panama and upon the United States is, of course, through the amendment process. If we do not like something, if the treaties are amendable because they are ambiguous or they do not state clearly that which they should state clearly, then the way to do it is to amend the body of the treaty and not wait until we get the resolution of ratification and amend that with reservations, understandings, or declarations which probably are not worth the paper they are written on. In other words, we are not protecting this country if we do not amend out the ambiguities.

In the exercise we went through on the Neutrality Treaty with some amendments of great import which would have protected the United States of America, many of which could hardly be said to be offensive to Panama, the only amendments which were acceptable were the two supposed leadership amendments which were supported by three-quarters of the Senate leadership.

Although Panama would under international law be bound by those documents, if as a matter of domestic law Panama refuses to recognize the U.S. claim under international law because it was "prejudicial to the national interest" the U.S. claim as a practical matter would be rendered academic unless we do it in the form of amendments which would then require a plebiscite in Panama or at least under international law would be binding if the dictator said they did not need a plebiscite.

This would also seem to apply to the leadership amendments that were passed in the last treaty. In that case Panama would have to go a step further and declare its authority to "blue pencil" part of the treaty text because the leadership amendments were part of the treaty text. The only way they could do that is to come right up front and say that they did not accept that.

Let us look at a couple other changes of the Panamanian Constitution; changes which are important here. Consider, for instance, Torrijos' ability to pack the Supreme Court of Panama. Under the old constitution, article 165:

> The Supreme Court of Justices shall consist of nine magistrates.

That is what it says.

Under the new constitution, article 185 of the Torrijos constitution, it says:

> The Supreme Court of Justices shall be composed of the number of magistrates determined by law.

This constitutional change potentially allows Torrijos to pack the supreme court. If Torrijos as a matter of political convenience wanted any reservations, understandings, or declarations not submitted to a plebiscite declared unconstitutional and if the sitting court refused to strike those documents, Torrijos could pack the court and assure that they would be declared unconstitutional.

This theory could also apply to the leadership amendments as well in the prior treaty to which a resolution of ratification has been voted. In that case the Supreme Court would also have to declare its right to "blue pencil" part of the treaty text.

On another constitutional change on the national plebiscite for treaties affecting the Canal Zone, the old constitution had no comparable provision. However, the new constitution, article 274, talks about transitory provisions, and it says this:

> Treaties which may be signed by the executive organ with respect to the Panama Canal, its adjacent zone, and the protection of the said canal, and for the construction of the new canal at sea level or of a third set of locks, shall be submitted to a national plebiscite.

The term "treaty" is the operative word in determining the validity under Panamanian domestic law of reservations, understandings, declarations, and even amendments which have not been submitted to the populous for a plebiscite. There have been no treaties concerning the Canal Zone since the promulgation of the new constitution other than these. Therefore, article 274 has never been the subject of judicial interpretation of the Panamanian Supreme Court which could be packed at any time if Torrijos dislikes a particular decision.

If the court were to define the term "treaty" as including all of the operative associated documents exchanged at the time of ratification, then it could strike any attached documents not submitted to the plebiscite or it could also strike the entire treaty if part of it were constitutionally defective under Panamanian law. In the case of Filos against Republic of Panama the Supreme Court struck an entire treaty because the procedures used in ratification were defective under Panamanian law as defined by the Panamanian Supreme Court. Panamanian law is so vague in this area that Torrijos, as a practical matter, can do whatever he wants to.

In order to make its views known or to qualify its consent to ratification of a treaty, the Senate has basically four options.

No. 1, the Senate may advise and consent to ratification but makes its views known in the committee reports. This has no legal effect and is not binding on the parties other than to serve as legislative history.

No. 2, the Senate may include in its resolution language expressing its understanding or interpretation.

Now, let me repeat that.

The Senate may include in its resolution language expressing its understanding or interpretation. The purpose of an "understanding" is to achieve clarification or even modification of the treaty provision without entering a reservation. Under existing practice the President would communicate such understandings to the other parties. The legal effect of such understandings is not always certain. If, for example, the language does not substantively affect the terms of international obligations of the treaty, such language would have no legal effect.

Whether the understanding does or does not substantively affect the terms of the treaty is a matter that is ultimately resolved by the parties. Moreover, if the understanding is communicated to the other party and accepted, the treaty need not be reopened. The inherent danger of understandings is that they are not always certain or should I say, it is not always certain whether the parties, because of the failure of communication, had a meeting of the minds. For this reason, an understanding may engender doubt or controversy as to whether the parties agreed to the same terms.

An understanding then may not require renegotiation, if the parties deem it insubstantial. Such understandings are always vulnerable to subsequent reinterpretation and disagreement. Thus, an understanding is not normally used where one of the parties to the treaty seeks a major clarification or modification to the material, as we are doing here, and as Senator Dole is doing here.

Further confusion can result from an understanding if one of the parties accepts the treaty without expressly consenting to the understanding or to the understandings, which I think will be the case here. Because the only way the Panamanians can accept, it seems to me, would be to have another national plebiscite with regard to the understandings, which they claim they will not have to do because understandings are just what we think about the treaties and not what they think about the treaties.

No. 3, the Senate might include in its resolution language expressing its "reservation." A reservation usually, but not always, requires renegotiation. In only one instance—a treaty with Canada to divide the waters of Niagara River—has the legal effect of the reservation been seriously debated. In consenting to ratification of the treaty, the Senate resolved that the United States reserves the right to provide for redevelopment of its share of the waters by an act of Congress, and no such redevelopment should be undertaken unless specifically authorized by an act of Congress. Both the United States and Canada treated this reservation like other reservations.

The President asked Canada to accept it and Canada—though somewhat mystified by it—did accept it. Renegotiation, therefore,

in that case, was not necessary. But the precedent shows that unless the other party does accept it and does so through the legal structure of its own constitution, then renegotiation is necessary.

Normally, reservation language involves some change in the international obligations of the treaty and may affect its terms in such a significant manner as to require the Executive to communicate the terms of reservation to other parties to the treaty, thus enabling them to take such action as they feel appropriate, including reservations of their own, renegotiation, or even refusal to proceed with the treaty.

In effect, the inclusion of the reservation tells the President that the Senate gives its consent on the condition that changes be made or certain conditions be met.

The Senate could, for example, include a reservation that required the passage of implementing legislation by both Houses before the President had authority to ratify. The Senate may even, as was the case in the Versailles Treaty, reserve special powers to interpret or terminate the treaty as a condition for ratification by the President.

The fourth point. Finally, the Senate may amend the terms of the treaty itself. In this instance, there will be no question but that the treaty would need to be renegotiated. A distinction should be made between a "reservation" and an "amendment." A reservation limits only the obligation of the United States under the treaty—although a reservation may, in fact, be of such significance as to lead other parties to file similar reservations or refuse to proceed with ratification.

An amendment, on the other hand, changes the obligations for all the parties of the agreement. It is therefore the only certain guarantee that the Senate has if it wishes to bind all the parties to a certain obligation. Certainly, reservations, understandings, and declarations do not give this country a guarantee that the Senate's wishes will be undertaken by, in this case, the country of Panama. It should also be noted that the Senate has not used the amendment process in the post-World War II years.

So, in summary, as a practical matter, if the Senate uses language of understanding, the implication is that the contractual relationship between the parties is merely being clarified. If the Senate attaches a reservation to its resolution of advice and consent, the inference is that the contractual relationship is being changed so far as the international obligations of the United States are concerned. But if the Senate adds an amendment, it is clear that the Senate requires a change of the contractual relationship between all the parties. In other words, it is a straight forward way of letting them know what the American people really believe and what we really feel. It is the way of saying, "Look, Mr. Torrijos; look, our Panamanian friends, these treaties need some corrections. They need some amendments and some changes. The ambiguities are intolerable to us and we improve the treaty so that you know where you stand and we know where we stand, and together maybe we could stand together forevermore."

It would be in the interest of both countries if we could bring about that wonderful state of Nirvana. Those who will not allow

any amendments seem to think it is going to occur just because we enter into these treaties with Mr. Torrijos.

If you applied these considerations to the Panama Canal treaties and in particular to the uncertainties that have arisen in connection with the rights of the United States to defend the canal and to acquire preferential treatment through the transit of warships, and, of course, with regard to the Panama Canal Treaty itself and some of the ambiguities there, the only option available to the Senate that would bind all of the parties is the amendment process and that is why the distinguished Senator from Kansas has such a desire to get these decent and worthwhile amendments, clarifying amendments into the treaty, for the benefit of both countries—I would have to say for the benefit primarily of this country. Because, after all, that is what we have been elected to do as Senators. We have been asked to, it seems to me, protect this country and certainly all of us with all sensitivity have a desire to protect it in a way that is not offensive to the Panamanians but if offensive, at least honestly, so they know where we stand.

That is why I think these amendments, many of them, have been substantively valid. In fact, I cannot think of one that has not been substantatively valid in the whole amendment process with the other treaty. This is the first one brought up on the Panama Canal Treaty, and I find it to be eminently fair and eminently worthwhile in the light of the ambiguities in the treaty.

One of the things that really bothers me is that there has been, and I do not think anyone can deny it or at least seriously deny it, a flat rejection of good amendments in the interest of making Mr. Torrijos happy and making sure that these treaties go through, good or bad. If we were not sworn to protect the interests of the United States in these matters and do our best to make sure that the interests of the United States are protected, I might not be nearly as excited as I am about the stonewalling which has taken place in this particular situation.

Let me go back to some of the Panamanian court decisions, just to show how Panamanian law operates, and maybe help all of us to realize that this treaty is in need of amendment.

The jurisdictional mandates for the Supreme Court of Panama under the 1946 constitution as amended in 1959 and the Torrijos constitution of 1972 are strikingly similar. The 1972 constitution is modeled after the 1946 constitution as amended. Torrijos expanded the jurisdiction of the Court somewhat in most areas by giving them greater jurisdiction over the subject matter of documents in controversy but denied the Court's jurisdiction to review the constitutionality of constitutional amendments. For purposes of this memorandum the Court's jurisdiction over treaties is, if changed at all, somewhat broader under the Torrijos constitution.

During the 1960's there were three court cases dealing with the Panamanian treaty ratification process. There have been no cases under the Torrijos constitution. The differences in the language of the two constitutions are so minor as to give no weight to theories that the decisions of the 1960's have been vitiated by the new constitution. There is no reason to expect that the doctrine of stare decisis would not be in operation.

The treaty cases of the 1960's affirmed the concept that the Panamanian Supreme Court has no jurisdiction over the substance of the treaties but may deal with the constitutionality of the procedures used in the Panamanian ratification process.

An example of this was the Supreme Court's decision that the "Geneva Convention of August 12, 1949" was unconstitutional because the Panamanian Government failed to use the proper procedures in ratifying the treaty. Article 133 of the 1946 national constitution required that the National Assembly approve treaties. As part of that process the entire document had to be printed in the official Gazette. In the case of the Geneva Convention in controversy the entire document was not printed properly in the Gazette. The Supreme Court described the law as "truncated and therefore incomplete". The Panamanian Supreme Court held—

> If the promulgation of the laws exists as a constitutional prerequisite so that their texts, through the publication in the official Gazette, can be accessible to those that must observe it, then it must be concluded that the observance of the acts omitted in the laws enacting them cannot be made compulsory, insofar as their text is unknown because of not having been published as part of that law. * * *

This dicta could have serious implications on the constitutionality of any reservations, understandings, declarations or even amendments not submitted to a national plebiscite.

If the Carter-Torrijos understanding was not published as part of the text of the neutrality treaty, there are serious doubts cast on its constitutionality. Dr. Quintero and Dr. Linares, professors of law in Panama, both agree that there was insufficient publication of the leadership amendments under Panamanian constitutional law. Both professors point out that there was no publication of these documents prior to the Panamanian plebiscite. Although the two treaties and various notes attached to them were published and available to the public the package of materials did not include the Carter-Torrijos understanding. The mere fact that Carter and Torrijos entered into the understanding prior to the plebiscite does not mean that the understanding was sufficiently published in Panama to meet Panamanian constitutional requirements.

Predreschi, a leading Panamanian constitutional scholar in citing examples where the Panamanian Supreme Court has jurisdiction over a treaty states:

> Consider, for example, a public treaty entered into by the President of the Republic, and a situation in which he states that the treaty is finalized and in effect only with his signature, with that of the appropriate minister being unnecessary, and, even more serious with the approval of the National Assembly being unnecessary. Could not a treaty such as the one given in this example, which can allegedly be finalized with the signature of the President of the Republic, be brought before the Court on constitutional grounds? A treaty entered into in clear violation of the Constitution can be brought before the Court on these grounds.

The Predreschi article predated the new transitory provisions of the Panamanian Constitution created by General Torrijos in 1972. Those provisions require that treaties dealing with the Canal Zone be submitted to a national plebiscite and it is only logical to conclude that Carlos Bolivar Predreschi would have included the national plebiscite within the framework of his article had it existed at the time of publication.

There are no precedents to indicate whether the Panamanian Supreme Court could strike understandings, reservations, declara-

tions, or amendments including the leadership amendment leaving the balance of the text in force. Since there appears to be no restrictions in this regard and the Panamanian Supreme Court has broad discretion in their decisionmaking, there would seem to be nothing to prohibit them from rendering such a decision. This analysis, incidentally, is concurred in by Eduardo Abbot, a Chilean lawyer, working as a Hispanic law expert for the Library of Congress.

I bring these considerations up again because I think our assignment, for the people is to provide good amendments to the treaties if they do not do for the United States that which should be done.

Not too long ago I brought out some of the problems with these treaties which I think ought to be reconsidered at this time, the amendment of the Senator from Kansas (Mr. Dole) does seem to alleviate one of the problems, and I wish to commend him in that regard.

Consider, if you will, that there may be a potential ambiguity under articles XX and XXII of the revised charter of the Organization of American States, which is binding on the United States in connection with the U.S. defense rights under these treaties.

Article XX provides that:

> The territory of a state is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another state, directly or indirectly, on any grounds whatever.

Article XXII then goes on to provide that:

> Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of this principle.

Again, that is why the amendment of the distinguished Senator from Kansas is very appropriate here. I might add that the defense rights of the United States are presently exercisable under the 1903 treaty, an "existing treaty" under article XXII. Do these defense rights continue under article XXII, in light of the fact that these treaties terminate the "existing treaty" of 1903? That is a real question, and it is something we have to consider.

Former Secretary of Defense William P. Clements has recently revealed that the former administration had obtained consent for a security clause that clearly protected American defense rights in the Canal Zone.

The clause, which was approved by the National Security Council, the Department of State, the Pentagon, and General Torrijos, and not in the resolution of ratification of the Neutrality Treaty, unambiguously gave the United States the unilateral authority to defend the canal, even without the approval of Panama. Why was this clause, which had been approved, replaced by the ambiguous terminology of the Neutrality Treaty and agreement? One has to ask why.

I see in the Dole amendment here an attempt at least to clarify and straighten out some of the ambiguities from which we have been suffering.

The treaties, both of these treaties, purport to extend many guarantees to the United States. It is questionable whether such guarantees are meaningful, however, if they are simply paper guarantees. In other words, all sail and no anchor.

The prior treaty provides, for example, that American warships shall enjoy expeditious transit, and the joint statement indicates that they shall even go to the head of the line. But how does the United States enforce this guarantee if the Panamanians control all of the facilities of the canal and its ports, if Panamanians are in charge and refuse or fail to cooperate? How can the United States be assured of expeditious transit if the United States does not own or even operate the canal? Likewise, the treaty provides that only the Republic of Panama may maintain military forces in Panama after the year 2000. But how does the United States exercise its right to defend the canal and its ability to maintain the regime of neutrality if all of the military installations are owned and occupied by Panama?

What would be the cost in terms of manpower, material, and money? Would U.S. troops occupy Panamanian soil to keep the canal operational? Would they have the ability to operate the canal, or would the United States be required to keep a permanent corps of canal pilots and other trained specialists who could be sent to Panama to keep the canal operating in times of emergency?

Except for the Joint Chiefs of Staff, who are politically answerable to the administration, most American military leaders warn that loss of the canal would jeopardize our national security.

Exhaustive analysis by the Congressional Research Service of the Library of Congress concerning the importance of the canal in terms of our strategic mobility and logistic support indicates that the canal will be even more vital to our defense needs in the year 2000 than it is right now.

In examining the role of the canal in facilitating the shipment of munitions to an Asian military operation the study shows, for example, that we have only one munitions port on the west coast, and that this port is capable of loading only 4,000 tons per day. Since, based on past experience, the requirement could easily be 10,000 tons daily, at least 6,000 tons would have to come from the east coast, where most munitions are manufactured and from which most transit the canal.

Adm. James Holloway, Chief of Naval Operations, and Adm. Thomas Moorer, former, Chief of the Joint Chiefs of Staff from 1970 to 1974, have pointed out that the present Canal Zone serves as a base of naval and air operations 3,000 miles south of the United States.

Moreover, the Canal Zone is the only refueling center south of California in the Pacific. When the United States no longer has use of the bases and ports and facilities of the Canal Zone after the year 2000, will not the loss of these strategic sources adversely affect our ability to control and defend the vast area of land and sea?

I could go on and on because there are many, many aspects of these treaties which really disregard American interests.

I might mention that recently General Sumner, representing the Inter-American Defense Board, an independent international organization established by the Rio Treaty, testified before the Armed Services Committee that there was a widespread anxiety in Latin America about the economic consequences of these treaties. General Sumner based this observation on his personal discussions with

heads of state and high-level defense officers in 17 Latin American countries.

What I am saying is that I think if we really have the interests of the United States at heart and the interests of Panama, we ought to amend these treaties to get the ambiguities out, to resolve the problems now, even if it does mean another plebiscite, so that both countries can go into an era of friendship and unity.

I commend the distinguished Senator from Kansas for his effort to bring forth substantive and decent amendments for the protection of this country, and I think indirectly for the protection of Panama, because I think he is doing our country and Panama both a great service. It will not do either county any good because we fail to do our job as Senators now in the interest of pleasing Mr. Torrijos if we ultimately wind up having to go into Panama to reinforce our rights in the interests of the United States.

So is it not better for us, if we can, to clarify and to make these treaties the very best we possibly can on the assumption that 67 Senators will vote for them, even though that is an assumption which should not be made lightly at this time?

In closing, I extend my congratulations to the distinguished Senator from Kansas (Mr. Dole) and wish to indicate that I certainly intend to vote for his amendment. I hope all other Senators will vote for it also.

Mr. DOLE. Will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. DOLE. I thank my colleague from Utah for his remarks. It is probable that anything we do here will be rejected. There is great precedent for that in the first Neutrality Treaty debate.

Mr. HATCH. That would include many amendments that the Senator from Kansas proposed.

Mr. DOLE. That is correct. They never had the chance to see the light of day.

I am certainly not going to change any minds. Maybe this treaty will be adopted by the same vote, by the same Senators. But I think we do have an obligation to try to explain the process to those who may have an interest, who may be listening via radio. It seemed to me in this past weekend the American people just cannot understand why amendments which have merit are offered and rejected summarily, or tabled, whatever. Therefore, as the distinguished Senator from Utah indicated, we can predict what will happen, but I am not certain we can predict what the reaction might be outside this Chamber. It seems to me there is a lot of frustration with the American people. As I have said, they have asked me, "Why do you not do something?" Maybe they will find out, if they listen carefully, why we cannot accomplish what we would like to accomplish.

I appreciate the Senator's assistance. I believe the amendment does have merit and I would hope that we might have an up-or-down vote in the next few moments.

Mr. HATCH. Will the Senator yield?

Mr. DOLE. I yield.

Mr. HATCH. I feel we ought to have up-or-down votes. I personally feel that these moves to table are not as understood by the people as they might be. Basically, if there is a motion to table and

an amendment is tabled, that is the end of it. There is no vote up or down. The American people should know that the vote would basically have been the same, up or down, so why not have a vote up or down?

Mr. DOLE. I think we might be able to agree on a vote very soon, if we could have an up-or-down vote.

Mr. HATCH. That is correct. I think it would be a more straightforward procedure. It would let the people in this country know a lot more about how the Senate operates if we vote up or down, and they would know exactly what we are voting on in each case. I do not think it would encroach upon any Senator's rights.

[Mr. Riegle assumed the chair.]

Mr. HATCH. But let us at least vote on them, up or down, so the American people will have less difficulty understanding them. I think the motion to table is strictly another way of obfuscating what is really going on here and not letting the American people know that, in essence, the treaty proponents are stonewalling every possible improvement to these treaties, rather than biting the bullet and facing those problems squarely.

I might just mention in that regard, under article IV of the agreement in implementation of article IV of the Panama Canal Treaty, the United States agrees to "emplace no type of nuclear armament on Panamanian territory."

We agree to bind ourselves in that regard, because Panama is a signatory to the Latin American Denuclearization Treaty. Such an important restriction serves no purpose other than to weaken our southern defense and improve the nuclear strategy of our enemies.

On the other hand, why did our negotiators not retain language which keeps powers unfriendly to the United States out of Panama, which includes powers with nuclear weapons? That is essentially what the Senator from Kansas is trying to do. I think that is one of the great defects in these treaties, which we could clear up with some very simple language so that both sides, once and for all, know exactly what is going on here, and above all, so the American people and the Panamanian people know what is going on in clear, unmistakable language.

That is what is wrong with these treaties. They are not in clear, unmistakable language. The Panamanians interpret these treaties to mean something that we do not agree with and we have interpreted them to mean something they do not agreee with. The time to resolve those difficulties, so we do not have these internal difficulties for the rest of our countries existences, is now, right here, with amendments like that the distinguished Senator from Kansas is undertaking to make. I think it is only fair and honest to do so.

I compliment him again. I have agreed with every amendment he has brought forward. Personally, I think there has been a great deal of time and effort regarding the amendments that he has brought forth. not the least of which is this amendment here today.

Mr. DOLE. I thank the Senator.

Mr. THURMOND. Mr. President, I rise in support of the Dole amendment. Under the treaty of 1903, we have the Canal Zone, including the canal, and we have it in perpetuity. Now, if we are going to turn back that Canal Zone to Panama, cannot we, at least, have an agreement—and that is all this amendment does—that

military forces, defense sites, or military installations will not be placed in the Republic of Panama except by Panama and the United States during the 22 years of the Panama Canal Treaty? Is that not reasonable? Why would anybody object to that?

Mr. President, as we all know, the danger in the world today is from the Soviet Union. There is no use beating around the bush. We might as well face it. The Soviet Union has as its goal to spread communism throughout the world. The Soviet Union is now spreading communism throughout the world. They are in Africa, they are in Europe, and they are down in the Caribbean now, in Cuba. Knowing that, and knowing that they are a threat to the freedom of the people of the world, including the United States, why can we not put something in this treaty that will say to Mr. Torrijos, "There will no be any military installations, there will not be any defense forces, there will not be any military sites there except of your country or ours?"

How can anybody object to that, Mr. President? I cannot imagine any Senator in this body opposing such an amendment. If we wish to retain our freedom, we have to stand up against these expansionistic powers such as the Soviets. We have to be prepared. To be prepared, we have to help keep out the enemy from places like Panama, which are so vital to the economic and the military well-being of the world.

There is no question about the importance of this canal. It is one of the vital waterways in the world. It is extremely important, not only from an economic standpoint, but from a military standpoint.

Mr. President, if ships have to go around the Horn, for instance, it takes 3 or 4 weeks longer; they have to travel thousands of miles farther. That can be the difference between victory and defeat if we have a war.

I just cannot see any value to the argument that the Dole amendment should be defeated.

Mr. President, presently, we can keep foreign troops away from the canal because the zone is under U.S. control. Now, if a dispute arises, Panama can invite in Soviet Union or Cuban advisers and they could accelerate military training or activity as a leverage on the United States.

If foreign troops are not allowed after 2000, why not before 2000? That is 22 years off. In 22 years, a lot can happen. Look at the progress the Soviet Union has made in the past 22 years. I say it just does not make sense to me to leave this matter to the chance. The joint operation of the canal would be smoother and safer if foreign troops are prohibited before the year 2000 and that is what the Dole amendment does.

Mr. President, again I say, if anybody wants to be sure that there will not be foreign troops there then let us pass the Dole amendment. Then, insofar as Panama and the United States are concerned, there will not be foreign troops there and this reduces the threat of a confrontation.

We know that the treaty does not prohibit foreign troops between the time of ratification and the year 2000. We can change that by adopting the Dole amendment. I hope the Dole amendment will be passed.

Senator ALLEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama (Mr. Allen).

Mr. ALLEN. Mr. President, the Dole amendment is a good amendment, a strengthening amendment, to the treaty. It should be approved by the Senate. That does not mean, of course, that the amendment will be approved. If the record of the treaty proponents on the consideration of the neutrality treaty is any criterion for the policy of the record that they will amass on this treaty, no amendments will be agreed to.

I want to express my appreciation, though, to the distinguished Senator from Idaho (Mr. Church), who, in all candor, said, with respect to the Neutrality Treaty, that if we amended the treaty in any particular, it would defeat the treaty. While I do not agree with the distinguished Senator from Idaho that that is correct, I do appreciate his frankness and his candor in opposing all amendments on his theory that such amendments, no matter how small they might be—just a change of a few words—would defeat the treaty.

On the other hand, I have argued that no matter how many times we amended one of these treaties, the treaty would be accepted by the Panamanians, because Torrijos is a one-man government in Panama and all he would have to do would be to approve the treaty, exchange notes of ratification with the President, and who would there be to say that he had not properly or that the Government of Panama had not properly approved the treaty?

Some have said—as a matter of fact, I heard the distinguished majority leader on one of the television programs, just yesterday, say that he had kept an open mind and that he was going to keep an open mind with respect to amendments presented to the treaties.

Well, his open mind with respect to the Neutrality Treaty did not admit of support by him or acceptance by the proponents of the treaties of any amendment other than the leadership amendment, or amendments, if we group the two separate amendments in the form in which they were offered.

So keeping an open mind does not necessarily mean that approval is going to be given to a good amendment because, if the past record is any indication of what the record is going to be with respect to these amendments, the proponents of the treaties will, with their monolithic large majority here in the Senate, order the defeat of all the amendments.

Just what does the Dole amendment do? It supplies a missing provision, a provision that is missing from the Panama Canal Treaty which we now have under consideration, because the Neutrality Treaty, which we approved last Thursday, was a very close vote. It was close even though the vote was 68 to 32 because two more votes in opposition would have defeated the treaty.

But that treaty makes this provision:

> After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory.

In other words, after the United States is required under the Panama Canal Treaty to withdraw all of its troops from the Panama Canal Zone by the year 2000, Panama pledges to go it alone with respect to the defense of the canal. They pledge in the

Neutrality Treaty which has been approved that they will not call in the forces of any other nation into Panama, even though the support forces of the United States have been withdrawn. They pledge to go it alone.

Now, we sought amendments which would have permitted a military presence in the Panama Canal Zone after the year 2000 if the President thought it was necessary for the defense of the canal and if we were in a state of war. A number of other provisions that we sought were turned down. But no such provision is made in the treaty we now have before us, that Panama cannot call in troops from another nation into Panama.

So we see the anomalous situation that where the United States and Panama until the year 2000 have the joint defense of the canal, there is no necessity whatsoever for bringing in foreign troops because one would certainly think that the United States and Panama could defend the canal, we find the anomalous situation that Panama is not prohibited from inviting in foreign troops during this 22-year period.

Now, we do not want a confrontation by our troops with the troops of any other nation that Panama might decide to call into Panama.

Under the present conditions, it was argued here on the floor, some sort of concession, that Panama in the neutrality treaty was agreeing not to bring in outside troops, whereas now they can bring them up, as was stated, up to the Panama Canal Zone fence; we find that under the Panama Canal Treaty they can bring in foreign troops not up to the fence, 5 miles from the canal, they can bring them in right up to the canal itself under the provisions of the Panama Canal Treaty. No prohibition against it whatsoever.

The Dole amendment would supply this missing provision and, in effect, make the same provision that applies from the year 2000 on, that Panama cannot bring in any other troops, though under the reservation they are permitted to negotiate with the United States for retention of our troops there. Of course, they could have done that without reservation, for that matter. But under the neutrality treaty they cannot bring any foreign troops into Panama, whereas under the Panama Canal Treaty they can, even though the United States is charged with the primary responsibility, along with Panama, of course, of defending the canal up to the year 2000.

If we have some, I believe, 9,000 troops there in the Canal Zone at this time, it does not seem to be very difficult for Castro to raise an army of 15,000 to go to Africa, I assume he could raise a much larger army just to cross the Caribbean and go into Panama, and this provision of the Panama Canal Treaty that does not forbid Panama to bring in outside troops should be done away with. The Dole amendment would supply that necessary prohibition.

So there is no need, if we are interested in defending the canal with the American presence there to the year 2000, the Panamanian presence there up to the year 2000, there is no reason to believe that the two nations could not together defend the canal, especially when Panama says they can go it alone without the United States starting in the year 2000.

Mr. President, I believe the distinguished Senator from Kansas has started out with, certainly, one of the most meritorious amend-

ments that will be offered. The others, of course, have to do with the prohibition on the United States for negotiating with another nation for another canal. That certainly ought to be eliminated because of the danger, and the certainty, for that matter, that the American taxpayer is going to have to not only give the canal to Panama, but is going to have to pay hundreds of millions of dollars to get him to take it. That needs to be straightened out.

But certainly, the omission from the Panama Canal Treaty of the provision that is in the Neutrality Treaty, this same provision that Mr. Dole seeks to put into the Panama Canal Treaty, is already in the Neutrality Treaty. So if it is in one, why should it not be in both?

The only difference being that before the year 2000 American troops are there, along with Panamanians, whereas after 2000 it would just be the Panamanians alone, but they are not authorized under the Neutrality Treaty to bring in foreign troops after 2000.

Mr. Dole says the same provision should apply as soon as this treaty goes into effect. Who can argue with the logic of that contention?

Mr. President, it is duty and responsibility—yes, it is the constitutional duty and responsibility—of the U.S. Senate to shape this treaty before we advise the President to ratify the treaty in the Senate. That term is loosely used. We do not ratify it. We give our advice and consent or our advice and nonassent to the President in order to enable him to proceed with the ratification process.

The PRESIDING OFFICER. Will the Senator suspend?

The Senate is not in order. The Chair asks that the Senate be in order, so that the Senate can be heard.

Mr. ALLEN. I thank the Chair.

We have the duty in the Senate—it is our constitutional duty—to shape this treaty in such a way that we can conscientiously recommend—that is, give our advice—to the President that he proceed with the ratification process. So we do him no service, we do our country no service, and we do the Senate no service if we say that the Senate should not and must not amend these treaties, no matter how good the amendments are.

We read a lot in the press about Mr. Torrijos being dissatisfied with the reservation that was put on in the Senate. Well, let us not be fooled by Mr. Torrijos. He is laughing up his sleeve at us in the Senate right now.

I understand that this proceeding in the Senate is being translated into Spanish, for rebroadcast in Panama. I do not know whether in Spanish they have an expression that means the same as "laughing up his sleeve." I believe that is what Mr. Torrijos is doing, by making believe this reservation is such a heavy burden on them and he does not know whether to accept it or not. Wait until the U.S. Senate gives its approval to this treaty, and you will really hear a tremendous guffaw from Panama. It will be so loud that it will be heard in the Senate Chamber.

This is typical of his attitude: After the President and the dictator agreed to a so-called memorandum explaining what they are supposed to have understood the original Neutrality Treaty to mean with respect to unilateral intervention by the United States, and they were supposed to have had a meeting of the minds on it—

the President and Torrijos—as soon as Torrijos got back to Panama, he laughed and said that he had not signed anything up here in Washington, that he had not even signed an autograph. He gave his interpretation of what the memorandum meant, and it was that we did not have the unilaterial right to intervene in Panama for the defense of the canal. We had the duty to intervene when he called on us, when he pressed the button. He has not recanted on that until this good day.

Of course, we know that the memorandum, word for word, became the leadership amendments. That different construction that Dictator Torrijos had as to the amendment, of necessity, would transfer over to being a different construction from what we have, with respect to our right to intervene.

They will want to get the best of the gringos. I note that one of the ministers there talked about our right to go to the head of the line. He said that, under the treaty, the gringos had to wait our turn. That is the expression they use in talking to us.

So if Mr. Torrijos, by expressing displeasure and reservations, which he does not have to submit to the people, can so upset the Members of the Senate into refusing to agree to any amendments, no matter how good, you can rest assured that he is going to have the last laugh on the United States.

It certainly seems a fair statement to say that Mr. Torrijos has had as much influence or more in shaping these treaties than has any Member of the U.S. Senate. He showed his power when the Foreign Relations Committee added the leadership amendment as a separate article or articles. The State Department expressed the view to the committee that that would not be pleasing to the Panamanians, and the committee backed up and reconsidered what they had done and put in the form of the leadership amendment, in the form of two amendments, to the existing articles.

Now we find that same spirit emanating from Panama. We do not even know whether they are going to take the first reservations on the first treaty. So what is our attitude going to be on amendments? Is it going to be to amend the treaty in ways that will strengthen our right to defend the canal, or is it to be one of bowing to the will of the Panamanian dictator? We know he expressed the view that there should be no amendments. I express the view that there should be amendments—amendments to protect the interests of the people of the United States, the taxpayers of the United States. If any amendment will do that, I do not care whether Mr. Torrijos objects or not, and I do not care whether it has to go back to another plebiscite. It should go back to another plebiscite, for that matter, if we are to be sure we have a compact with the Panamanian people rather than with a dictator who might not be dictator at the time these treaties are finally put into force.

So, Mr. President, we are engaged now in the most important phase of the Panama Canal treaties debate. What we have done up to now—that is, approve, with one vote to spare, the Neutrality Treaty, last Thursday—does not really get to the basic thrust of what we are considering here in the Senate. There were 68 votes cast for the Neutrality Treaty. At the time a score and a half of us were seeking to get the Panama Canal Treaty considered first, I

stated with some degree of assurance that if the Panama Canal Treaty were considered first and approved by the Senate I would say that 90 or more Senators would have voted for a defense treaty or a neutrality treaty, by whatever name you might care to to refer to it, not 68 Senators, but at least 90 Senators. Why would that be? By taking the Neutrality Treaty first, it of necessity is just one part of a package surrounding the central theme and thrust of these treaties giving the Panama Canal away.

That is the main question we are deciding, not whether we are going to defend it in the year 2000. Everybody knows we are going to defend it in the year 2000. So the proponents of these treaties would have gotten 90, 95, possibly 99 votes.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. ALLEN. I yield for a question, yes.

Mr. SARBANES. Is it safe to assume that the Senator refrained from saying 100 because we would not have gotten his vote in that instance?

Mr. ALLEN. I was pledged against both treaties from the start, I say to the distinguished Senator from Maryland.

Mr. SARBANES. I thank the Senator.

Mr. ALLEN. Yes; I made that statement. I believe the Senate might possibly have gotten 99 because I could not have broken my pledge. I do not know, but I assume the Senator has the same feelings about a pledge. I am sure that he does.

Mr. President, that is what we have decided up to now, that we are going to defend the canal down around the year 2000. Upward of 99 Senators would have voted for that if that had been the second vote and not the first vote.

So to say that the Panama Canal Treaty has been approved is hardly accurate.

As a matter of fact, Mr. President, if this treaty we have before us is defeated, that completely wipes out all of the action we have taken up to now. It wipes it out, every bit. There will not be a vestige left. It will all be gone. That is the reason that I felt it was unwise to go with the Neutrality Treaty first because we still have the basic question to answer, are we going to give the Panama Canal away? We have not decided up to now.

We have decided on what I feel is an inadequate defense of the canal after the year 2000. But certainly we have not decided to give the canal away.

So, Mr. President, I hope that the same rule will not obtain here in the Senate with respect to amendments but that we will consider these amendments on their merits.

I believe the amendment offered by the distinguished Senator from Kansas (Mr. Dole) is a great amendment. It merely provides that Panama cannot call foreign troops from Cuba or Russia or anywhere else into Panama during these 22 years. If Panama is willing at the year 2000 and beyond not to call in foreign troops, why should they want foreign troops to come in while the United States is still there? They are not needed. And the only service they would perform would be to provide a confrontation for American troops and possibly the takeover of the Panamanian army.

So the Dole amendment is necessary to put the same prohibition in Panama or the same right. I guess worded one way it would be a

right. It is the right of Panama to be the only one to have troops there after the year 2000. That is in the Neutrality Treaty. But it is a limitation, also, in that they cannot bring in other troops. It is a right and a limitation at one and the same time. It would be a limitation with respect to the Dole amendment in that during these 22 years they could not bring in outside troops. If more troops are needed I assume the United States would furnish them. What is the use of calling on Cuba or Russia or any other nation? That is all the Dole amendment does.

It is a sound provision. It is a provision that would avoid any confrontation by U.S. troops in Panama with foreign troops, and the Dole amendment would prevent so far as the canal's own area is concerned something that is now prevented under the present treaty, that is, bringing foreign troops into the Canal Zone where the canal is and 5 miles on each side. So without the Dole amendment Panama would be able to bring troops into the Panama Canal Zone where they are not now permitted. So the amendment cries out for adoption to protect the best interests of the people of the United States. Why should the proponents of the treaties objects to a strengthening amendment, an amendment that will keep our troops in Panama from possibly being subjected to a confrontation with troops of a foreign nation?

That is the best way, Mr. President, that we could see hostilities down in Panama. Talk about we do not want to send our boys. The President said in the fireside address we do not want to see our boys sent down there to fight for the canal. This offers the best possibility that I can see, if we do not have the Dole amdmement or something similar to it, the best chance of our boys having to fight in Panama for the very simple reason that if Panama brings in foreign troops into Panama they could not keep from there being a confrontation between our troops and the troops of that foreign power.

I believe the Dole amendment is very sound. I hope that it will be approved by the Senate.

I yield the floor.

Mr. CHURCH. Mr. President, I remember an old film a few years back called "The Russians Are Coming." If I were to characterize the arguments made for this amemdment I might do so in that form: "Beware, beware, the Russians are coming."

Well now, since 1903 we have not required the Panamanians to explicitly promise us not to let the Russians into Panama. Since 1903, we have not called upon the Panamanians to guarantee in writing that they would not permit foreign troops on their soil. For 75 years, the Panamanians have been good friends and neighbors. Would Senators think of asking a good neighbor to give a written promise not to let the Mafia in his house? I am afraid that would quickly put an end to the warm feeling between the two households.

I have no brief for General Torrijos. I have no liking for dictators. But I recall it was only a few weeks ago that General Torrijos said he did not want Communist sharks swimming in Panamanian waters.

Let along envisioning the possibility that he would invite the Russian troops or Cuban troops, he does not even maintain formal

relationships with the Soviet Union, which is more than you can say for the United States.

So why this insult, riveting into the text of this treaty an amendment that can only be calculated to inflame even further the sensitivities of the Panamanian people?

Well, of course, there is no good reason for doing it. The Panamanians, under many different governments, have never invited foreign troops onto their soil. It it a very unusual thing for any people to do.

The provisions of this treaty guarantee that our troops may remain in the Panama Canal Zone for purposes of defending, the canal for the remainder of the century, and thereafter Panama promises not let any foreign troops within its territory. Obviously, the vital interests of our country in preserving the canal as a safe and peaceful waterway are secured by the terms of the present treaty.

This amendment is not only unneeded, but it is mischievous in the friction it would bring to our relations with Panama, in the event it were adopted.

For that reason, Mr. President, I now move to lay the amendment on the table, and I call for the yeas and nays.

Mr. DOLE. Mr. President, will the Senator yield? I took the amendment with me when I went to lunch.

Mr. CHURCH. Very well, I withhold my motion.

[Mr. Melcher assumed the chair.]

Mr. DOLE. Is there any possibility of any agreement on not moving to table but to have an up or down vote? The Senator has plenty of votes to spare.

Mr. CHURCH. I will say to the Senator that insofar as up or down votes on this particular amendment are concerned, I would perfer to move to table. As the Senator knows, in our previous debate on the Neutrality Treaty this was not the invariable habit of the leadership, and I anticipate other amendments will be offered, where the vote will occur on the merits. I think in this particular case it is best to move to table, and that is my intention. But, first, I invite the Senator from Kansas to make any further remarks he may wish.

Mr. DOLE. Again, let the Senator from Kansas state that I do not want to delay the Senate. But it seems to me this is a matter of some substance, and it would be very much appreciated if we could have our amendments defeated on their merits, rather than some procedural motion to table that is not fully understood.

It seems to me there are a number of Americans who will wonder what we are doing here. We argue amendments sometimes for 2 or 3 days, and somebody stands up and moves to table the amendments, in other words, not consider it at all, and I just happen to believe that this amendment is an amendment of some substance.

I share the view expressed by the distingushed Senator from Alabama, and I do not share the arguments just made against the amemdment.

We are saying that after the year 2000 there will be no troops in Panama, but Panamanian troops. It seems to me to be consistent with that policy, and also when we stop to consider we are going to

relinquish a great amount of territory as soon as we ratify these treaties.

You cannot see the map, but you are going to, in effect, invite the Cuban troops to the water's edge. They can dip their fingers in the canal if they wish; for that there is no prohibition. We are going to give up bases, and there is no prohibition to prevent Torrijos from inviting Castro in to occupy the bases as we leave.

That is hard for the American people to understand. I certainly do not question the motives of any Senator, nor do I question the strategy because the votes are there. The protreaty forces have the votes. But I must say I share the views expressed by the distinguished Senator from Alabama (Mr. Allen). I am not so really concerned about what General Torrijos may think because if he gets this treaty approved by the Senate, he has it made. He will be in as long as he wants to be in. He does not have to stand for election every 6 years. He is not going to take the heat on why you voted for or against the Panama Canal treaties, because he is a dictator. He does not have any elections. Once we set him up with billions and billions of dollars worth of our property, he is on pretty sound ground; he is in easy street.

I do not know why there is this great anguish and concern about upsetting General Torrijos, particularly with an amendment like this which, I think, really helps the Panamanian people. It just says that between now and the year 2000, foreign troops cannot come into Panama. Our troops will be there, but as soon as this ratified, the Panama Canal Zone is going to be shrunk drastically. In some cases, I would guess that the buffer between what was left of the zone and the water itself is less than a hundred yards, and I assume that is all part of the record. It is no secret, and this was furnished by the Panama Canal Company. I just cannot understand the opposition to this amendment unless it is that same old tired argument we have heard for 4 weeks: "We do not want another plebiscite. We do not want to amend the treaty. We cannot accept one word of change in the treaty."

I assumed if you have the votes that is the strategy to adopt. But I must say again that when people ask me why I am not doing something in the Senate to strengthen the treaties, I am somewhat at a loss to explain.

It is not enough for some Americans—they do not understand that we are being stonewalled. They do not understand that the majority will not listen to amendments. I think maybe we just should use whatever time is left between now and the final vote on the Panama Canal Treaty to explain the so-called big giveaway, the bonanza to Torrijos. At least the American people ought to understand there were some Senators offering responsible amendments who could not even get a vote up or down on their amendment.

I am about convinced there probably will not be any vote on this amendment, maybe no vote on Wednesday or Thursday or Friday. If we are asked to stand here and debate responsible amendments for 3 or 4 or 5 hours and then we are told, "Well, you cannot have a vote on it, we are going to table that amendment because it concerns us," then why do we want to relinquish the right to explain to the American people that we are unable, through parliamentary procedure and the debating process, to impress upon those

who are alined with the pro-treaty forces of the seriousness of the amendment?

Now if it were frivolous or irresponsible, or offered in a series of 10 or 20 or 30 or 40 or 50 amendments, then the Senator from Kansas might agree, but this Senator has offered relatively few amendments.

As far as I am concerned, they were carefully drawn, they were carefully thought out, they were offered in the right spirit. And now we are told that "Well, we don't want to rock the boat; we don't want to rock the canal." I am convinced that the only thing we can do is spend our time talking to the American people, if we cannot impress upon our colleagues that we also have a point of view and that at least we would expect the courtesy of an up or down vote. So I just say at this point, if we cannot have an up or down vote, there will be no further votes today and there will be no further votes on Wednesday, and there will be no further votes on Thursday. I think the time has come, if we are going to lose that we should have the right to have our efforts laid away, if those are the correct words, on their merits and not by some procedure that the American people fail to understand. The people listening to this debate do not understand what a motion to table is. They wonder what happend to our amendment. Well, it was tabled.

What do you mean it was tabled? What does that mean?

Well, it means they have more votes than I have. They do not want to face the music, and so they put it away. They laid it on the table. It was a nice quiet burial and they had more pallbearers than we had. So I think we have reached the point, and I think some of my colleagues agree, where hopefully we have enough to talk today and Wednesday and Thursday and Friday, so that if we are going to have any impact for the American people we should help them understand the process.

It seems to me that the process is frustrating, if we simply offer our amendment and then after 2 or 3 hours, or whatever, we agree that you can table our amendment. If that is the case, why offer the amendment in the first place?

The Senator from Kansas has agreed, on every amendment he has offered, to time limits. I agreed with the Senator from Maryland for 15 minutes one day on an amendment, a very serious amendment, about the military presence after the year 2000. I had 10 minutes, the Senator from Maryland had 5, and I did not quarrel with that.

Why is it that he cannot——

Mr. SARBANES. Will the Senator yield on that point?

Mr. DOLE. Yes.

Mr. SARBANES. Is it not a fact that the amendment referred to by the Senator from Kansas had been debated or the substance of that amendment had been debated at some length before the amendment was offered?

Mr. DOLE. I am just saying that I agreed.

Mr. SARBANES. Just like the pending agreement—

Is there an amendment pending now?

Mr. DOLE. No, not now.

The PRESIDING OFFICER. No, there is no amendment pending before the Senate at this time.

Mr. SARBANES. Of course, today, beginning at 11:15, when the Senator from Kansas offered his amendment until now, which is 4:15, that is 5 hours, most of our time has been devoted to talking about his amendment, in one way or another.

Although, I must say, on occasion the discussion has been much broader than the substance of the amendment, both when the amendment was pending and when the amendment was not pending. So that is 5 hours today that have been spent related to the Senator's amendment.

The previous occasion that he referred to concerning an amendment with a short time limitation, I regret that a great deal of time prior to that time limitation has been spent discussing the Senator's proposal. I do not think the Senator would quarrel with that.

Mr. DOLE. In fact, I would not quarrel with it. I have tried to point out that I have accommodated the wishes of the protreaty forces because I understand that there are other things to do in this body besides the Panama Canal Treaties. But it would seem by the same token, that maybe they can understand our point of view. I have no illusion that my amendment is going to be adopted, but I would like somebody to understand that it was defeated or rejected, instead of some mysterious act of laying it on the table. That does not make a great deal of sense to many people who are not familiar with parliamentary procedure.

What is so wrong with voting on the merits? You have as many votes for that as you have to table. Why is it that we cannot have a vote on the merits? Is it easier for some to vote to table than it is to vote against the amendment? Is that the strategy?

Apparently, it is the strategy.

Mr. SARBANES. Is the Senator asking a question?

Mr. DOLE. I am, more or less.

Mr. SARBANES. I was not quite sure whether he was asking me a direct question or making a rhetorical question. It is a little hard to differentiate between those two on occasions.

Mr. DOLE. Right.

Mr. SARBANES. Well, the Senator knows, as every other Senator knows, the motion to table is a standard parliamentary procedure in this body. We have not asked the Senator or the people on his side to relinquish any standard parliamentary procedure for dealing with matters on the floor of the Senate. It seems to me the request he is making is unreasonable. It is clear that a motion to table, in effect, kills the Senator's amendment. I do not think there is any problem in understanding that. I understand the Senator's point, though, he is going to go on forever, unless the vote is taken under the terms on which he wants it taken. That seems to me to be an unreasonable request for him to put to the proponents of the treaties.

Now the Senator may choose to follow that course. I suggest to the Senator that it is reasonable to take an appropriate amount of time to discuss amendments and then vote with respect to them, either up or down or by tabling motions. Now if the Senator wants to go on and on if it is not done in his particular way, that is of course the Senator's prerogative. Under the rules of the Senate, he may choose to proceed in that manner, but it seems to me that we

ought to be able to move ahead on this matter, giving it proper consideration and then conclude so that we are then able to go on and deal with other pressing issues that are before the country.

Mr. DOLE. Well, I do not want to quarrel with that. Again, the Senator from Kansas is not trying to lead any extended debate or filibuster because in every instance I have agreed on time limits on my amendment, but I think we have an amendment here that this Senator considers to be very important.

If the Senator will look at the map of the territory we are giving Panama, and if only the American people could look at the map, I think they would understand this to be an important amendment. There are lots of things I would rather do than stand here and debate this amendment. There are lots of other things I would rather do than see it tabled. If the Senator has the votes to kill it, why not just kill it outright? Why the indirect method?

I guess there were a very few occasions in all those amendments we considered in the past several weeks where they pumped up-and-down votes on the Scott amendment and the so-called leadership amendments, and maybe an isolated one or two other than that.

Mr. CHURCH. There are five up-or-down votes, for the Senator's information.

Mr. DOLE. Well, let us have——

Mr. CHURCH. We are sure we will. We will have 8 or 10 before this debate is over, but to suggest that there is something conspiratorial in making a motion to table comes as a surprise to me.

Mr. DOLE. I am not suggesting it is conspiratorial.

Mr. CHURCH. Since the Senate normally uses the motion to table in connection with all of its legislative work.

Nor do I think it is such a great mystery to the people of the United States what a motion to table means. It means what it says: Lay the amendment on the table; to put it aside, and that is one way of disposing of an amendment.

As a matter of fact, it has the added advantage of bringing debate to an end. The extent of this debate, which has now gone—we are in the sixth week of this debate. The most important alliance the United States ever entered, the NATO alliance, was debated for only 11 days in the Senate. Here we are in the sixth week on the Panama Canal Treaties, and I must say that every aspect of the treaty has been gone over and over and over and over again. If this debate were confined to new arguments it would soon be over.

Mr. DOLE. I might ask the Senator on that——

Mr. CHURCH. I must say to the Senator, this lecture to which we are being subjected about the impropriety of motions to table is not at all reflective of the normal procedures of the Senate, as the Senator well knows.

Mr. DOLE. Well, I would only say that we have had a number of lectures in this body and some I have listened to and some I have avoided. So I am not trying to lecture the Senate.

Mr. SARBANES. Will the Senator yield for a question at this point?

Mr. DOLE. Well, I want to ask the Senator from Idaho a question.

Mr. SARBANES. Just on the lectures.

Mr. DOLE. Right.

Mr. SARBANES. I was not clear whether you had listened to or avoided your own lectures, in particular the one that we just received.

Mr. DOLE. Well, you do not have to listen to what you say yourself because it depends on what you are taking about.

Mr. SARBANES. I thank the Senator for yielding. I think if we do not keep some sense of humor as we move things along here we may not survive. Now, the Senator and all of us know that a motion to table is a standard parliamentary procedure. The Senator makes great use of this at times. I do not mind him engaging in some rhetoric, for purposes of the airways with respect to it, but to then go on from that to assert the position that he intends to go on and on and on forever, with respect to this matter, unless the proponents relinquish standard techniques for considering matters on the floor of the Senate seems to me to be a short, narrowly unreasonable suggestion from the Senator from Kansas, and I must say not of the sort that he is usually given to making.

So I am somewhat taken by surprise with his approach to this matter, and I would hope that we would be able to proceed reasonably with respect to these items or to a determinative end of this matter and finally vote on the Panama Canal Treaty, and go on to all of the other business that faces the country.

Mr. DOLE. I appreciate the Senator's concern about the other business of the country and the Senator's concern about the treaty.

I will say again that this Senator has not engaged in any extended debate in this particular instance. I have had the pleasure, in years past, once for a period of 7 weeks, of engaging in debate with the distinguished Senator from Idaho on the famous Cooper-Church amendment. I was on one side and he was on the other. We were here for 7 weeks. I was so confused after 7 weeks, I finally ended up voting for the Cooper-Church amendment. [Laughter.]

The point is that we understood that we were really in extended debate, and that was very extended. I think it was an exercise. I agreed with the distinguished Senator from Idaho. I may agree with him on something else next year or this year or sometime.

The point is that now we are discussing what I consider to be the key amendment to the Panama Canal Treaty. I do not want to appear to be arbitrary or to be an obstructionist in any way, but it is a matter of some concern to me that we have an up or down vote. I will not discuss that now because there is no amendment pending. I will call it up later this week. Maybe I should bring it up again on Wednesday or Thursday.

I wanted to see if the distinguished Senator from Idaho and the distinguished Senator from Maryland had the same view of the treaty in its present form as the Senator from Indiana (Mr. Bayh) expressed this morning. If the treaties are approved and ratified, if everything happens according to the plan of the pro-treaty forces, and let us just say the worst possible thing happens and Cuban troops go into Panama 5 years from now, is that a threat to the security of the canal, so far as the distinguished floor leader's pro-treaty forces are concerned? Would that bring about a response from the United States?

Mr. SARBANES. Will the Senator yield?

Mr. DOLE. Yes.

Mr. SARBANES. If the United States would so view it. That would be our judgment to make. We would take a look at it and we would make a determination.

Mr. DOLE. Just the mere presence of Cuban troops would not be a threat?

Mr. SARBANES. That would be our judgment to make. Cuba might be a different place at that point, for all I know. There might be a wholly changed situation.

All I am saying is that if anything takes places which creates the possibility of endangering the regime of neutrality, the United States is entitled to act to prevent that from happening. We make the judgment.

Mr. DOLE. The point that worries the Senator from Kansas is the very thing we are discussing. If there is some assurance that we are already protected without the amendment, if the amendment does do serious damage to our relation with Panama, I might accept that argument.

Mr. SARBANES. Will the Senator yield at that point?

Mr. DOLE. Yes.

Mr. SARBANES. We maintain American military presence in Panama over the next 22 years. It is a significant presence in terms of the facilities and installations retained by us first of all, as it were, completely under our operation, and second, other facilities and installations shared jointly with the Panamanians.

Furthermore, there is projected under the treaties a program for working cooperatively with the Panamanian military with respect to protecting and defending the canal. So we will have a presence—a real presence—until the end of the century. As to the further condition which the Senator is now seeking, we do not have with any country where we have an American presence or arrangement such a condition. The Senator is asking the country to foreswear control over its own territory. Even at the moment even with the treaty of 1903, Panama has the right, if they choose to do it—and they have never chosen to do it—to have foreign troops on Panamanian soil. They have never done that over the course of our long-standing relationship.

We will continue to have an American military presence for the next 22 years, as long a term, I might point out to the Senator from Kansas, as we have anywhere else in the world. This was, of course, an important matter which was negotiated between the parties in the course of arriving at these treaties.

I do not know what the situation is of which the Senator is so fearful. We are on the ground and in a position to handle any situation which comes along.

Mr. DOLE. Earlier I referred to Ethiopia and the fact that I was glad there was no canal there. They too had been traditional friends and allies, up until a few years ago.

Mr. SARBANES. If the Senator will yield, the post-2000 treaty, when there will not be an American military presence in Panama any longer, precludes foreign troops. In the period up to the year 2000, when there will continue to be an American military presence in Panama, with all of the sites and facilities our people judge they need, does not carry that prohibition with it because it is

judged that it is not needed; second, we do not have it anywhere else, with any other country, where we ask them to do that. Our presence is there. They have agreed to that. We have judged that having our presence there is adequate to defending and protecting the situation.

I think the American presence there which we will keep through this treaty, and the arrangement under the treaty, is more than adequate for us to be in a position to protect and defend the canal.

Mr. DOLE. If we rely on that argument, I believe we invite trouble. It underestimates Soviet intentions. Maybe the Senator from Kansas is wrong and the Senator from Maryland is correct, but I think we at least have to think about the Soviet-Cuban determination. It seems to me we might be inviting conflict over the sovereignty issue if, in fact, they were invited into the area, which is now protected by a 5-mile cordon on either side of the canal. It will be very much reduced. They could almost be at the water's edge.

That is the reason I posed the question: When do we concern ourselves with sovereignty? Is it when somebody is there, or do we hope it never happens? Do we raise it now in a friendly atmosphere in the debate on the treaty by offering some amendment? Let me again indicate in response to an earlier statement by the Senator from Idaho that, as far as this Senator is concerned, there is no anti-Panamanian feeling. That is not the reason that amendments are offered.

I just believe that, rather than discuss this amendment any more today, since it appears that, once it is offered, it will be tabled, the Senator from Kansas will yield the floor. Perhaps some other amendment can be brought up and disposed of, so we shall not delay the process. Perhaps in the interim of the time the distinguished Senator from Wyoming is discussing his amendment, we can work out an agreement on a vote on this amendment.

I yield the floor.

Mr. WALLOP. Mr. President, I intend to call up an amendment. I share the frustration of the Senator from Kansas concerning the constant tabling motions on amendments of a serious nature which do more by way of protecting people from the consequences of their vote than they do by way of trying to end debate. I have no doubt that, if the Senator from Kansas could get an up or down vote on his amendment, he would end debate immediately and bring it to a vote of the Senate. I tried, a few minutes ago, to arrange for an up or down vote on this amendment and a time limitation and it was rejected summarily, even before treaty proponents had read the amendment. I am beginning to suspect that it is the word "amendment," not the words of the amendment, that is troubling the sponsors of this treaty.

It is with a feeling of some sense of sadness that I see in the proponents the unwillingness to have the highly visible nature of an up or down vote. I do, really, honestly believe that the word, "amendment," troubles them more than the words of any amendment that has been offered.

I think the Senator from Idaho would agree that there have been a number of amendments which I have voted to table alone with them because I thought they were not in the interest of construct-

ing a treaty. Nevertheless, and knowing full well that the motion will be made to table this, I send an amendment to the desk and ask that it be stated.

UP AMENDMENT NO. 13

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from Wyoming (Mr. Wallop) proposes an unprinted amendment numbered 13.

Mr. WALLOP. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of Article 1, add the following:

"5. Notwithstanding the provisions of the first paragraph of this Article, if the Republic of Panama abrogates any provision of this Treaty or of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, all of the provisions of both treaties shall terminate, and the provisions of any treaty, convention, agreement, memorandum of understanding, or exchange of notes terminated or superseded under the first paragraph of this Article shall reenter into force.".

Mr. WALLOP. Mr. President, this amendment is designed to deal with the contingencies that would take place should the treaty be abrogated. It is not an item that has been brought up or considered by the Senate. The Senator from Idaho has correctly characterized some of this debate as being stated, restated and restated over the same issues. To my knowledge, this is not an issue which has been brought to the attention of the Senate. Simply stated, it would provide that, if the treaty is abrogated, we would return to the status quo.

There is, I think, great public concern in America over what happens if these new treaties between the United States and Panama are abrogated or, in layman's terms, broken. It is unclear what action the United States could legally and morally take should that event occur. I think it is the obligation of everyone to clarify what would happen if these treaties are broken. I bring it up because, in my trip to Panama, not only Panamanians but Zonians and American businessmen in Panama and other places, consistently told me that they expected this to be but the first of perhaps three treaties between now and the year 2000; people on all sides of the issues—those who supported it and those who opposed it. If that is the case, then the country that we are dealing with and ourselves and bystanders with varying degrees of interest are not dealing in good faith for the future through the year 2000.

If that is the case as well, and there is not even the dignity of an extended negotiation for a new treaty and they are simply broken, then the American people ought to know and the world ought to know to what standard we would revert. The standard that I propose is recognizable, and it should be, by both parties and it should have standing in the world's mind. The world should understand what the situation would be should that take place. My amendment will make it clear what will happen if Panama abrogates the treaty: Then all other agreements and treaties we had with the Panamanians reenter into force. We return, in fact, to the status quo of pre-1977 treaty standards.

Article I, paragraph 1, of the Panama Canal Treaty terminates and supersedes all major agreements we have with the Republic of Panama. It states:

ARTICLE I

ABROGATION OF PRIOR TREATIES AND ESTABLISHMENT OF A NEW RELATIONSHIP

1. Upon its entry into force, this Treaty terminates and supersedes:
(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;
(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understanding Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;
(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama, concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and
(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

So, should there be an abrogation, we would know to what standard we would return. My amendment does not alter any of the treaty's terms. In fact, if the Panamanians live up to the terms of the new treaty, then my amendment will lie unused in those dusty files to which unused international agreements are rightfully consigned.

This amendment assures one thing: That whatever treaties the United States agrees to, will indeed govern the relationship betweeen the United States and Panama. They will not prove to be mere way-stations on the road to abrogation and early ejection of American forces from the Canal. It provides strong second-thought medicine to any Panamanian leader who might contemplate abusing any treaty provision governing the canal. The amendment does this by providing a simple legal basis for remaining in or returning to military positions in the zone in the event Panama breaks the treaty.

The administration's primary argument for these treaties is that the Panamanians' ill feelings toward the United States make necessary our gradual surrender of the canal to them. As they gradually assume control, so goes the argument, the Panamanians' feelings toward us will improve; a sort of prolonged and gigantic valium that we are administering to the relations between this country and Panama.

The theory also goes that taking this great tranquilizer, they will consequently work with us to keep the canal open, neutral, and secure.

It is reasonable that is should be so, and so it may well be. But unfortunately, Mr. President, the approval of treaties like these could just as well be followed by other developments. The Torrijos regime, or another more inclined toward our enemies—and Torrijos, despite claims to the contrary on this floor, is a mortal man and could die, be replaced, retire, or we could have another individual more inclined toward our enemies who could be emboldened by what he considers a show of weakness in Panama, or elsewhere in the world—to use the grant of sovereign rights to harass Americans, to find pretexts for abrogating the treaties, ordering Ameri-

can forces to leave, and to invite armed personnel from hostile countries to assist them. If the treaties are not amended as I suggest, we would then have no choice but to sit helpless or to act militarily without basis in law—that is to say, to commit aggression, something which is not and has not been the habit of this country.

Every nation has the sovereign right to enter into treaties and to render them inapplicable in the territory over which it exercises sovereignty. It follows that this right is limited to—and does not extend beyond—any nation's sovereign reach. No nation can make or unmake treaties except on behalf of areas where it has the sovereign right to make and unmake other laws. Today the Republic of Panama does not exercise sovereign rights over the Canal Zone. Since 1903, Panama has agreed that the United States should exercise all such rights in the zone. Today under the unique status established in 1903, the Republic of Panama can neither make nor break treaties binding the Canal Zone for the same reason that it cannot effect ordinary legislation there.

Should the treaty presently before us be ratified, the Republic of Panama would assume plenary sovereign rights over the zone. Panama would then be in the new position of making and unmaking all laws—including treaties—on behalf of the former zone on its own authority alone. Panama could then abrogate the 1978 treaties by fiat. It could not exercise the sovereign right to abrogate the treaty of 1903 because that regards a zone over which Panama exercises no sovereign right.

The treaty of 1903, and its subsequent modifications, like all other treaties which transfer sovereign rights in perpetuity, belongs to a well-defined category in international law. Consider how such treaties differ from ones which provide either for payment or for the performance of certain acts. In these cases, unilateral abrogation might constitute the international equivalent of theft or breach of contract. But sovereign rights are a different matter, the very stuff of which nations and national interests are composed.

Mr. President, this amendment provides us with a legal and a moral foothold in the case of unilateral abrogation by Panama. I would point out, if it is their intent to abide by the terms of the treaties, and other more evil influences on the world's stage do not orchestrate or instigate an abrogation, no one will ever know of this amendment, no sovereignty subject to it, no national loss of face be compelled by it. I hope that if the treaties are ratified the promised new relationship with Panama will be estimated and neither Panama's present or subsequent leaders will ever consider abrogation. But should such unfortunate events ever occur, the United States, no, the world's commerce is provided with no contingency plans under this treaty as drafted. Our commerce, South America's commerce, and the world's commerce, all need the assurances of the contingency provided by my admendment.

The world's economic structure depends, in large measure, on the stability of this canal over the years to come, especially in light of energy crises and the existing facts that the trip around the horn not only makes some commercial routes impractical, some commerce impossible, but all more expensive and all longer to take place.

We need assurances. We need a contingency in the world.

We know, Panama knows, and the world knows what the present structure is. It is no mystery. It is something everybody could rely on, that we go back.

The amendment is, in fact, simple reassurance to ourselves and to Panama.

Mr. President, I ask that this body adopt the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. WALLOP. Mr. President, I suggested the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WALLOP. Mr. President, I call on the Senate for adoption of my amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wyoming. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. Durkin addressed the Chair.

SEVERAL SENATORS. Vote! Vote!

Mr. Durkin addressed the Chair.

Mr. DURKIN. Mr. President, I move to table.

Mr. WALLOP. Mr. President, the rollcall is underway.

Mr. DURKIN. A point of order. The rollcall has not been answered.

Mr. WALLOP. The rollcall is underway.

The PRESIDING OFFICER. There had not been a response.

Does the Senator from New Hampshire seek the floor?

Mr. DURKIN. I do, Mr. President.

Mr. WALLOP. Mr. President, a point of order. A rollcall was underway. Mr. Abourezk's name had been called.

Mr. DURKIN. No one had responded.

The PRESIDING OFFICER. The Chair already has ruled that the rollcall had not been responded to by any Member of the Senate. Therefore, the rollcall had not started.

The Senator from New Hampshire.

Mr. CURTIS. A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from Nebraska will state the parliamentary inquiry.

Mr. CURTIS. Suppose the Senator whose name was called would appear at this time and state that he wants to answer? Would that mean the rollcall was in progress or not?

The PRESIDING OFFICER. No, it would not.

Mr. DURKIN. Mr. President, I move to table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Wyoming. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from Maine (Mr. Hathaway), the Senator from Kentucky (Mr. Huddleston), the Senator from Maine (Mr. Muskie), the Senator from Alabama (Mr. Sparkman), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Arizona (Mr. Goldwater), the Senator from Michigan (Mr. Griffin), the Senator from Illinois (Mr. Percy), and the Senator from Pennsylvania (Mr. Schweiker) are necessarily absent.

I also announce that the Senator from Maryland (Mr. Mathias) is absent to attend the funeral of a former Senator.

The result was announced—yeas 50, nays 37, as follows:

[Rollcall Vote No. 67 Ex.]

YEAS—50

Abourezk	Hart	Metzenbaum
Anderson	Hayakawa	Morgan
Bayh	Heinz	Moynihan
Bentsen	Hodges	Nelson
Biden	Hollings	Pearson
Bumpers	Humphrey	Pell
Byrd, Robert C.	Inouye	Proxmire
Case	Jackson	Ribicoff
Chafee	Javits	Riegle
Church	Johnson	Sarbanes
Clark	Kennedy	Sasser
Cranston	Leahy	Stafford
Culver	Long	Stevenson
Danforth	Magnuson	Stone
Durkin	Matsunaga	Weicker
Eagleton	McGovern	Williams
Glenn	McIntyre	

NAYS—37

Allen	Ford	Randolph
Bartlett	Garn	Roth
Bellmon	Hansen	Schmitt
Brooke	Hatch	Scott
Burdick	Hatfield, Mark O.	Stevens
Byrd, Harry F. Jr.	Hatfield, Paul G.	Talmadge
Cannon	Helms	Thurmond
Chiles	Laxalt	Tower
Curtis	Lugar	Wallop
DeConcini	McClure	Young
Dole	Melcher	Zorinsky
Domenici	Nunn	
Eastland	Packwood	

NOT VOTING—13

Baker	Gravel	Haskell
Goldwater	Griffin	Hathaway

Huddleston	Percy	Sparkman
Mathias	Schweiker	Stennis
Muskie		

So the motion to table Mr. Wallop's amendment (No. 13) was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Wallop addressed the Chair.

The PRESIDING OFFICER (Mr. Moynihan) The Senator from Wyoming.

Mr. WALLOP. Mr. President, when I called up that amendment, I said I fully expected it to be tabled.

The PRESIDING OFFICER. If the Senator will suspend, the Senate is not in order. Senators will kindly take their seats. The Senator from Wyoming is addressing the Chamber.

The Senator from Wyoming.

Mr. WALLOP. Mr. President, when I called up that amendment I said that I was certain that it would be tabled, and I was not disappointed in that. But, Mr. President, I also said that one of the things that the proponents of this treaty are unwilling to do it to look at any amendment on the face of it. We have as pure an example of that unbridled use of power as you could imagine on this amendment. They did not raise one argument against it. There was not one word spoken against that amendment, not one. They walked in. They refused the up and down vote, had to bend the rules to achieve that and they moved to table without a single word in argument.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. WALLOP. I yield.

Mr. ROBERT C. BYRD. How were the rules bent to achieve that?

Mr. WALLOP. Mr. President, if I may respond to the majority leader, the rollcall had begun.

Mr. ROBERT C. BYRD. Had there been a response?

Mr. WALLOP. There had not.

Mr. ROBERT C. BYRD. Then the rules were not bent.

Mr. WALLOP. The second name had been called and the response was about to be given when that took place.

Regardless of that point, no one is interested in what these amendments say. The proponents are not interested in any logical argument that can be brought up about anything. They are more frightened of the word "amendment" than the words in any amendment.

I think this is a good explanation to the American people of what is happening right here. The most interesting part of this situation is that it was an unprinted amendment, it was uncirculated. It was not read by the clerk in its entirety, and the proponents of the treaty did not even ask to see it. All they did was to call for the tabling of this amendment without raising one single argument.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. WALLOP. I doubt if anyone over there had the foggiest notion of what it said until after the tabling motion. It is typical of the

way this thing is being run and it is not in behalf of the American people. It is in behalf of a power play. They are not interested in logic. They are not interested in the future of the country. They are simply interested in tabling anything.

Mr. BROOKE. Mr. President, will the Senator yield?

Mr. WALLOP. I yield to the Senator from Massachusetts.

Mr. ALLEN. Mr. President, let us have order.

The PRESIDING OFFICER.The Senate will be in order. The Senator from Wyoming has yielded to the Senator from Massachusetts. The Senator from Massachusetts.

Mr. BROOKE. Mr. President, I thank my distinguished colleague from Wyoming for yielding.

Mr. President, I am very sensitive to what the Senator from Wyoming has said. Not only am I sensitive, but I am sympathetic to what he said. I think he makes a very strong point. I ultimately voted for the Neutrality Treaty, but I have consistently voted against every motion to table amendments, understandings, or reservations to that treaty, and I will continue to do so regarding the pending treaty. On this particular amendment I would vote no if an up-or-down vote were permitted.

I think both the administration and the proponents of these treaties are making a big mistake in not allowing any substantive amendments to be voted up or down by this body.

The only argument they have given is that if we in any way alter these treaties they will have to go back for a plebiscite in Panama. Mr. President, that is not our business. That is the Panamanians business. I do not think we ought to have these treaties, which are important to the American people, important to our country, be voted favorably upon without amendment because of the threat of a plebiscite in Panama any more than I think we ought to have these treaties acted favorably upon because of a fear of violence in Panama or elsewhere. These should not be criteria by which we make our judgments pro or con on this matter.

If ever this Nation begins to make its policy, our foreign policy, based on the fear of violence anyplace around the world, we are traveling a very, very dangerous road, and we may encourage that perception by the way we argue substantive amendments and act upon them.

Obviously, the votes were here to defeat the proposal of the Senator from Wyoming. He knew that, he said that. But at least he was entitled to an up-or-down vote. And although I would have voted against his amendment I still believe he deserved an up-or-down vote.

He ought not to be subjected to a motion to table. The Senator from Kansas (Mr. Dole) has an amendment that he believes in, and has been talking about it for many hours today. But he refused to have it brought up because he knew it would be subjected to a motion to table.

I think it is not in the best interests of the proponents of these treaties to continue this practice and procedure of filing motions to table every amendment that comes on the floor. Some of them may be frivolous, to be sure. But some of them are substantive and meaningful amendments that would strengthen the treaties in the

best interests of the United States, and even assure the proponents of the passage of these treaties.

I make this statement very seriously, very somberly, and very soberly, and I make it in the best interest of this country because I think we are making a big mistake if we think that the only people concerned about the Panama treaties are a group of extreme conservatives in this Nation.

There is a large segment of the American people who are seriously concerned about it, who maybe do not have all the facts about it, and who may perceive that they are being denied facts about it if we continue to proceed as we did on the Neutrality Treaty; namely, tabling substantive amendments that come up for consideration.

So I again say to the administration and I say most respectfully to the leadership and to the floor manager of this bill, for whom I have great respect, that at least in one Senator's opinion—and I think in other as well—this is not the proper procedure to follow. It is self-defeating, and you may rue the day that you make decisions or continue this practice and this procedure.

At least give these amendments an opportunity to be heard and to be voted upon without a motion to table. So I just want to say to my distinguished colleague from Wyoming I know why he is incensed, and he is justifiably incensed, and that his feeling about this is shared by others of us in this Senate who may have even voted on the other side of the first treaty, but who conceivably might vote on the other side of this treaty.

Mr. MATSUNAGA. Mr. President, will the Senator from Wyoming yield for a question?

Mr. WALLOP. I will in a minute as soon as I respond to the kind remarks of my friend from Massachusetts.

My point is that I expected a motion to table. I did not want it. I had asked for an up or down vote. I had even sought to make a time arrangement to achieve that. But more than that I think the amendment was entitled at least to the dignity of a response.

I think there may be aguments against it, but they were never brought up and nobody ever made any kind of a move whatsoever to argue against it but merely to table it, and I do not think it is in the interest of America, in the interest of the proponents or the opponents to willy-nilly dismiss out of hand any arguments that may have been made.

I do not say mine were the most compelling in the world. I took some time with them, and I thought the amendment out, and I did not put it on the table in a frivolous manner. I was serious about it because I do not think there is any provision for this country, in the event that Panama were to abrogate the treaty, and I brought up my amendment with all due seriousness.

So, Mr. President, I do thank the Senator from Massachusetts.

I yield now to the Senator from Idaho and then to my friend from Wyoming, and then from Alaska.

Mr. CHURCH. Mr. President, I want to say to my good friend from Wyoming I appreciate fully his irritation, and I want to say further to him that it was not my intention to ignore his argument. As a matter of fact, I believe that, at all times I have been on the floor, I have responded to the arguments made on behalf of all amend-

ments. I have tried to state the case against them for the treaty proponents.

I also want to say that I did not regard the Senator's amendment as frivolous. It just happened that I was called into the majority leader's office at the time the Senator was making his case for the amendment. I had anticipated that I would come back in time to respond.

The Senator's amendment was an unprinted amendment. I wanted to look at it first and to hear the Senator's argument.

While I was in the majority leader's office the bells rang signifying a vote. I came back onto the floor and discovered that the Senator had called for a rollcall vote, when the Senator from New Hampshire (Mr. Durkin) temporarily occupied my chair. Mr. Durkin jumped to his feet, made the motion to table, which was entirely within his rights. But that was not the way I had thought the matter would go.

I came back onto the floor, and discovered we were already voting on the motion to table.

So I want the Senator to know he has my apologies. It had been my intention to respond. He is quite right, he was entitled to a response. I would be willing to give it to him now, even after the event, but I am sorry that circumstances were such that I was not on the floor at the moment that the vote was called so that I could have responded in a timely manner to the Senator.

Mr. WALLOP. I thank the Senator from Idaho. I hope that at some time should something very similar to this occur that a motion to table would not be made because it is entitled to a full airing as an idea.

Mr. CHURCH. May I just add one other thing? It has not been the monolithic rule of those of us managing the treaty to move to table every amendment. When we had the last treaty up for consideration, a number of times we did vote up or down; I believe five or six times we voted that way. I am sure we will be voting up or down during the debate on this treaty as well. But, in any event, whether we vote on the merits or vote on a motion to table, the Senator was entitled to a response. His amendment was seriously intended, and had I been on the floor he would have received that courtesy.

Mr. BROOKE. Mr. President, will the Senator from Idaho yield for just a question? If the Senator from Wyoming will yield I would ask the Senator from Idaho to yield.

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

Mr. WALLOP. I yield for the purpose that a question might be directed to the Senator from Idaho.

Mr. BROOKE. The distinguished Senator from Idaho is the floor manager of the treaty. Could the Senator tell me whether they have changed the strategy and that so far as the second treaty is concerned that there is not going to be an accepted procedure or strategy to enter a motion to table every amendment that is offered on the floor?

Mr. CHURCH. The Senator is correct; but there has been no change in strategy. As we had votes up or down on a number of amendments during our consideration of the Neutrality Treaty, so

I anticipate we will have votes up or down on some amendments during our consideration of the Panama Canal Treaty.

Mr. BROOKE. But the only meaningful amendments, as I recall, to the Neutrality Treaty on which we had up or down votes, really, were the two so-called leadership amendments, where the Senator knew that he had sufficient votes to pass them. Those were the only meaningful amendments that I recall.

Mr. CHURCH. Well, I am sure that the Senator——

Mr. BROOKE. After they had been accepted, obviously, by the administration.

Mr. CHURCH. I am sure the Senator would not object if I referred to the Record, and pointed out that, in addition to the up or down votes on the leadership amendments, we also had an up or down vote on amendment No. 2, offered by the Senator from Virginia (Mr. Scott); we had an up or down vote on amendment No. 3, offered by the Senator from Utah (Mr. Hatch); and we had an up and down vote on amendment No. 47, offered by the Senator from Alabama (Mr. Allen).

Mr. BROOKE. And will the Senator, for contrast, state the number of amendments that we had motions to table on?

Mr. CHURCH. In most cases, amendments were handled by motions to table, but there were at least five exceptions to that rule, as the record shows.

Mr. BROOKE. Is it the Senator's intention to permit up or down votes on amendments to this second treaty?

Mr. CHURCH. Yes; there has been no change in the strategy, and there is no intent on the part of the Senator from Idaho to insist on motions to table in every case.

Mr. BROOKE. Will the Senator from Idaho enlighten the Senator from Massachusetts and the Senate, really, as to what basis will be used to make the decision as to whether up or down votes or votes on motions to table will be permitted?

Mr. CHURCH. Well, I think the decision will be made on a case-by-case basis, on the merits of the amendments and on the propriety for considering the subject matter in the form or a reservation rather than changing the actual text of the treaty.

Mr. BROOKE. What was the basis the Senator used for not permitting an up or down vote on the Dole amendment?

Mr. CHURCH. Well, I would say to the Senator that I thought that the Dole amendment should be rejected on its merits, but in addition to that, if it is the disposition of the Senate to impose an explicit obligation upon Panama to refrain from permitting foreign troops on Panamanian soil while American troops are there, in addition to its promise not to permit foreign troops on Panamanian soil after American troops leave, then I believe that ought to be done in the form of a reservation, not in the form of an amendment to the text of the treaty.

Mr. BROOKE. That is the reason?

Mr. CHURCH. That was the reason why I felt the best way to proceed with the Dole amendment would be with a motion to table.

Mr. BROOKE. I thank the Senator.

Mr. WALLOP. Mr. President, I would say to the proponents of the treaty that Senator Stevens and I will offer a very similar amendment to the last article of the treaty, and I hope that a point of

order on the basis that it had been a subject considered by the Senate will not be raised against it, because I do not think that the issue was fully aired; certainly, no arguments were made against it.

Mr. CHURCH. I would be happy to oblige the Senator in that respect. He now understands the circumstances of the peremptory vote on his amendment?

Mr. WALLOP. Yes, I do. I appreciate the Senator's courtesy, and I yield to my colleague from Wyoming (Mr. Hansen).

Mr. HANSEN. Mr. President, I shall not be long. I do not want to say, though, that I think we have had some very scholarly efforts made by a number of Senators to help explain and make sure that all of us may understand what the issues are—and they are very intricate indeed—as we consider the two treaties before us, one of which has already been ratified by the Senate.

The PRESIDING OFFICER. The Senate is not in order. Senators will please take seats. The Senator from Wyoming is addressing the Senate, and is entitled to be heard.

Mr. HANSEN. But I do want to pay particular tribute to the Senator from Michigan (Mr. Griffin) and to the Senator from Alaska (Mr. Stevens). I think that the research that preceded their offering amendments on the floor was very scholarly, very much in depth, and certainly would have presented the sort of issues to the Senate that, by any measure, by any rational consideration, deserved an up or down vote.

Now, it is my recollection that Senator Griffin's amendment was tabled, and I think the same fate befell the amendment of Senator Stevens. I believe that the people of the United States had a right to expect that Senators would be called upon to vote up or down on issues of the importance that I attach to those two amendments. It seems unfortunate indeed that, as we undertake the extensive and exhaustive deliberations on these treaties, we think it is not worthwhile to have each of us declare and go on record as to whether we favor or reject a particular amendment, as is done when we vote up or down on a motion to lay on the table rather than voting up or down on the issues. I do not believe we are encouraging the American people to believe we are as open and forthright in the consideration of these treaties as they would hope that we might be. I deplore the fact that we have pretty well established a technique for disposing of any amendment that is not looked upon with favor by the leadership—and when I say that, I include both the Republican and Democratic leadership, because as we all know, Senator Baker has been going along, and I am not criticizing him, with the Democratic leadership in trying to get these treaties ratified.

I believe we would do a far better job than we have done so far if we would vote up or down on these issues, and I am sorry that my colleague from Wyoming was not afforded the satisfaction of having Senators record their feelings on the merits of the amendment that he proposed, instead of having it handled in the preemptory fashion that was attached to it.

I am encouraged by what one of the prime sponsors of the treaty, the Senator from Idaho (Mr. Church), has said about his willing-

ness to permit up or down votes on substantive issues. I hope we will see that carried out in practice.

I thank my colleague from Wyoming.

Several Senators addressed the Chair.

Mr. WALLOP. Mr. President, I will yield in a moment, after I make one further comment, to thank my colleague from Wyoming (Mr. Hansen) for his contribution.

The PRESIDING OFFICER. Will Senators wishing to converse please retire to the cloakrooms? The Senate is not in order. The Senate will please come to order.

The Senator from Wyoming may proceed.

Mr. WALLOP. I thank the Chair. While the argument that I advanced may not have been the most compelling argument in the world, it was infinitely more compelling than any argument that was raised against it.

I yield to the Senator from North Dakota.

Mr. YOUNG. Mr. President, a most unusual thing happened to me last Saturday. The State commanders of the American Legion, the VFW, and the DAV called to thank me personally for my vote on Thursday against the Panama Canal Treaty. Charges have been made that only the real conservative organizations are opposing these treaties. You could not get much better representative of the thinking of good responsible thinking, I do not believe, than these three national veterans' organizations. This is the first time in 33 years that I have been in the Senate that those three leaders have called to thank me for a vote. This is the most unusual thing that has ever happened to me.

Mr. SCOTT. Mr. President, I have listened to the comments that have been made by a number of Senators, including the concern of the Senator from Massachusetts about the motions to table the great bulk of the amendments that have been offered, and I would say that is also true of the understandings and other efforts to change the treaties somewhat.

It is my understanding that only under Panamanian law, only the amendments, the contents of the treaty are considered to be binding on the Panamanian Government.

I am concerned that when these various amendments come up, the floor manager of the bill indicates that if we adopt an amendment, that Mr. Torrijos, the dictator of Panama, will not accept it and perhaps it will mean that the treaty will be vitiated; that it will not become a reality.

Well, now, you know, Mr. President, when I hear about the concern of General Torrijos it reminds me of the Uncle Remus story, the story of Brer Rabbit and the fox, and I believe that every Member of the Senate is familiar with this statement and whether the fox was going to drown the rabbit, the fox was going to burn the rabbit up, and the fox was going to do great harm and kill Brer Rabbit, and in many ways Brer Rabbit, each time, said, "Well, go ahead and do that but please don't throw me in the briar patch."

And Brer Rabbit finally was thrown in the briar patch. He was not drowned. He was not burned. No harm came to him.

And he said, "I was born and reared in the briar patch."

I have a hunch that General Torrijos, after final action is taken on these treaties and we have acceded to his demands that we not

have any amendments to the treaty, he will be glad that he has the title, the sovereignty, the control that he can do with this canal as he damn well pleases, and that is against the best interests of this United States.

I feel that we should amend or should reject these treaties.

Mr. LAXALT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. LAXALT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, is there an amendment pending at the desk?

The PRESIDING OFFICER. There is no amendment pending at the desk.

Mr. SARBANES. To article I.

The PRESIDING OFFICER. The Senator from Maryland has the floor.

Mr. ALLEN. I have an amendment.

Mr. SARBANES. Do I understand that the Senator from Alabama wishes to call up an amendment?

Mr. ALLEN. I have an amendment at the desk. I wrote it out just a moment ago. I ask that the clerk read my amendment.

The PRESIDING OFFICER. Is there a suggestion that we should call up his amendment?

Mr. ALLEN. I do not particularly care to call it up at this moment, unless we have an understanding as to whether there will be a motion to table prior to being given an opportunity to discuss the amendment.

I wonder if we might inquire of the distinguished majority leader if other votes tonight are anticipated?

Mr. ROBERT C. BYRD. Mr. President, I would hope that we could get Mr. Dole to call up his amendment—it has been discussed throughout the major portion of today—and possibly get a vote in relation thereto.

Does the distinguished Senator——

Mr. ALLEN. I have no objection. I merely did not wish to pass to the next article.

I have an amendment more or less in reserve to call up, if it is planned to go to the next article but I agree with the distinguished majority leader, as regards Senator Dole, inasmuch as we have discussed his amendment some 4 or 5 hours should, if he wishes, call up his amendment.

I am not trying to come in ahead of the distinguished Senator from Kansas.

Mr. HANSEN. Will the distinguished Senator from Alabama yield for an observation?

The PRESIDING OFFICER. The Senator from Maryland has the floor.

Mr. SARBANES. I yield to the Senator from Wyoming for a question, without losing my right to the floor.

Mr. HANSEN. I am surely not privileged or licensed to speak for the Senator from Kansas (Mr. Dole), but I would say that I hope

Senators might understand the manner in which most amendments offered by those of us who oppose the treaty have been handled so far does not encourage Senators to call them up and press for a vote, and if we could have a vote on the merits, as has been pointed out by my distinguished colleague from Wyoming, it would certainly help.

I do not know at all what the distinguished Senator from Kansas (Mr. Dole) may have in mind, as far as his amendment goes, but it seems to me that when a person works hard, is diligent and tries to understand the issue and tries to become better informed, as indeed Senator Dole and others have, it is a little discouraging to have few people, if any, on the floor and then to have practically nothing spoken in rebuttal, as was indeed the case when my colleague from Wyoming, to have someone get recognition of the Chair and move to table.

Now, obviously, most Senators who are away from the floor and who come in and ask what the issue is and are told that the prevailing side simply has moved to table, that is about all the information that the typical Senator has and Senator Dole might have, and I do not know at all that he did, but he might have had the feeling that if he were to push further this evening for consideration on his amendment, the best that he can hope for would be to have someone move that it be tabled, and most Senators would come in and support that tabling motion, having little, if any idea what the amendment was.

I could certainly understand why Senator Dole might have chosen—maybe he did, maybe he did not, I do not know if he did—to put his amendment down. I can well understand why.

I thank my colleague from Maryland for yielding.

(Mr. Hodges assumed the chair.)

Mr. SARBANES. Mr. President, let me just respond to that because I think it is important to do so.

The proponents of the treaties have on occasion moved to table amendments and on other occasions amendments have gone to a straight up or down vote.

Now the motion to table is a standard and respectable parliamentary procedure. Senator Dole has himself used it on a number of occasions in this body, which I have been a witness to.

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to interrupt him?

Mr. President, before the distinguished Senator from Washington leaves, we have heard a great deal today about this business if it does go to a vote up or down, look what is going on in the Senate here; look what the leadership is doing; we are being deprived of a vote up or down, the American people, when they catch on as to what is going on, and all that business.

Now, if you want to vote up and down on the Dole amendment, I ask unanimous consent that we vote in 5 minutes. Five minutes from now. Up or down.

Mr. CURTIS. Mr. President, reserving the right to object——

Mr. ROBERT C. BYRD. I want to call your hand up. Let us just vote up or down.

Mr. CURTIS. Reserving the right to object, tomorrow there are two important agriculture bills to be voted upon. It is my informa-

tion that the distinguished Senator from Kansas, who is the ranking minority member on the Committee on Agriculture, and the distinguished chairman of the committee, Senator Talmadge, are now in conference arranging for the presentation of that important legislation tomorrow. I do not think that due to the fact that this legislation is scheduled for tomorrow and it is important, that Senator Dole should be sent for and told in this great deliberating body of unlimited debate, if he is a good boy, he can have a vote in 5 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. HANSEN. Mr. President, reserving the right to object, and I shall not object, I am perfectly willing. I should have to say this: If we vote within 5 minutes on the Dole amendment, that is a lot better than we expected. I do not object.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. I object in Mr. Dole's absence.

The PRESIDING OFFICER. The objection is heard.

Mr. ALLEN. Besides, there is no amendment pending.

Mr. ROBERT C. BYRD. I can call up an amendment, precisely like it, of my own and move to lay it on the table, for that matter.

I have heard this all day long, the same old ritual, the same old record playing: "We cannot have an up or down vote."

We had some up or down votes on some amendments on the first treaty. The distinguished Senator from Idaho has said we will have some up or down votes on amendments to this treaty. That is a parliamentary technique that has been used since parliamentary bodies began.

Those who vote for a motion to table are voting against the amendment. I voted for the motion to table. I voted because I am against the amendment.

I know what these amendments will do. They will open the treaties to renegotiation. That allows the other party then to come in and ask for a quid pro quo. So let us have a vote up or down on the amendment.

Get in touch with Mr. Dole. Let us get a vote.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Let me offer a further suggestion. I wonder if the opponents to the treaty would agree to a vote up or down on the Resolution of Ratification by no later than, say, 6 o'clock this coming Thursday, provided we have up or down votes on all amendments in the meantime? I should like to offer the opponents that opportunity, to vote up or down on the treaty.

We have debated this. We are in our 6th week now of debating this treaty, because it was debated along with the other treaty, before we voted on the resolution of ratification.

There has been ample debate and the reason there are only five or six Senators on the floor, as someone has said, is that they have heard these arguments over and over. They have heard the same old argument so many times that they do not need to be on the floor to know what has been said. So let us have a vote. Let us get this thing behind us and get on with other business. I ask the opponents if they are willing to have a showdown vote up or down—to vote up or down—on the treaty no later than 6 o'clock this coming Thursday. Then we will go out for the legislative

holiday and we will come back and we will be ready to start on other matters. But if we are not going to have an agreement, let us just inform our colleagues here and now—here and now—that the legislative holiday is going to be cut in half. If we do not get an agreement, we shall just be out on Good Friday and Good Saturday and Good Sunday, and Monday and Tuesday, and come back on Wednesday.

Of course, there will be votes, because any Senator can call up any amendment. He does not have to call up his own. He can call up someone else's.

For that matter, I can put in amendments of my own, call them up, and move to lay them on the table.

I implore my friends who are opposing this treaty to consider the suggestions I have made: get an agreement to vote up or down on the treaty by no later than 6 o'clock p.m. this coming Thursday, and get it all behind us after 6 weeks of debate. In the meantime, vote up or down on all the amendments.

Mr. THURMOND. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. SARBANES. Mr. President, I have the floor. I yield to the Senator from South Carolina for a response without losing my right to the floor.

Mr. THURMOND. Mr. President, I just want to call to the attention of the distinguished majority leader that the able Senator from Kansas was here most of the day and he would have consented to a rollcall vote up or down, but the proponents of the treaties never did consent. He wanted an up-or-down vote. They would not give him an up-or-down vote. He was here and wanted it. Now he has gone, working on an Agriculture Committee matter which is very important, because the farmers cannot survive unless we do something. He is doing his duty there.

I am sure he will agree to an up-or-down vote as soon as he comes back. If we can get him back here, I am sure he will agree.

I thought I ought to call that to the attention of the distinguished majority leader.

Mr. SARBANES. I would hope so, and I think I ought to add to the record, for the information of the Senator from South Carolina and others, that the Senator from Kansas, in effect, said that unless he got an up-or-down vote, he did not intend to let his amendment go to a vote. That if a motion to table were in prospect he would then go on for days. Under those circumstances, his attitude obviously affected the perspective with which one viewed his position, understandably so.

I see the Senator from Kansas has now come back into the Chamber and I think that, perhaps, we may be able to go to an up-or-down vote in a few minutes on his amendment.

I yield to the Senator from Kansas without losing my right to the floor.

Mr. DOLE. I do not know what has been said. I have been meeting with Senator Talmadge on tomorrow's legislation.

The Senator from Kansas is willing to agree to vote almost immediately on an up-or-down vote.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. SARBANES. I yield.

Mr. ROBERT C. BYRD. I say to the distinguished Senator from Kansas that I have just proposed that there be a vote on the amendment of the Senator from Kansas, up or down, within 5 minutes?

Mr. DOLE. Could I have about 2 minutes of the 5?

Mr. ROBERT C. BYRD. With the time to be equally divided in accordance with the usual form.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DOLE. Mr. President, I shall make my statement very quickly, since there are probably more Senators in the Chamber now.

The PRESIDING OFFICER. Will the Senator call up his amendment?

AMENDMENT NO. 69

Mr. DOLE. I call up amendment No. 69 to article I.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. Dole) proposes and amendment numbered 69. At the end of article I, add the following:

5. For the duration of this Treaty and consistent with the provisions of Article IV, the Republic of Panama and the United States of America agree that, subject to the other provisions of this Treaty, only the military forces, defense sites, or military installations of the Republic of Panama or of the United States of America may be maintained in the national territory of the Republic of Panama.

Mr. Dole. Let me say this very quickly, and I should like to reserve 30 seconds of the 2½ minutes: This amendment has one purpose in mind. That is to insure that no foreign military presence other than that of the United States will be established within Panamanian territory between now and the year 2000.

We have argued this amendment and debated the amendment at some length. It seems to me that that is in our interest and is in the interest of Panama. It is going to happen after the year 2000. That is already in the Neutrality Treaty.

It is not a hostile amendment, it is not a killer amendment. It is an amendment offered in good faith to strengthen the treaty.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I said earlier in the debate that if you have a good neighbor, you do not ask that neighbor to protect the neighborhood by promising you in writing not to let the Mafia use his house. For 75 years, Panama has been a good neighbor. Never have they let foreign troops on their soil. One of the chief reasons they want this treaty is in the hope that, one day, only Panamanian troops will occupy Panamanian soil. It is highly unlikly that they will change their attitude between now and the end of the century. But if they do, American troops will be present to protect American interests. This is a very unwise amendment. It should be rejected in the interest of preserving our friendship with

the Panamanians, which is the best security we have for the canal and our interest in it in the future.

Mr. JAVITS. Mr. President, if the Senator has any time, I would like to say I shall be against it and vote "no," because it relates to the whole Republic of Panama. After all, what this is all about is that Panama is seeking to recapture its dignity. If we are there and we have not the ability and the presence to keep foreign troops out, it is a pretty sick day for us. I think this negates the whole reason for which the Panamanian people are seeking this treaty., It is to give them national standing and respectability. I hope very much that the Senate rejects the amendment.

Mr. DOLE. I yield the remainder of my time to the Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from Kansas for yielding to me.

Mr. President, the Neutrality Treaty that was agreed to last Thursday provides that Panama shall not permit any foreign troops to be on Panamanian soil.

If that is going to be the rule from 2000 on, why should it not be the rule between now and 2000, especially since the United States will have troops there until the year 2000 and the United States will not have troops there beyond the year 2000?

There is less necessity to have troops between now and 2000 with the American troops being there than there is to have troops, foreign troops, there after the year 2000.

If they do not need them after 2000, why do they need them before the year 2000 with the United States there to defend the canal?

I hope the amendment will be agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. Moynihan addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized for 30 seconds.

Mr. MOYNIHAN. Mr. President, I cannot conceive that anybody would responsibly suggest this amendment is not profoundly altering our agreement with Panama and would be altogether unacceptable by Panama.

Is there no man in this Chamber on the other side with any experience in foreign affairs, of any confidence for foreign affairs, of any sensibility about what is required of a great nation in its dealing with small nations?

Mr. President, this amendment is a monstrosity. It suggests a fearful nation and a declining one, and I will have nothing to do with it because we are neither. We are great and powerful and an indispensable nation to the liberties of the world and we will not stand here and cringe in front of the fears of uninformed men.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from Kansas has 30 seconds.

Mr. DOLE. Mr. President, I agree with the distinguished Senator from New York. We should not look to uninformed men. I therefore, suggest we vote for the amendment.

I yield back the remainder of my time.

Mr. Melcher addressed the Chair.

The PRESIDING OFFICER. All time has been yielded back.

The Senator from Montana.

Mr. MELCHER. Mr. President, I ask unanimous consent for 2 additional minutes for myself because I was in the Chair during much of the time when this was debated and could not enter into the debate. I ask unanimous consent for 2 additional minutes.

Mr. ROBERT C. BYRD. Mr. President, there should be an equal amount, may I say respectfully to the Senator, 2 minutes for Mr. Church.

The PRESIDING OFFICER. Is there objection to 2 minutes for Mr. Melcher and 2 minutes for Mr. Church?

Without objection, it is so ordered.

Mr. MELCHER. Mr. President, i am going to vote for this amendment. I am not going to vote for this amendment to abuse Panama on any basis, nor that we are crining in this country for wanting the amendment.

I am going to vote for it because in discussions with the Panamanian Government leaders a few weeks ago and with General Torrijos, this is exactly what the treaty meant, that there would not be any other troops between now and the year 2000, other than American and Panamanian troops in Panama.

The canal is strategic. It is important to us. That is why we can adopt this amendment because it agrees with what General Torrijos and the Panamanian Government officials have told us, that there will not be any other troops of any other foreign country in Panama between now and 2000.

That is all the Dole amendment declares. It carrys out that purpose.

For that reason, I will vote with Mr. Dole for the amendment.

Mr. Sarbanes addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. Sarbanes).

The SARBANES. Mr. President, since the 1903 treaty has been in effect, Panama has had the right to invite foreign troops into the Republic of Panama. It has not done so. It has not done so and we have had a close relationship between the United States and the Republic of Panama.

There is no expectation that Panama wishes to do so between now and the end of the century; a time period when we will have a continued American military presence in Panama. At some point there must be an understanding of the decent sensibilities of other people——

Now, we do not ask for this kind of condition in any agreements we have with any other country where we have an American military presence. We do not come in, and with respect to their sovereignty and their independence to make their own decision, say not only, "Let us in," but "sign on the dotted line no on else will come in." That is understood and it is carried out that way. Why is there in this Chamber this desire to rub the faces of people into it.

The 1903 treaty does not preclude the presence of foreign troops in Panama and they have not been there. now we seek to make explicit something that has always been understood, and the implication of making it explicit is to take away from a people their own right to make decisions just like other people.

We do not ask the same thing out of Spain, or out of Britain where we have American bases, or out of the other NATO countries, out of Germany.

Mr. DOLE. We do not have a canal there, either.

Mr. SARBANES. We do not ask them to make the same representations to us. Yet, we want to come along and impore this here. We have our presence there. We can protect our interests.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Montana has approximately 1 minute.

Mr. MELCHER. Mr. President, I want to state that, of course, this treaty is a different kind of agreement than other treaties with other countries. This is a treaty dealing with the Panama Canal, which is strategic to us, as it is for all of the rest of the countries of the world that use it in commerce.

We do not have a similar agreement with Spain or with Great Britain or other countries because it is a different set of circumstances and the treaties with them involve an entirely different subject and different circumstances.

This treaty with Panama involves the canal. We have a vital stake in it. We have a great responsibility for it. That is why there are different circumstances involved with this treaty and our agreeing to it than there are with other treaties with other countries throughout the world. The amendment is pertinent and carries out the mutual concept we have with Panama.

Mr. WALLOP. Will the Senator yield the remainder of his time?

The PRESIDING OFFICER. The Senator has 5 seconds.

Mr. WALLOP. I would just ask, how many Cubans defended Ethiopia since 1903?

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Kansas. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ZORINSKY [after having voted in the affirmative]. On this vote I have a pair with the Senator from Maine (Mr. Hathaway). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withdraw my vote.

Mr. FORD (after having voted in the affirmative). On this vote I have a pair with the Senator from Colorado (Mr. Haskell). If he were present and voting, he would vote "nay." If I were permitted to vote, I would vote "yea." I therefore withdraw my vote.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Colorado (Mr. Haskell), the Senator from Maine (Mr. Hathaway), the Senator from Kentucky (Mr. Huddleston), the Senator from Massachusetts (Mr. Kennedy), the Senator from South Dakota (Mr. McGovern), the Senator from Maine (Mr. Muskie), and the Senator from Alabama (Mr. Sparkman) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Arizona (Mr. Goldwater), the Senator from Michigan (Mr. Griffin), the Senator from Kansas (Mr. Pearson), the Senator from Illinois (Mr. Percy), and the Senator from Pennsylvania (Mr. Schweiker) are necessarily absent.

I also announce that the Senator from Maryland (Mr. Mathias) is absent to attend the funeral of a former Senator.

The result was announced—yeas 39, nays 45, as follows:

[Rollcall Vote No. 68 Ex.]

YEAS—39

Allen	Hansen	Randolph
Bartlett	Hatch	Roth
Bellmon	Hatfield,	Schmitt
Bentsen	Mark Paul G.	Scott
Brooke	Hayakawa	Stennis
Burdick	Helms	Stevens
Byrd, Harry F., Jr.	Johnston	Stone
Cannon	Laxalt	Talmadge
Curtis	Long	Thurmond
DeConcini	Lugar	Tower
Dole	McClure	Wallop
Domenici	Melcher	Young
Eastland	Nunn	
Garn	Packwood	

NAYS—45

Abourezk	Durkin	McIntyre
Anderson	Eagleton	Metzenbaum
Baker	Glenn	Morgan
Bayh	Hart	Moynihan
Biden	Hatfield, Mark O.	Nelson
Bumpers	Heinz	Pell
Byrd, Robert C.	Hodges	Proxmire
Case	Hollings	Ribicoff
Chafee	Humphrey	Riegle
Chiles	Inouye	Sarbanes
Church	Jackson	Sasser
Clark	Javits	Stafford
Cranston	Leahy	Stevenson
Culver	Magnuson	Weiker
Danforth	Matsunaga	Williams

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Zorinsky, for. Ford, for.

NOT VOTING—14

Goldwater	Huddleston	Pearson
Gravel	Kennedy	Percy
Griffin	Mathias	Schweiker
Haskell	McGovern	Sparkman
Hathaway	Muskie	

So Mr. Dole's amendment (No. 69) was rejected.

Mr. CRANSTON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

[Mr. Moynihan, Mr. Robert C. Byrd, and Mr. Thurmond addressed the Chair.]

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I thank the Chair, and I would like to take a moment, because perhaps there were just a few Senators here, to respond——

Mr. LEAHY. May we have order?

The PRESIDING OFFICER. The Senator from New York will cease until there is order in the Senate.

The Senate will be in order. Members will cease conversation. The Senate will please come to order.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, as has been observed, we are now in the sixth week of debate on these treaties. By comparison the North Atlantic Treaty occupied 12 days of the Senate's time. And we begin to enter into a period where standards are collapsing.

The distinguished Senator from Wyoming this afternoon submitted an amendment to this treaty which was so devoid of intellectual content or even rhetorical merit as to literally silence the supporters of these treaties. He rose and said, in the aftermath of the defeat of the amendments, that not one word of argument had been presented against it. Did he ever stop to consider that the proponents of the treaty might have been showing mercy, that they might have wished to spare him any elaboration on the proposition that a Member of the U.S. Senate has stood up and proposed that the United States in certain circumstances would claim rights under nonexistent treaties?

Article I of the treaty before us abolishes the 1903 treaty and the 1936 treaty with Panama.

Having been abolished, the treaties ceased to exist. And in the name of heaven to what recourse can you claim somehow, now there is subsequent revival and resurrection in consequence of your own annoyance? It will not work.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. MOYNIHAN. The Senator will not yield for the moment.

Mr. President, a moment ago I left the floor. I called Medford, Mass., and I spoke to what is perhaps the leading international legal scholar in America, possibly the world, today, Dr. Leo Gross. Dr. Gross did his work in Vienna, who was for a long time an official of the League of Nations, who taught at the Fletcher School of International Law and Diplomacy at Harvard University for a distinguished generation of diplomats after the Second World War, and I read to Dr. Gross this amendment of the Senator from Wyoming. Dr. Gross by definition, having given his life to the study of international law, does not have many laughs; there are not many chuckles in the day of a professor of international law. Leo Gross was reduced to laughter. He finally stopped and said:

> Nothing is beyond the imagination of a Senator, I suppose, but such a proposal would be meaningless unless accepted by the other side. You cannot claim rights under a nonexistent treaty.

Are we going to ask the world to look down upon us as persons who have no standards of argument, of the logic of a sentence, of the empirical basis of an assertion of fact?

Here is the United States of America that launched the Marshall plan, what Winston Churchill called the most generous and selfless act in the history of mankind, and this same U.S. Senate, which approved the Marshall plan, is going to spend some time trying to get $10,000 out of the Panamanians in the unlikely event that by 1993 the account may be in surplus.

We are going to ask the American Republic to be reduced to the circumstance of meanness and trivia.

Mr. President, there is a reputation of this Senate involved. I thank the Chair.

Several Senators addressed the Chair.

Mr. HANSEN. Mr. President, my good friend, the distinguished Senator from New York, has spoken about my colleague from Wyoming (Mr. Wallop), and I regret that Mr. Wallop is not on the floor at the time. I know that from what my colleague from New York says apparently the amendment that was offered by my colleague from Wyoming (Mr. Wallop) caused him to evidence some humor.

All I can say is that if the junior Senator from New York's friends were to observe what goes on on this floor, as some of us have, I am sure he would become almost hysterical in his humor because if the amendment offered by my distinguished colleague would evoke that much humor and mirth, I can hardly imagine how funny, how ridiculously funny, would be the antics of the full Senate if he were to watch us all the time.

I would hope that my colleague from Wyoming might be permitted to be recognized when he comes onto the floor. I think he has gone to his office, and I know that my good friend, Mr Moynihan, would want very much to afford him the opportunity of responding to the remarks which I do not think were intended to be critical, but I must say I am a little surprised that he would seemingly imply that there was so little merit in them.

I thought the amendment offered by my colleague did have merit, and I would hope that when he comes to the floor, as I understand he shortly will be doing, that he might be recognized and afforded as much time as my friend from New York.

The PRESIDING OFFICER [Mr. Matsunaga]. The Senator from New York.

Mr. MOYNIHAN. Just briefly to state, of course, I should await the Senator from Wyoming's return. Clearly I did not intend by speaking to his amendment in his absence to do him any discourtesy. I was trying to make a general point about relevance in our debate.

I should be happy to talk with him. He is, of course, the most careful of persons. It is simply I fear that having strayed into international law he has got a principle wrong. I shall be happy to explain that to the best of my limited ability when he does return.

Several Senators addressed the Chair.

Mr. HANSEN. Mr. President, I would be happy to yield to my friend from Alabama.

The PRESIDING OFFICER. The Senator from Wyoming has the floor.

Mr. ALLEN. Is it not correct that some 36 Senators voted along with the Senator from Wyoming for this amendment? As the distinguished Senator from New York criticizes and makes light of the, as I gather it, mentality of the distinguished Senator from Wyoming, does he not also level the same indictment at 36 other Members of the Senate?

Mr. MOYNIHAN. May the Senator from New York respond?

Mr. HANSEN. I would be happy to yield.

Mr. MOYNIHAN. The Senator from Alabama, if he would do me the justice to listen to me, would know that no scintilla of suggestion was made by me with respect to mentality of those who voted for this treaty.

Mr. ALLEN. I thought he compared them with 5-year-olds who are not generally compared to a U.S. Senator.

Mr. MOYNIHAN. I compared it to the psychology, not mentality. There is a difference in my view.

Mr. ALLEN. I see.

Mr. MOYNIHAN. I said that to suggest that one could unilaterally impose upon another nation such a condition is to suggest that which is absurd, and it opens the Senate to the charge of absurdity.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. ALLEN. I thank the Senator for a clarification of his remarks.

Mr. CHAFEE. I would like to just say the Senator from New York was long on humor but I do not think he was long on accomplishing the goals. He stirred some people. A lot of laughs over there, great chuckles, but I do not think he is advancing his cause one bit.

I thank the Chair.

The PRESIDING OFFICER. Will the Senator from Wyoming yield the floor?

Mr. HANSEN. I yield to the Senator from Utah.

Mr. ROBERT C. BYRD. Mr. President will the Seantor allow me, yield to me? I simply want to state there will be no more rollcall vote today, Mr. President.

Mr. HATCH. Let me just say this: I thank the distinguished Senator from Wyoming for yielding. There are very few people in the Chamber whom I enjoy as much as I do the distinguished Senator from New York. As a matter of fact, I think he has in many cases shown a brilliant intellect, a very brilliant mind, a very facile way of speaking. But before I came over here I had to admit we just had in essence 41 votes on the Dole amendment, which he did not call a name, but at least he indicated that anybody who would vote for it or at least present it did not know much about foreign policy. That may be so. It may be that the distinguished Senator from New York knows more about foreign policy than anybody else in the United States of America.

Mr. DOLE. He does.

Mr. HATCH. I will say this, in fact I will be willing to say, that it is a distinct possibility that he does.

When he was at the United Nations I enjoyed ever ounce of his service at the United Nations, and I appreciated it very much.

But I think it may be one thing to criticize a colleague on the floor of the Senate who advances, as I know Senator Wallop had done, sincerely and in a dedicated fashion an amendment in which he believes. To call it inane, childish, and stupid and every other word in the book that was used, and then rely upon an international lawyer from New Bedford, I guess it was—was it New Bedford?

Mr. MOYNIHAN. Leo Gross.

Mr. HATCH [continuing]. Who said it would be meaningless, this amendment, unless accepted by the other side.

Now, I think if the distinguished Senator from New York would stop and think about that, any Senator in the U.S. Senate can offer an amendment which, if this treaty is abrogated, assuming it is

enacted, would reinstate the 1903 treaty, and if they do agree it would be acceptable and he has a right to do so.

Mr. MOYNIHAN. Will the Senator yield for a question?

Mr. HATCH. Yes.

Mr. MOYNIHAN. Would the Senator restate the proposition?

Mr. HATCH. As I understand it, you stated that Leo Gross described that it would be meaningless unless accepted by the other side, meaning we can offer that amendment, and if it is accepted it would not be meaningless, which is exactly what Senator Wallop wanted to do, because he knows as well as the distinguished Senator from New York that if you would offer an amendment on this floor, the only way it is going to be accepted down there in by plebiscite or unless the dictator says he will accept it, which will then not be valid if he is succeeded by another dictator who does not recognize the amendment.

All I am saying is this: Again, and I will preface my remarks with my regard for the distinguished Senator from New York who, I think, is very witty at times, but I personally felt he was not very witty today. It is the first time when he has evidenced humor that I have not found it to be humorous, and the reason I have not is because I think it has been demeaning to an awfully fine, distinguished, decent man on the floor of the Senate named Malcolm Wallop who, I think, offered a very sincere and dedicated amendment, in which 36 Senators concurred.

I think it is demeaning to the 36 Senators.

I will say this much more: I think the distinguished Senator from New York is entitled to express his opinions with regard to how meaningless that amendment may be. My only request is that he do so with greater courtesy, that he show courtesy, dignity, and respect, as I think Senator Wallop has shown to every man in the Senate Chamber.

I think if the distinguished Senator from New York would do that he would have even more power and more visible acceptance and, I think, expression, which would be acceptable to other Senators on the floor of the Senate.

What I would like to just add, in conclusion, is that I hope this does not affect the relationship I have with the distinguished Senator from New York because I like him so much. But I do not think, however brilliant a man may be, and I think we have an awful lot of brilliant people here on the floor on the Senate, that that man or any other Senator has the right, the privilege, or even the capacity, in a very real sense, to be rude.

My interpretation may be faulty, but it I interpreted it right I felt the distinguished Senator from New York was rude to a fellow. If I am wrong I certainly apologize, but that was my personal interpretation of it. I think he made light of and had a humorous time at the expense of a very dignified and fine colleague, who would not do the same to him.

I would say that from my observation of these treaties and these debates, I have seen a great lack of understanding of international law by many Senators on the floor of the Senate, including perhaps even the distinguished Senator from New York, and including myself. We are all going to have to study a little bit harder. It would be wonderful if Leo Gross had found the price to run for

office and become a U.S. Senator, so that he could enlighten all of us on the floor of the Senate. But I would imagine even if the famed Leo Gross were here on the floor of the Senate enlightening all of us, he would find arguments against some of his opinions and theories cannot be questioned.

Mr. MOYNIHAN. Will the Senator yield, so that I might respond?

Mr. HATCH. If the distinguished Senator from New York will allow me to finish——

Mr. MOYNIHAN. Yes, when you conclude.

Mr. HATCH. I promised to yield to the distinguished Senator from Alabama, and then I will yield to you.

The PRESIDING OFFICER. The Senator from Wyoming still has the floor. It is up to the Senator from Wyoming to whom he yields.

Mr. HATCH. May I finish?

Mr. HANSEN. I continue to yield to the distinguished Senator from Utah.

Mr. HATCH. I would say again, without a desire to cause offense to any of my colleagues, and especially my friend and brilliant colleague from New York, that I do not know a man on the floor of the Senate who is more sincere or more dedicated, who works harder, who does more good, who literally has pleased more people, or who has any more talents than my friend and colleague from Wyoming who has been so severely criticised on the floor of the Senate today, whether rightly or wrongly; I believe wrongly.

On the other hand, I think it is the right of any Senator to ridicule or find fault with any argument made on the floor of the Senate. I just think it should be done with dignity and courtesy. I suppose we will all be guilty of breaching this from time to time, but when I look at some of the programs that have been offered by this administration, including these treaties, with all their frailties and faults and problems, and, I would add, breaches of international law, to have anybody on the proponents' side of these treaties stand up and ridicule, if you will, a sincere, dedicated Senator who is opposed to the treaties is almost laughable, when you consider all of the matters and all of the ramifications involved here.

In closing, I would just like to say that I personally was basically offended for my colleague. Since he is not here, I felt constrained to stand up and express my viewpoint that if you put two international lawyers together, just like two psychiatrists, you are going to find a variance of opinions, no matter how brilliant they are. I would suspect that if you put two U.S. Senators together on opposite sides of this issue, you would see some awful differences of opinion.

We have been fighting together for a long time on these particular treaties. In the opinion of some of us, these treaties are of immense importance. Maybe the time should be shortened, and I personally will work to try to do that, as will other Senators opposing these treaties.

On the other hand, I would hope we would have mutual respect between the two opposing sides, so that we can continue to work together, and so that whatever the result, we will all feel at least that there has been fairness on each side.

Mr. MOYNIHAN. Mr. President, will the Senator from Wyoming yield to me, so that I may reply?

Mr. HANSEN. I yield to the Senator from New York.

Mr. MOYNIHAN. I thank my friend from Wyoming.

Mr. President, most explicitly, what I should have thought was very clear, there was no personal aspersion intended in what I said. I spoke to the nature of the proposition. I hope the Senator from Utah knows I would be incapable of being rude to the Senator from Wyoming, a fellow Member of our freshman class.

Mr. HATCH. I would have hoped that that was the case.

Mr. MOYNIHAN. I thank the Senator for making that clear.

But having said that, perhaps one should speak to those who are trying to defeat this treaty by offering a succession of nongermane or irrelevant or illogical or unimaginable propositions put to a vote in the Senate, some of which have the quality of intimidating Senators who are really for the treaty, but do not want to seem to be against the seeming logic of this or that proposition. If you do not support this treaty, say so. But, gentlemen, we are not negotiating the treaty. We are advising the President and counseling as to whether or not he should ratify it.

We are not negotiating. We cannot unilaterally amend it so as to change its meaning. That is not a constitutional function of this body.

The opponents of the treaty ought to stand up and say why they do not think the treaty, as negotiated, is a good one, and then proceed to vote against it. They ought not to present to us as solidly judged matters which are wholly ultra vires.

I put to you that this is something so large that the proponents of this treaty are going to feel free to comment on the irrelevancies the opponents present to us, if indeed they continue to do so. I feel we have no other recourse, because we feel very much that these treaties should be considered on their merits, and neither this Chamber, this country, nor the world should be distracted by inane and impossible proposals. I do not think that serves the opponents' purpose, and I do not think it serves the Nation's purpose. But I hasten to say that I meant no discourtesy of any kind to the junior Senator from Wyoming.

Mr. HANSEN. Mr. President, I propose to make a very brief statement, and then yield to the Senator from Alabama; at that point I shall yield the floor.

The Senator from New York said "Let us be specific." I would just like to ask him if the different adjectives he used applied specifically to the amendment offered by the Senator from Wyoming (Mr. Wallop).

Mr. MOYNIHAN. Which adjectives?

Mr. HANSEN. Well, you used several a few moments ago. Frivolous—maybe that was not one of them, but you used several.

Mr. MOYNIHAN. I would say illogical.

Mr. HANSEN. Now, you are speaking about the amendment offered by Mr. Wallop?

Mr. MOYNIHAN. Yes, that particular one.

Mr. HANSEN. And how do you characterize his amendment?

Mr. MOYNIHAN. Illogical, and incapable of implementation on the face of it. Not something that we could do.

Mr. HANSEN. The reason why I wanted to be specific on that point, Mr. President, is just this: My colleague, I think very wisely,

will not be here this evening, because it would be awfully easy, when tempers may flare just a little, to come to the floor and say things that any of us might regret. So I think my colleague very wise, since he was absent from the floor when the distinguished Senator from New York, Mr. Wallop's friend and mine also, spoke, since he was not here I think it best that he has concluded, as he has, that he will not come here to speak tonight.

I would hope that he might be recognized sometime tomorrow, if he cares to be, in order to explain the reasons which compelled him to offer the amendment. I have no doubt at all but what he will do that.

I just repeat again I do not think he intended in any way to offer an amendment that was frivolous, or which was poorly thought out, or which had little merit. I think he has been very diligent in this whole matter. I greatly respect and admire him for it.

Having said that, I yield to the Senator from Alabama and yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is reminded that under the rules he may not yield to another but the Chair will recognize another if the Senator yields the floor.

Mr. HANSEN. Mr. President, I yield the floor.

Mr. ALLEN. Mr. President——

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I thank the Chair.

We all recognize the supremacy of the distinguished junior Senator from New York in the area of foreign relations. We recognize his great expertise in that area, as much as he served as U.S. Ambassador to the United Nations and gained much favorable attention there through his fine work in the interests of the people of the United States.

I wish that he would have made these comments while the amendment was pending. Possibly if he had pointed out these various criticisms that he voiced after the amendment was defeated, the distinguished Senator from Wyoming might possibly have adjusted his amendment to meet the distinguished Senator's suggestions.

Another thing I would like to comment on with respect to the comments of the distinguished Senator from New York is he points out that the Senate is not writing this treaty; that we are just advising with the President; that it is up to the executive to write the treaty and we advise.

We are not supposed to just take it as it is or not take it as it is. It is part of our function to shape this treaty, as I see it. Of course, we have been prevented from shaping the treaty by the leadership. But it is well within the concept of giving advice to advise the President, "Yes, this treaty is all right, with this amendment, with that amendment and with another amendment."

The Senator says it cannot be amended unilaterally. Of course that is true. It would take the assent of the other party. That is what we want. We want to see Panama give its assent to such amendments as the Senate might adopt through Panama's constitutional processes, which they say would require a plebiscite if any substantial amendment is adopted.

Mr. STEVENS. Will the Senator yield?

Mr. ALLEN. That seems to be the position of the leadership. I yield for a question.

Mr. STEVENS. The Senator from New York implies that we have no business in trying to change this treaty on the floor of the Senate. I wonder if we would have the constitutional prerogative that we have to review this treaty article by article and consider amendments if all we were required to do is either rubber stamp or reject the treaty negotiated by the executive branch.

Mr. ALLEN. I think that is an excellent point. We do consider it article by article. Right now we are on article I.

Mr. STEVENS. If the Senator will yield again, I am sure my friend from Alabama heard the statement I made the other night concerning the fact that Panama had, in fact, declared unconstitutional the Geneva Convention of 1949 that it had ratified because it had failed to comply with its own domestic procedures when it ratified that document. Its own supreme court declared that the treaty was not binding upon Panama.

I wonder if the Senator has a feeling about how we would get the Panamanians to agree to a reservation, understanding, or declaration that we might attach to it if, under their domestic law, they choose to ignore it, as they did the Geneva Convention on the Red Cross.

Mr. ALLEN. I think unquestionably with the Panamanian Government, if they saw fit not to submit any amendment to a plebiscite, we would not raise that point. It has been pointed out here on the floor by myself and others that the ratification of the treaty could not be attacked collaterally, that is, as to whether Panama took the necessary steps as provided by its constitutional procedures.

I do appreciate the remarks of the distinguished Senator from Alaska and the great point that he made, of why are we considering this treaty article by article unless there is some thought that we might want to possibly offer a strengthening amendment.

Mr. LEAHY. Will the Senator yield for 2 minutes without losing his right to the floor?

Mr. ALLEN. Yes; I yield under those conditions.

The PRESIDING OFFICER. Without objection, the Senator from Vermont is recognized for 2 minutes.

(Mr. Leahy's remarks at this point are printed later in today's Record.)

Mr. THURMOND. Will the Senator from Alabama yield?

Mr. ALLEN. I have one further comment and then I will yield to the distinguished Senator.

Mr. President, the Wallop amendment and the dim view the distinguished Senator from New York took of it, and the jocularity it produced in the humorless professor from Harvard, reminds me somewhat of the incident related in the Bible when Paul was appearing before Festus, the ruler in that day. Paul made his speech there before Festus, and Festus said, "Thy great learning has driven thee mad."

I do not feel that the great learning of the distinguished Senator from New York has driven him mad, but if we substitute the words "impetuous, reckless and intolerant" of the views and workman-

ship of the distinguished Senator from Wyoming (Mr. Wallop), I feel that that might well be viewed by some as a correct statement.

Now I do yield to the distinguished Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

THE PANAMA CANAL TREATY

The Senate resumed the consideration of the treaty.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. THURMOND. I want to thank the distinguished Senator from Alabama for yielding the floor to me.

Mr. STEVENS. Mr. President——

The PRESIDING OFFICER. The Senator from Alabama has the floor.

Will the Senator from Alabama yield the floor?

Mr. ALLEN. I do yield the floor.

Mr. STEVENS. Mr. President——

The PRESIDING OFFICER. The Senator from New York receives recognition.

Mr. MOYNIHAN. I thank the Chair.

Mr. President, perhaps it is best simply to conclude this little exchange tonight by saying that I believe it is the view of at least some of us, and more perhaps than just a few who are proponents to this treaty that the President has the right to have it discussed at a level of realistic and candid assertion of what is being proposed, and for what purpose.

The effort to bring it down by prolonging the process of the deliberation is really not becoming of this Chamber and certainly would be resisted by those who wish to see the President's work unaccomplished. It is not just his work. It is the work of the last four Presidents. We have certainly a responsibility to take seriously our duties to advise and consent and to do it with equal expedition and reference to real ideas and hard facts, as the President's negotiators who have brought this treaty to us.

In no sense do I suggest, as I fear the Senator from Alabama may have misunderstood me to suggest that I had any great learning in this matter. I went out of my way to consult one of the Nation's recognized authorities to make sure that what seemed on the surface to be inane—I repeat that word—as an idea was indeed just that; at least in the judgment of one person that was indeed the case.

And it is one thing to identify it inappropriate and irrelevant and to so state, and another thing to be intolerant of alternate views. I would suggest, if anything, there has been an excess of tolerance in this debate, as day after day we have gone on with great patience listening to some persons who obviously feel stronger, and at much greater length than would be the normal distribution of time on the Senate floor, but it is within our right, and we somewhat take our responsibilities to declare that to identify as irrelevant and inappropriate and on the face of matters not to be taken seriously those things which we feel to be of that order.

I thank the Chair.

Mr. STEVENS. Mr. President.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I have great respect for the Senator from New York, in the field of foreign affairs, but I have little regard for the comments he just made concerning the attitude of those of us who have walked the narrow road trying to make the treaties acceptable to the people of the United States. There are people who are, I think, blindly proponents of these treaties. There are others who are blindly opponents of these treaties and there are some of us who have worked very diligently to try to change them so that they might be agreeable to the majority of the people of this Nation.

I think I am one of those who has tried and has done a great deal of work to try and change it and it just so happens that prior to the time my good friend from Wyoming offered his amendment, we had drawn an amendment to accomplish the same thing, which I shall hope I will share with the Senator from Wyoming (Mr. Wallop), to article XIV because our research shows us that Panama does in fact have a way to ignore the reservations, declarations, and understandings that under our law we might attach to these treaties. Reservations, declarations, and understandings which might seduce some people to support the treaties may well be ignored in Panama, unless there is an amendment placed in the body of the treaty which says, in effect, that if they ignore the will of the U.S. Senate, as expressed in a reservation and understanding, or a declaration, then the treaties which were superseded by this treaty would come back into force and effect.

There is no way I know for us to invade the domestic law of Panama and to make a reservation, a declaration, or an understanding binding upon Panama. Unless the treaty has a mechanism to in effect make the treaty void, if Panama ignores these declarations, understandings, or reservations then Panama would have no reason to recognize the reservations, declarations, and understandings passed by the U.S. Senate.

Now I think——

Mr. ROBERT C. BYRD. Mr. President——

Mr. STEVENS. I see my good friend from West Virginia rising and I have no greater respect for any man in this Senate than my good friend from West Virginia.

I think I spent a lot of time on this and I think I have been involved in the practice of law long enough to understand the treaty and its implications as well as anyone else here.

You may disagree with me, but I would not like to have my amendment referred to as being inane and inept, and like those offered by people who are merely trying to delay the process of the Senate. Mr. President, as I said in my question to my good friend from Alabama, if we do not have a role in trying to shape this treaty so it is acceptable to the people of the United States, what are we doing here? Why do we go through article after article? Why do we have the process of amendment? Why do we not just have a reservation process?

I yield to my good friend, if he wants to comment on——

Mr. MOYNIHAN. Mr. President, may I respond for just a minute?

It would be typical to say to the Senator from Alaska, and he surely would know that it was very clear that with respect to the

Neutrality Treaty there were improvements made and there were reservations registered and some of the most important were unanimously accepted or nearly so because they did make good sense.

But the Senator from Alaska—he does not have to agree with me, obviously, but there is no way that one nation can unilaterally declare that if something else happens, a nonexistent treaty will come into effect.

May I suggest to the Senator that what you probably are thinking—I wonder if this is what you are thinking because this is not my thinking. You can say that if the treaties were abrogated or some portion of them, then you could put the others or other parties on notice about how the United States will conduct its affairs.

Mr. STEVENS. I say to my friend from New York that he misses the point of the amendment, and the point is, that unless Panama, following their own constitutional processes of their domestic law, accepts the constitutional processes of our domestic law, these new treaties will not become effective. If our amendment is adopted the problem can be overcome. Having not become effective, the treaties in and of themselves revoke and repeal these old treaties. What we are saying is we want to put in this treaty a provision which puts Panama on notice that if following their domestic law they use devises to circumvent the will of the United States, as expressed in these reservations, declarations, or understandings, then the treaties are void, as far as we are concerned, and the other treaties are still in effect.

Now, I say to my good friend that is a good provision and it is a good tactic. Unless it is followed in some way by the Senators who are saying to the people of the United States that they are voting for this treaty, or they voted for the last treaty because of an understanding or a reservation or declaration that was attached to the resolution of ratification, then one of us has been misled.

Mr. MOYNIHAN. Will the Senator yield?

Mr. STEVENS. Just let me finish that one point.

There is a mechanism for putting these people on notice down there that they cannot do what they have done in the past.

And I point out that they under their constitution now can pack their courts. Just remember what happened in the United States when the President of the United States tried to do that.

Well, General Torrijos just gave himself the authority to do that with a new constitution in Panama. He can pack the court and he can keep sending so many questions to that supreme court until he puts enough people on there to get the court to do what he wants them to do. He is in fact a dictator.

Now if my friend says that we have no way in the ratification process to assure that the meaning that the Senate attaches to a treaty will not be accepted under the domestic constitutional law processes of Panama and that it will not be binding on them before we agree, the treaty will in fact be binding, then I disagree with him on that, and I think that many constitutional lawyers would disagree with my friend from New York.

Mr. MOYNIHAN. Let me urge the Senator to let me intervene here and be very explicit.

I think his proposal is not a good proposal, but it is, in fact, a perfectly logical one and perfectly appropriate to debate in this Senate.

If we provide a provision in this treaty whereby the treaty, in effect, does not come into effect—I do not know how the time sequence would work here, but if, in effect, the cancellation of the previous treaties would be void by the terms of this treaty—then we can envision the previous treaties being in effect.

Is that right?

Mr. STEVENS. My point is, under our domestic law, the treaties with their reservations, understandings and declarations would be binding upon us, and under our interpretation of international law, if they accept the resolution of ratification, any other nation would be bound by that.

But we know by looking at their own internal domestic law, that is not the situation with this country, and we are put on notice with the way they rejected the Geneva Convention of 1949. The Panamanian Supreme Court stated that because they had not, in fact, published the text of that treaty properly and in its entirety, they had not complied with their own domestic law, and having not complied with their own domestic law in terms of the ratification procedure, the Convention was not binding upon Panama.

Mr. MOYNIHAN. Did the Senator hear me say that I think he may have a point here?

Mr. STEVENS. I know I have a point here. I have been arguing it a couple of weeks now. It sounds like my good friend from New York says those of us who want the treaties to be changed and improved before voting for them—and mind you, some of us said we would vote for them if they were changed in a specific way, the last one was not changed and I voted against it, the question of whether this one is changed is very material, as far as I am concerned—are obstructionists.

I shall vote against it unless it is changed to protect what I consider to be the national security, economic interests, of the United States.

Now, one of the things I think is in the interest of the United States is the question of whether Panama can accept this treaty. I am sure the Senator has read his paper from New York. I spent last weekend reading some of the items in the New York paper about General Torrijos' comments. He is going to wait, as he said to the President in the letter, until he sees all the reservations and they will determine later whether they will be bound.

That is very good.

All I am saying is that we should not give him a check that is binding upon us, when it is one he can ignore, one that is not binding on him at all.

Mr. MOYNIHAN. If the Senator can work that out and if that is the type of thing that ought seriously to be considered, and should be, and, certainly, would be welcomed by me, I am not in any means a principal in this debate, but that is a tenable proposition.

Mr. STEVENS. That is what the Senator from Wyoming's proposition was.

Mr. MOYNIHAN. Then I must respectfully disagree. In no way could that provision be binding on anybody else. No international

court, no international lawyer, no other country would think it did. That is what I am talking about.

Mr. STEVENS. No. My friend is not understanding either one of us. All we say is that unless this treaty will be binding on Panama, with all the attachments kept on it, under their law, then it should not be binding on us under our law.

That is a simple proposition of, I think, international law.

But the difficulty is as my friend refuses to see the difference, in dealing with a dictatorship under a democratic process.

We are dealing with a country that is ruled by a dictatorship. He has the power to pack the court. He changed the Constitution. He now has the power to ignore the reservations we approved last week in the Neutrality Treaty.

Under those circumstances, I would say that there is no way for us to tell the American people that what we have done, if we have passed a resolution with reservations, understandings or declarations attached to it, is binding upon Panama unless we look at their own law, their own Constitution, which incidentally says in title I, article 4, that Panama is bound by international law only so far as it does not "prejudice" the "national interests" of Panama.

Mr. MELCHER. Will the Senator yield?

Mr. STEVENS. I am happy to.

Mr. MELCHER. I think there is even a more pertinent point in the Constitution of Panama.

Their Constitution clearly and emphatically states that the ratification process for any treaty dealing with the canal is only by plebiscite where a majority of people voting in that plebiscite agree with the treaty.

I think there is one thing we should keep in mind about our own Constitution, referring to the ratification of treaties.

Prior to the time we brought up the first treaty considered here, dealing with Panama, the Neutrality Treaty, I reviewed those few words in our own Constitution referring to the ratification of a treaty.

Our process is for the Senate to advise and consent, and there are very few words on it. Our process requires that the Senate advise and consent, and I do not want any of us to lose sight of the word "advise."

We interpret that to mean a review of a proposed treaty by the Senate, article by article, open for amendments.

We in the Senate do not negotiate the treaty, as the Senator from New York has reminded us. No. But we do advise and consent, and no treaty is ratified by the United States without the Senate's two-thirds vote to advise and consent.

The process of these amendments is, indeed, the process of advising. If that should be construed or interpreted or understood by some in regard to these treaties as "negotiation," I think that would be an error on the part of the proponents of these treaties.

If we find in our process of considering these amendments, that amendment is needed and we adopt an amendment as part of our "advise," as part of our procedure of advising and consenting, we are clearly within our own Constitution. And that, indeed, I believe is not only a constitutional requirement, but I believe it is a grave responsibility on each and every one of us as Senators.

I cannot take these amendments lightly. I believe they should be considered and voted on their merits as our process of advising.

Mr. MOYNIHAN. If the Senator would hear me one last moment, there are some amendments, particularly the one the Senator from Alaska was trying to discuss, that obviously had to be taken seriously. It was a very serious proposition on the face of it. It appears to be something that could be done.

There are other amendments which we have heard presented and debated here, which, on the face of it, could not be done and should not distract this body and should not be seen as the appropriate subject for serious debate, but rather, dilatory, irrelevant, and not adding to the substance of our debate at all.

Obviously, there is a large area in between. But some of the extremes have been extreme, and it is to those extremes that I pointed, and nothing more.

I could not get the Senator from Alaska to quite hear me, but I was trying to say to him that I thought he had what is the making of a serious idea. Whether it would do or not, I could not quite follow. But it should be considered, and obviously will be. And that is the end of my thoughts on this subject tonight.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER [Mr. Hodges]. The Senator from West Virginia (Mr. Robert C. Byrd).

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[From the Congressional Record—Senate, Mar. 21, 1978]

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

The PRESIDING OFFICER. The Chair recognizes the Senator from New York (Mr. Moynihan).

Mr. MOYNIHAN. Mr. President, I rise briefly as the debate on the second Panama Canal Treaty resumes. Last evening, at about this time, or perhaps a little earlier, the Senate having just voted on the second of two amendments that had been presented, I rose to speak, both in retrospect with regard to that day's proceedings and as to the prospective proceedings that have now commenced. I addressed myself in part to an amendment which had been proposed by the distinguished Senator from Wyoming, a Member, as I am, myself, of the freshman class in the Senate and a man for whom I have come to have the highest regard and close relations. In the confusion of the moment following the vote, I was not aware that Senator Wallop had left the floor, so I inadvertently spoke to a matter of considerable, of very direct concern to him, when he was not present to reply. Of course, I spoke in opposition to his amendment, as I voted in opposition.

I did so in very considerable, in largest measure, because he had complained, if I might use that term—he might want to use some other term—to the Senate at the time of the vote on his measure that it had not been debated by the proponents of the treaty; that, rather than entering a dialog with him and rebutting, if they could and as they were able, to the extent they were able, his argument, a vote was simply called for and the majority that exists for these treaties voted down his amendment. That seemed to me a perfectly appropriate matter to raise and I did raise it.

I thereupon used and, in several passages, I employed terms and analogies and references which seemed to me not to have been necessary and, in retrospect, that seemed to me not to have been in order. I should like to express to my good friend—and he knows that our relations are of that order—my regret for any wrong I may have done and to state that he knows of my great regard for any man who has had the good fortune to be educated at Yale. As a CCNY man, I have almost a class deference to such persons.

Finally, Mr. President, I should like to say that, with respect to my having spoken yesterday when he was not on the floor, when I called the Senator from Wyoming this morning to offer my apologies for having done that—stating that it has inadvertent, but it nevertheless did occur—characteristically and most graciously, the Senator from Wyoming accepted my apologies. We have since had occasion to talk about these matters and, with respect to any ill service that I may have done him, that matter is behind us. The issue of the treaties and of his particular point of view which he represented in that amendment is still very much before us.

I recall that the Senator asked yesterday that, since the matter was not debated fully, or at all, in his view, it be brought up at a later time and no point of germaneness be brought against it. I believe the managers of the bill indicated that they acceded to his desire and I think they were wise to do so.

Mr. WALLOP. If the Senator would yield to me for a minute.

Mr. MOYNIHAN. The Senator is happy to yield.

Mr. WALLOP. One of the things that I admire most about being in the Senate is the stature of the men that are in the Senate and, you, sir, I think have shown in every way that the Senate rightfully deserves that reputation.

I accept your apology and I accept your friendship and so far as I am concerned, the Senate has many better things to do than to drag grudges across the floor from day to day, and let me say that I bear no grudge, I bear no ill will, and as far as I am concerned, the matter will be raised as an amendment by Senator Stevens. We can talk about it at that time, I do much appreciate your kind and gracious words, and I thank you very much.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. MOYNIHAN. I yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I wish to congratulate both the distinguished Senator from New York (Mr. Moynihan) and the distinguished Senator from Wyoming (Mr. Wallop). They have demonstrated what to me is a courtesy, which is of the highest caliber, and for which Senators and this institution itself are known.

I listened to the distinguished Senator from New York on yesterday and I never understood at any point that he was expressing in any way any disrespect for the Senator from Wyoming nor could I determine in his words any aspersions on that distinguished Senator from Wyoming.

As a matter of fact, he went out of his way later to state very emphatically and clearly that he meant no offense to the Senator from Wyoming and I understood it that way.

I am grateful that he has in the meantime contacted the Senator from Wyoming and that he has taken the floor here this afternoon to state beyond any peradventure of doubt his high respect, his high regard for the Senator from Wyoming, and I hope that that will make the record clear.

I admire the Senator from New York. He has an enormous facility for expressing himself and expressing himself well. I think he was directing his attention not only to the amendment that had been introduced by the Senator from Wyoming but he got to the fact that the Senate is being subjected to the consideration of a good many amendments, and some which have merit, but I think he was remonstrating against amendments that really, as he characterized the amendment yesterday, are incapable of implementation.

I am not entering the argument as to whether it was or whether it was not capable of implementation, but I clearly remember those words. And that was one of the objections he had to the amendment, and I think he was speaking for all of us, when he expressed the view that we ought to avoid, if we can, introducing amendments which are incapable of implementation, which obviously are—and I do not characterize the Senator from Wyoming's amendment this way when I say that but Senators' amendments that obviously are not going any place and in some instances may be considered to be frivolous and which take up the Senate's time and which keep the Senate from reaching a final conclusion on the treaty itself.

So I did not misunderstand the Senator from New York. I think he was very kind and generous and he did the right thing, I think, in contacting the Senator from Wyoming to explain what he had said and to state that he was apologizing for having inadvertently spoken while the Senator was not on the floor.

I think the Senator from Wyoming likewise, has demonstrated a splendid attitude in the way he has reacted toward this, and I join with him in saying that I hope that we can now put the matter behind us and get on with the business of consideration of the treaty.

Mr. WALLOP. May I say that I thank the distinguished majority leader.

My friend, the Senator from New York, called me this morning and I explained to him that I thought no public act was necessary on this thing. He has been more than gracious in offering it and I think it speaks well of both himself and the United States Senate. I thank the distinguished majority leader for his remarks.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. BAKER. Will the Senator yield to me for just a moment?

Mr. MOYNIHAN. The Senator is honored to yield to the Senator from Tennessee.

Mr. BAKER. I must confess to my colleagues for the record that when the event that we are now discussing occurred yesterday I was on my way back from Tennessee, so I did not hear it, which may have no advantage except it gives me a touching point of view, and from that point of view I must say that the performance of my two colleagues today, the distinguished Senator from New York and the equally distinguished Senator from Wyoming, has been in the best tradition of the Senate.

While I know nothing about the matter in controversy, I do know that both of them have acted with honor and dignity today and they are to be commended for it, and I do now commend them for it.

Mr. MOYNIHAN. I thank the distinguished Senator from Tennessee and I especially thank my good friend, the Senator from Wyoming.

Thank you, Mr. President.

(Mr. Moynihan assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, I would like to inquire if there are any amendments at the desk or unwritten amendments any Senator would like to call up at this time in connection with the treaty.

Mr. ALLEN. I have an amendment at the desk if no other Senator would have one.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Alabama.

Mr. ALLEN. I would inquire of the distinguished majority leader if it is his plan to continue the discussion in consideration of the treaty to the point of requiring additional rollcall votes tonight?

Mr. ROBERT C. BYRD. No, I do not necessarily have that in mind. May I say to the distinguished Senator from Alabama that I have alerted Senators on this side of the aisle that we will probably be in until 6:30 or 7 o'clock and that there could be another rollcall vote.

I am not insisting on a vote, may I say to my distinguished friend. I will be pleased to have an amendment called up and debated briefly and voted on, but perhaps the Senator will want more time on his amendment.

In any event, if we could get the amendment up and hopefully reach an amendment as to a time limit on it so that we could look forward to tomorrow and have a vote on the amendment or in relation to the amendment at a particular time, I think that will serve the interests of the Senate.

Mr. ALLEN. I would not object to that, providing enought time was given, because I believe the amendment addresses one of the most important defects in the treaty, one of many I might say, but this is one of the most important defects in the treaty and I would hope that other Senators would be given the opportunity to discuss the amendment after they become familiar with it.

I would think that sometime possibly in the—I do not know when the majority leader has in mind bringing the Senate back in. I wonder if he would mind telling us that.

Mr. ROBERT C. BYRD. I had in mind the hour of 9:30, inasmuch as two Senators want special orders. This will enable the Senate to resume consideration of the treaty by 10 o'clock tomorrow morning.

Mr. ALLEN. Well, I might state to the distinguished majority leader that the amendment is capable of being divided and there are two questions, and I would ask for a division and I would feel that both phases of the amendment could be addressed so that both phases of the amendment could be acted on tomorrow.

That would be in the late afternoon of tomorrow, and both phases might have been disposed of.

I would agree if that sort of order could be entered I would certainly have no objection.

Mr. BAKER. Will the distinghished majority leader yield?

Mr. ROBERT C. BYRD. I will be happy to yield to the distinghished minority leader.

Mr. BAKER. Mr. President, I would hope that we could arrange some sort of schedule for tomorrow, particularly in view of the request I have now from one Senator who has accommodated us rather extraordinarily on voting times today. I am speaking of the distinguished Senator from Kansas (Mr. Dole). He has commitments that will keep him from the floor until around noon, so if we can arrive at some sort of an arrangement to have an amendment pending. I wonder if the majority leader would consider also a request that no rollcall vote occur, say, before 12 o'clock.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Maryland is here, and he and Senator Church have the heavy burden of managing the treaty on this side of the aisle. If he would have no objection, I certainly would think that would be a reasonable request.

Mr. SARBANES. Mr. President, will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. SARBANES. I think that not having any vote before noon is a reasonable request. But I wonder if we could then go on to vote perhaps on the first part of the amendment. I understand the

distinguished Senator from Alabama is going to divide his amendment and have two votes. Is that correct?

Mr. ALLEN. That is correct.

Mr. SARBANES. I think we might have a vote on the first part shortly after that hour, when I take it Senator Dole would be back.

Would another hour or two be adequate for considering the second part?

Mr. ALLEN. One phase at 1 o'clock and another phase at 3:30, say.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate? I ask that the Sergeant at Arms help us to secure order.

The PRESIDING OFFICER. The Sergeant at Arms will do so.

Mr. HANSEN. Mr. President, if the Senator will yield, I apologize. The Sergeant at Arms did not tell me precisely what he wanted, and I misunderstood his gesture. I assure the Senator that I shall not do it again.

Mr. ROBERT C. BYRD. The Sergeant at Arms is pretty capable of taking care of himself. [Laughter.]

Mr. BAKER. Mr. President, I might also note for the record that the Sergeant at Arms is blushing. [Laughter.]

Mr. ROBERT C. BYRD. May I also say for the record that he is an outstanding Sergeant at Arms, and I have had the occasion many times to speak in approbation of him.

Will the distinguished Senator indicate what his amendment does? Perhaps the Senator from Maryland is aware of it.

Mr. ALLEN. The amendment I have at the desk is amendment No. 86. It addresses the question of whether or not the United States should agree in the treaty that we shall not have the authority to negotiate with another nation for the construction, operation, and maintenance of a new canal. It also discusses and addresses the question of whether or not another nation would be allowed to build another canal in Panama.

Those twin questions are addressed by the amendment.

Mr. ROBERT C. BYRD. The distinguished Senator had suggested a vote at 1 o'clock and another at 3:30.

Mr. ALLEN. That is correct.

Mr. SARBANES. If we had one at 12:30 and one at 3, that would give us from 10 to 12:30 on the first part—that is 2½ hours—and that would give us another 2½ hours on the second part of the amendment. That would make it possible to go on to another amendment after the vote at 3 o'clock. Does that sound reasonable to the Senator from Alabama?

Mr. ALLEN. I have a particular requirement that is going to cause the time of 12:30 not to be appropriate. I wonder if we could set it at 1 o'clock and 3:30?

Mr. SARBANES. If the Senator has some other requirement, I certainly think we should accede. I think the times he originally suggested, of 1 o'clock and 3:30, would be all right.

AMENDMENT NO. 86

Mr. ROBERT C. BYRD. Mr. President.

If the Senator will allow me, I will put that in the form of a request.

Mr. ALLEN. Yes. I will call up the amendment.

Mr. President, I call up amendment No. 86, and I ask that it be stated in full.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. Allen) proposes an amendment numbered 86:

Amend Article I by adding at the end of Section 1(d) the following new Subsection:

(e) It is expressly provided however, that (A) nothing contained in this treaty shall deprive the United States of the right it has under the 1903 and 1955 treaties to prevent the construction of a second canal in Panama by any nation other than the United States; and that (B) nothing contained in the treaty shall prevent the United States from negotiating with any other nation for the construction, maintenance, and operation of a transoceanic canal anywhere in the Western Hemisphere, or from constructing, maintaining, and operating any such canal.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. I am delighted to yield.

Mr. ROBERT C. BYRD. I ask unanimous consent that the vote occur in relation to the first division at 1 p.m. tomorrow and that a vote occur in relation to the second and final part at 3:30 p.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, there will be no more rollcall votes today.

I thank the distinguished Senator from calling up his amendment.

Mr. ALLEN. I thank the distinguished majority leader and the distinguished Senator from Maryland (Mr. Sarbanes).

Mr. ROBERT C. BYRD. Before the Senator begins, may I ask this question: Does the Senator intend to speak on the amendment this evening? If so, can he indicate the length of time?

Mr. ALLEN. I would rather have a larger audience of Senators. I will not state the number on the floor, but every seat is not filled, I say to the distinguished majority leader. [Laughter.]

I would rather have a larger audience; and if it is all right with the distinguished majority leader, we might go out at this time and let me start discussing the amendment the first thing in the morning.

Mr. ROBERT C. BYRD. That will be fine. I thank the distinguished Senator.

Mr. President, I ask unanimous consent that when the Senate resumes its consideration of the treaty tommorrow, Mr. Allen be recognized at that time.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENTS AND DECLARATIONS SUBMITTED FOR PRINTING—PANAMA CANAL TREATY—EX. N, 95-1

AMENDMENTS NOS. 87 AND 80 AND DECLARATION NO. 2

(Ordered to be printed and to lie on the table.)

Mr. Goldwater submitted two amendments intended to be proposed by him to the Panama Canal Treaty, and a declaration of ratification intended to be proposed by him to the resolution of ratification of the Panamana Canal Treaty, Ex. N, 95-1.

Mr. GOLDWATER. Mr. President, I submit today for printing two amendments to the Panama Canal Treaty and ratification of the treaty which, if adopted, would uphold the constitutional requirement set forth in article IV that legislation enacted by both Houses of Congress is necessary in order to transfer property belonging to the United States to a foreign power.

I ask unanimous consent that the text of the amendments and the declaration be printed in the Record.

There being no objection, the amendments and declaration were ordered to be printed in the Record, as follows:

AMENDMENT NO. 87

At the end of article XIII, add the following:

"5. The provisions of this Treaty relating to the disposal of the territory or other property belonging to the United States of America shall take effect only if the Congress of the United States of America enacts implementing legislation providing for the transfer of such territory or other property to the Republic of Panama.".

AMENDMENT NO. 88

At the end of article XIII, add the following:

"5. The provisions of this Treaty relating to the disposal of any real property of the United States of America which is located in the former Canal Zone and which, on the day before the date of entry into force of this Treaty, was under the jurisdiction of a Secretary of a military department of the United States of America enacts legislation providing for the transfer of such property to the Republic of Panama.".

DECLARATION NO. 2

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the following declaration:

That the United States Government declares that it will not deposit its instrument of ratification until after implementing legislation relating to the disposal of the territory or other property belonging to the United States has been enacted providing for the transfer of such territory or other property to the Republic of Panama."

AMENDMENT NO. 89

(Ordered to be printed and to lie on the table.)

Mr. BARTLETT submitted an amendment intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95–1.

Mr. BARTLETT Mr. President, I submit an amendment, No. 89, in the nature of a substitute, revising the Panama Canal Treaty as a lease agreement between the United States and Panama.

After many years of public discussion and official negotiation, during four administrations, after weeks of debate here in the Senate, concluding the ratification of the Treaty of Neutrality, the treaty ratification process now advances to the very heart of the Panama Canal issue.

Article I of the Panama Canal Treaty terminates all previous treaties between the United States and the Republic of Panama, redefines the rights and responsibilities which are delegated to the United States and Panama of the management, operation, and defense of the canal, and affirms the goal of uninterrupted, efficient operation of the canal.

In a sense, however, the real essence of this article, and of the entire treaty issue, is the recognition of Panama as territorial sovereign over the canal and Canal Zone. Both in Panama and the United States, the debate over the present treaty is virtually as old

as the treaty itself. The focus of this debate has been the matter of sovereignty, a circumstance which has regrettably made discussion of the treaty far more emotional and complex than it might have been, had the new agreement conformed to the treaty precedent the United States had established a half century earlier.

The United States and Colombia, Panama's former sovereign, had long enjoyed a mutually beneficial commercial arrangement under the Bidlack-Malarino Treaty of 1846. The treaty, while guaranteeing Colombia's sovereignty over the Isthmus of Panama, granted the United States—

> The right of way or transit across the Isthmus of Panama upon any modes of communication that now exist or that way be, hereafter, constructed.

With the treaty, the United States acquired the right to preserve the neutrality of transportation routes across the isthmus. Thus, America's Panama Canal policy was truly formulated 65 years before the canal became a reality. In the exercise of that policy, the United States built the highly successful Panama railroad across the isthmus. It was also in the legitimate exercise of that policy that the United States deployed military forces and warships to Panama on occasions when transportation across the isthmus was jeopardized.

These principles were reaffirmed on January 22, 1903, when U.S. Secretary of State John Hay signed a treaty with Colombian Minister Tomas Herran. The Hay-Herran Treaty, while granting the United States the right to construct a canal across the isthumus, acknowledged Colombian sovereignty of the Canal Zone. The treaty established U.S. jurisdiction and control over the canal and Canal Zone by leasing the property to the United States for a period of 100 years. The lease was to be renewable indefinitely at the option of the United States.

This precedent was followed again by Secretary of State John Hay in treaty negotiations with the new Republic of Panama. The treaty originally drafted by Hay appropriately avoided the question of sovereignty and proposed instead a simple 100-year lease of the Canal Zone by the United States, renewable indefinitely by our country. Under Hay's proposal, it is quite possible that the matter of renegotiation of the treaty might never have arisen until the year 2003.

Fortunately, in the opinion of the Senate and the Roosevelt administration, the Hay proposal was substantially revised by Panama's own Envoy, Phillipe Bunau-Varilla. Rather than simply leasing the Canal Zone, the revised treaty granted the United States "sovereign rights" over the Canal Zone "in perpetuity."

Thus, the new treaty was undermined from the beginning, as John Hay would later confess in a letter to Senator John C. Spooner of Wisconsin, champion of a Panamanian route versus a Nicaraguan route for the canal. Hay described the new treaty as "very satisfactory, vastly advantageous to the United States, and we must confess, with what face we can muster, not so advantageous to Panama * * * You and I know too well how many points there are in this treaty to which a Panamanian patriot could object."

In negotiating a new treaty with the Republic of Panama, the United States should have been guided by the precedents which existed before the Hay-Bunau-Varilla Treaty. We might have also been guided by another international agreement, negotiated, ironically, in the same year as the Panama Canal Treaty. The agreement, entered into force February 23, 1903, renewed in 1934, and remaining in effect indefinitely, provides for the lease to the United States by the Republic of Cuba of an area of land and water known as Guantanamo Bay.

The treaty is entitled "Lease of Lands for Coaling and Naval Stations," and, while its provisions are not precisely analogous to the issue of the Panama Canal, the language of Article III of the agreement is indeed relevant to our current dilemma. Article III states:

> While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas. * * *.

It is extremely important to note the manner in which the separate concepts of sovereignty and jurisdiction and control were addressed in this agreement. For this distinction is perhaps the primary reason the Guantanamo Bay lease remains in effect and undisputed today. Likewise, the absence of such a distinction is a principal defect, not only of the 1903 Panama Canal Treaty, but the proposed new treaty before us.

Mr. President, as I outlined in detail in a statement of February 23, 1978, the weight of evidence before the Senate affirms once again that the Panama Canal is vital to America's economic and national security interests, and that these interests will be secured only by continued U.S. administration and control of the Panama Canal.

It is clear that "America's Panama Canal policy," formulated a half century before the canal was constructed, remains valid today, I believe the course we must take to preserve that policy is equally clear.

The necessary revisions in the 1903 treaty between the United States and Panama will be achieved most appropriately and effectively through a lease agreement—an agreement similar in principle to those in force or proposed by the United States prior to the 1903 treaty, and to the existing treaty covering Guantanamo Bay, Cuba. Such an agreement would surely have appealed to the Republic of Panama. Within the framework of an international lease, every reasonable demand of Panama could be met.

First, the complex and emotional issue of sovereignty could finally be resolved in Panama's favor. At the same time, more tangible concessions could be made to address the justified resentment Panamanians have held for the U.S. presence, not only as a sovereign power, but a superior one in their own country. Duel economic, social, and legal standards would, and should, be dissolved.

Other appropriate concessions could include:

A substantial reduction of the land and water area of the Panama Canal Zone.

A substantial reduction in the number of U.S. military bases in Panama.

A substantial reduction in the level of U.S. forces in Panama.

A substantial increase in Panamanian employment in the operation of the canal and participation in higher levels of management of the canal.

A substantial increase in the share of the canal revenues for Panama.

A substantial increase in the U.S. annuity to Panama.

It should be noted that these provisions are not inconsistent with the terms of the Panama Canal Treaty before us. However, the proposed new treaty goes far beyond these generous concessions to phase out and eventually relinquish completely U.S. administration and control over the canal and Canal Zone.

During the recent debate over the Treaty of Neutrality, many Senators, perhaps even a majority, expressed serious misgivings about the loss of the U.S. rights to assure the continued effective operation of the canal. My amendment, revising the proposed new Panama Canal Treaty as a legitimate international lease agreement, reaffirms those rights. Unlike the 1903 treaty, however, it would do so in a fair and just manner, in good faith and without apology.

[From the Congressional Record—Senate, Mar. 22, 1978]

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calender No. 2, the Panama Canal Treaty, which the clerk will state.

The legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, the Panama Canal Treaty.

The Senate resumed the consideration of the treaty.

AMENDMENT NO. 86

The ACTING PRESIDENT pro tempore. The pending question is on amendment No. 86 by the Senator from Alabama (Mr. Allen). Under the previous order the Senator from Alabama (Mr. Allen) is recognized.

Mr. ALLEN. I thank the Chair.

Mr. President, the pending amendment covers two separate related subjects. I ask the Chair if he will kindly have the clerk state the amendment for the benefit of Senators.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. Allen) proposes an amendment numbered 86.

Amend Article I by adding at the end of Section 1(d) the following new Subsection:

(e) It is expressly provided, however, that (A) nothing contained in this treaty shall deprive the United States of the right it has under the 1903 and 1955 treaties to prevent the construction of a second canal in Panama by any nation other than the United States; and that (B) nothing contained in the treaty shall prevent the United States from negotiating with any other nation for the construction, maintenance, and operation of a transoceanic canal anywhere in the Western Hemisphere, or from construction, maintaining, and operating any such canal.

Mr. ALLEN. Mr. President, inasmuch as the amendment contains two separate divisible subjects, I ask that the Chair divide the subjects, and I will address my remarks to the first part of the amendment.

The ACTING PRESIDENT pro tempore. The Senator has that right, and the amendment is divided.

Mr. ALLEN. I thank the Chair.

Mr. President, this amendment is one of the most important amendments that will be offered to the Panama Canal Treaty. It covers provisions in the treaty that would prevent the United States for the next 22 years from negotiating with any other country for the construction of a second canal, and it provides that in return for that supposedly no second canal could be constructed in Panama without our permission.

This amendment in its two phases would allow the United States to continue to have the right to prevent another country from building a second canal in Panama but it would not impose this limitation on the United States that we cannot even negotiate with another nation for the construction of a second canal.

Mr. President, it has been stated time and time again by the proponents of these treaties that the two provisions now in the

treaty, that is, that no other nation can build a canal in Panama without our consent and that in return for that we must agree that we will not negotiate with another country, such as Nicaragua or Mexico, for the construction of another canal were put in the treaty at our request. That is hardly reasonable, Mr. President, to contend that.

Of course, if we are prevented from negotiating with another nation for the construction of a canal, obviously the negotiators then insisted that in compensation for that, to offset that prohibition on the United States, Panama would have to agree that no other nation could build a canal in Panama. The fallacy of that position, however, Mr. President, is that under the existing treaties—and I say treaties, because there is not only the 1903 treaty, but there is also the 1955 treaty that confirms the monopoly that we have on the construction of canals in Panama—as I shall read in just a moment from the 1903 treaty and the 1955 treaty, we already have the right to prevent any other nation from building a canal in Panama. But under the treaties—now listen to this; this is the way they worded it—we give up that monopoly. We give up the right to prevent any other nation from building a canal in Panama. That monopoly, that right to prevent another nation coming into Panama for building a canal, is wiped out under the treaty that we have. How is it wiped out? It wipes out every single treaty, protocol, agreement, exchange of notes, whatsoever, between the United States and Panama with respect to the Canal Zone and the Panama Canal. And we have to start from scratch.

Under the Panama Canal Treaty, nothing heretofore that has been negotiated in good faith will remain the agreement between the two countries. Every bit of it is wiped out, wiped out in the preamble or the first proviso before we get the articles. So whereas now we can prevent the construction of another canal by another nation in Panama—that is the rule now—in order to get that right again in the new treaties, we have to make the ridiculous commitment that we are not going to negotiate with any other nation that might have a feasible route for another canal. We cannot even negotiate with such a nation for another canal for 22 long years. So, what sort of negotiating was that by our negotiating team? A right that we already have they give up and then in order to get back the right we have just given up we have to make this prohibitive concession that we cannot negotiate with another nation for another canal for 22 years.

Mr. President, when the Panama Canal was on the verge of coming into being, while they were considering routes, the House of Representatives back in 1902, by an almost unanimous vote, 300 some odd to 8, voted for the Nicaraguan route, not the Panamanian route. That was changed in the Senate to go the Panamanian route. But many top engineers of the time felt that the Nicaraguan route was the preferable route. The House of Representatives thought so strongly that they almost unanimously voted for the Nicaraguan route. But under the treaty we have before us we cannot negotiate with Nicaragua for the construction of a canal for 22 long years.

Some say that across Mexico and coming out on the Pacific side at the Bay of Tehuantepec is a good route for a sea-level canal.

Well, we cannot netotiate with Mexico. We cannot negotiate with Nicaragua, under the terms of the treaty, for 22 years.

What is the situation now? It is going to be changed by these treaties, while we negotiate all day long, day in and day out, week in and week out, anywhere we want to go for a canal. Why should we give up that right? Mr. President, it does not make sense. Why should we not retain the right, if the Panama Canal is not properly operated? If it becomes too small to take care of our ships, why should we not have the right to negotiate with another nation for another canal? It does not mean we have got to do it, but we are deprived of the right even to negotiate with another country.

Now that right is given up under the treaty and in return for the giving up of that right they say, "Oh, well, in return for that we will let you say that you will prevent Panama from allowing another nation to construct a canal across Panama."

Well, we already have that right. So we are making a tremendous concession in return for a right that we already have. Why no reasonable person would negotiate such an agreement, and this is a vital flaw in this treaty.

Some of the proponents of the treaties state that they have open minds with respect to amendments, and I heard the distinguished majority leader on a television program on just Sunday state that he had an open mend with respect to amendments on this treaty. Well, I assume he had that same open mind with respect to amendments to the Neutrality Treaty, but it did not open it up sufficiently, Mr. President, to admit any amendments other than the leadership amendment.

So I think it is going to be interesting, as this debate proceeds, to see to what extent the proponents of the treaties have open minds with respect to amendments.

Now, I would say that any Senator with an open mind with respect to amendments should certainly see the fallacy in a treaty that puts such a burden upon the United States, a burden that does not now exist, a burden of not being able for 22 years to negotiate with another country for another canal, in return for giving us the right to veto another canal in Panama by another nation, which is a right that we now have, to make such a tremendous concession as that in return—in return for what? In return for nothing. Because we already have that right, the right to veto the construction of another canal in Panama.

So I would feel that openminded Senators would see the fallacy of these two provisions in the treaties.

Mr. SARBANES. Will the Senator yield?

Mr. ALLEN. I will yield for a question, yes.

Mr. SARBANES. Could I ask the Senator to what provisions in the Panama Canal Treaty is his amendment directed?

Mr. ALLEN. My amendment is directed to article I. That is what we have under consideration.

Mr. SARBANES. And what provision in article I is it that the Senator feels needs amending or what provision of the treaty before us is it that the Senator feels is deficient and requires this amendment?

Mr. ALLEN. This question is so vital, the question of eliminating this prohibition, that in all likelihood, if the leadership persists in

its policy of stonewalling against amendments, if it persists in its policy of demanding that the Senate rubberstamp this treaty without amendment, this is an amendment, or these are amendments, that the leadership is going to have to face time and time again here in this Senate.

Mr. SARBANES. Well, that may be, but just to make it clear, what provision in the Panama Canal Treaty is it that the Senator feels creates the problem that he is addressing?

Mr. ALLEN. I will respond, but I hope the Senator will allow me to complete my response before he interrupts again to ask a question.

The distinguished Senator has asked to what provision of the treaty my amendment is directed. Well, obviously, Mr. President, only amendments to article I can be considered at this time, because in Committee of the Whole that is the procedure, and I am glad that we are in Committee of the Whole, because we have to take these articles one at a time, in order.

At this time we are on article I. So, naturally, my amendment is directed to article I. It adds an addendum to article I.

Now the particular provisions of the treaty that would be supplanted by these two amendments, if they are agreed to by the Senate, can be found in article XII, section 2, subsections (a) and (b), which I will now read for the distinguished Senator's edification.

Mr. SARBANES. May I assure——

Mr. ALLEN [reading]:

No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance wtih the provisions of this Treaty, or as the two Parties may otherwise agree.

Mr. President, that is the veto power to which I alluded that the United States is given under this treaty in return for section (b), which I will now read for the further edification of the distinguished Senator from Maryland.

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

Now, Mr. President, that is already the treaty law between the two states involved.

I want to now proceed to read the provision of the 1903 treaty to which I have alluded. We find that in article V of the 1903 treaty. But for just a moment I want to comment on the effect of the 1955 treaty.

We have heard so much, Mr President, about the United States negotiating with Panama back in 1903, and I have heard the distinguished Senator from Idaho (Mr. Church) say that if the Panamanians had not agreed to that treaty, they were going to face a Colombian firing squad, and that, of course, they had to agree to that treaty, that it was forced on them almost against their will. That, in fact, it was against their will; it was sign the treaty or face the firing squad, is the issue as the Senator from Idaho has stated it.

The 1903 treaty gives us the right to have a monopoly in perpetuity for the construction, maintenance, and operation of the canal.

I will read it in full, so it will not be considered my version; it is only four lines:

> The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

That is the right that we have under the 1903 treaty. Now, 52 years later Panama and the United States entered into another treaty. Well, they did not have that Colombian firing squad to force Panama to enter into that treaty; it was an arm's-length transaction between sovereign states. So let us not refer to the 1903 treaty as the only basis for rights of the United States to construct, maintain, and operate a canal in the Panama Canal Zone.

First, let us compare the provision I just read with the provision that the distinguished Senator from Maryland called upon me to read. Let us compare those two, and see if they were any different.

Mr. SARBANES. Is the Senator now referring to the provisions of article XII, paragraphs 2 (a) and (b) of the Panama Canal Treaty?

Mr. ALLEN. Yes. I read them a moment ago. I am pleased that the distinguished Senator identifies them at this time.

Mr. SARBANES. The provisions in article XII of the treaty?

Mr. ALLEN. Well, the Senator just got through saying that. There is no need of repeating it.

Mr. SARBANES. All right.

Mr. ALLEN. Now, to compare the provision that is already the law between the two countries, which gives us the monopoly and gives us the veto right on the construction of another canal—frankly, Mr. President, I do not regard that right as being worth a great deal. I do not believe any country is going to be foolish enough to spend $10 billion building a canal in Panama, and then have the Panamanians do as they are doing now, and say "Give us that canal." They might well expropriate it.

So I really feel that that is of small moment, the right that we have from the 1903 treaty and the 1955 treaty, and that is given us in the treaty before us in return for tremendous concessions. I do not put too much stock in that. I do not know of any country, unless it be the Saudis, that could build a canal and spend $10 billion. If they sought to amortize a $10 billion investment, they would have to have some traffic there. So I do not regard that as too much of right, that is worth a great deal to us, the right to say that another nation cannot build a canal in Panama.

But I do regard this prohibition against the United States from even negotiating with another country for another canal as an intolerable prohibition.

All right. I have read the 1903 treaty; now I am going to show how it was brought forward in the 1955 treaty, when there were sovereign states dealing at arm's length with each other.

This is what is provided in the present treaty:

> During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere except as the two Parties may otherwise agree.

That is what we would give up in return for a provision we already have. That provision reads as follows:

No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree;

What does that give us in that section that we do not already have? The answer is a great big fat zero. It gives us absolutely nothing in addition to what we already have.

Now, Mr. President, let us look at the 1955 treaty, where concessions were made, where departures were made from the 1903 treaty, and the provisions about the monopoly that the United States has.

In 1955—let us read the heading of that, just for the information of Senators before we get to this paragraph.

This starts off, just to give the history of the 1955 Treaty:

Treaty, with Memorandum of Understandings reached;
Signed at Panama January 25, 1955;
Ratification—

We speak loosely here in the Senate sometimes of the Senate ratifying. The Senate does not ratify, it merely gives its advice and, if it approves the treaty, its consent, or it could give its advice and nonassent and, of course, that is what I would like to see the Senate do, give nonassent to this treaty. But we do not ratify it, even though that is a phrase that is sometimes loosely used:

Ratification advised by the Senate of the United States of America July 29, 1955;

Now, this took about 6 months. Talking about all this delay on the present treaty, this was a treaty that there was practically no controversy over, and it took 6 months from the time of the signature to the time that ratification was advised by the Senate, from January 25, 1955, to July 29, 1955.

The present treaty was signed, I believe, September 7, 1977, and we have not been on this treaty much longer than they were on that treaty way back in 1955. So I do not believe we are taking an undue amount of time with respect to the consideration of this treaty;

Ratified by the President of the United States of America August 17, 1955;

So there is where the word "ratification" properly comes in. The President ratifies it, on advice from the Senate.

I do not believe we have given the President the proper advice, Mr. President, unless we point out to him and change provisions which are not in the best interests of the United States. It would be mighty poor advice, it seems to me, with full knowledge that the treaty is defective. How could the Senate properly advise the President to ratify it?

It is our duty, Mr. President, as I see it, under the advise and consent provisions of the Constitution, as part of our advice to point out and to implement that pointing out of defects. We should point out and change defects which are so apparent in the wording of the treaty. That is part of our advice.

The leadership and the floor managers of the treaty apparently do not think that the Constitution places very much authority, power, and duty on the U.S. Senate in considering these treaties.

Pretty soon we are going to see just how openminded are Senators, the leadership and the managers of the treaty.

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I will say this for my distinguished friend, the distinguished Senator from Idaho (Mr. Church): He does not beat around the bush on his attitude with respect to these treaties. He says:

> Do not add a single word. Eight words, six words, two words, will kill the treaty.

So we see what his attitude is going to be. I admire that frankness and that candor in stating straight out:

> No, we are not going to allow any amendments to pass, no siree.

We know what the attitude of the manager is. He did not say he had an open mind on the treaties. I will say that to the credit of the distinguished Senator from Idaho (Mr. Church).

Mr. SARBANES. Will the Senator yield?

Mr. ALLEN. No, I will not. We have divided time here. The Senator interrupted me a few moments ago. I gave him the information he desired. I prefer he use his own time because it interrupts my chain of thought.

Mr. SARBANES. I will be happy to use my time——

Mr. ALLEN. I hope the Senator will allow me to finish my remarks. He has plenty of time to make such remarks as he wishes. I see him taking notes over there.

Mr. SARBANES. I will say to the distinguished Senator I have not taken a note this morning.

Mr. ALLEN. It might be well for the Senator to start making notes.

Mr. SARBANES. I have been listening to the Senator's comments very carefully.

Mr. ALLEN. I am glad the Senator is paying attention.

Mr. SARBANES. If he feels he has queries he wishes to pose to us during our time, I hope he would be happy to do so. I would hope on occasion he would yield for the purpose of a question. I have one further question I would like to ask the Senator.

Mr. ALLEN. Very well, I will accommodate the distinguished Senator.

Mr. SARBANES. I appreciate that. I wanted to ask this question: The provisions of the Panama Canal Treaty, now pending before us, which create concern in the Senator's mind, and which he is seeking to change, are in article XII of the treaty. Why is he offering his amendment to article I? Why not offer it to article XII when that provision is before the Senate?

Mr. ALLEN. Is that the single question the Senator wanted to ask?

Mr. SARBANES. I would be interested in the Senator's reasoning on that point. By his own admission, I believe his amendment applies to article XII.

Mr. ALLEN. I thought the Senator had a single question to propound. Having propounded it, I hope he permits me to answer it.

Mr. SARBANES. I do not want to argue with the Senator. I hope he will answer my question.

Mr. ALLEN. I will answer it right now. The whole treaty is before the Committee of the Whole of the U.S. Senate. We are limited at this time to article I. Since the entire treaty is before us, since the thrust of the treaty is before us, it is entirely appropriate, I will say to the distinguished Senator, to present any phase of the treaty as an amendment to the first article. My amendment does not

change one single word in the wording of article I. All it does is to bring to the fore one of the most important defects in the treaty and to point out a way to correct that defect.

If the leadership is going to stonewall amendments, if the leadership is going to insist that we have rubber stamp treatment of this treaty, then this amendment will be defeated.

I recognize the leadership is at the head of any army of some 60 Senators who are willing to vote according to the recommendations of the leadership. It may be possible that we have to address this very same question not once but several times when we get down to article XII. We will probably still be needing this amendment.

The PRESIDING OFFICER. The Chair would like to remind the Senator from Alabama that there is no allocation of time.

Mr. ALLEN. Mr. President, I ask unanimous consent that the time between now and the time of the vote on the amendment be equally divided between the managers of the treaty and the Senator from Alabama.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. I ask the Chair how much time the Senator from Alabama has consumed.

Mr. SARBANES. Under the unanimous consent request, I thought the time was equally divided between the two sides.

The PRESIDING OFFICER. The only thing the unanimous-consent agreement has in it is that we would vote at 1 o'clock and at 3:30.

Mr. SARBANES. I meant the time between when we started considering the amendment and the vote should be divided.

Mr. ALLEN. That is certainly all right. I will say for the benefit of the leadership, to give full credit to the leadership, the distinguished majority leader asked me last evening before we recessed if I would agree with that. I was going to honor that request even though it had not been made. Of course the time should be equally divided. I now ask the Chair how much time the Senator from Alabama has consumed.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

Mr. ALLEN. How much time has the Senator from Alabama consumed, Mr. President?

The PRESIDING OFFICER. The Senator from Alabama has used 38 minutes. The time began at 10 minutes after 10.

Mr. ALLEN. I thank the Chair.

The distinguished Senator from Maryland wished to make one further inquiry, which he did. He asked me why I was addressing by an amendment to article I something which appears down in article XII. The answer is that the Senator from Alabama feels that the major issues in this treaty should first be addressed.

In the interest of seeing that the Senate is occupied with the consideration not of frivolous amendments, not of dilatory amendments, but of amendments which go to the very heart of the treaty is the reason the Senator from Alabama has brought up this amendment to article I.

I will say this to the distinguished managers of the treaty: Some interest has been expressed in wondering when this treaty might come to a vote. I say that if the distinguished managers of the bill will allow the Members of the Senate that they lead, the substan-

tial majority of the Senators they lead, to vote their independent convictions in this area, and will see that much needed amendments are agreed to and added to this treaty, we will come to a vote much quicker than if the leadership and the managers of the treaty insist on the Senate rubberstamping these treaties, than if they insist on stonewalling against meritorious amendments.

If the Senate will permit or if the floor managers will permit Senators, if they will release them from blindly following the recommendations of the managers so that they might vote for amendments that are needed, let Mr. Torrijos worry about the ratification down in Panama and let the U.S. Senate give proper advice to the President with regard to the ratification of this treaty, in all likelihood, we could finish action on this treaty in the next few days.

I will say, no matter how the treaty might be amended by such amendments as the one that I have at the desk, as long as the treaty provides for giving the Panama Canal away, then I cannot vote for such a treaty. But there is a difference between not voting for a treaty and allowing an early final vote on the treaty. If we could, if the Senate would, in its wisdom, take care of the American taxpayer, with a substantial amendment providing that we are just going to give the canal to Panama and we are not going to pay them the hundreds of millions of dollars to take it—that is one amendment that needs to be adopted. Even though we are going to give it away, do not burden the American taxpayer, who will be overburdened with taxes, with the duty of paying thousands of millions of dollars to Panama.

If we knock out this provision that we must not negotiate with another country for the building of a canal; if we require the Panama Canal Commission, a commission of nine that takes over immediately—five U.S. citizens, four Panamanian citizens—if we allow those commissioners to be confirmed by the U.S. Senate so that we will not have just anybody that Torrijos names serving on this commission. That is a U.S. commission. It is not a United States-Panamanian commission. It is an agency of the United States.

To say that we are going to have to take as four of the nine commissioners four Panamanians whose names are submitted to us without any right to refuse those names—I challenge the supporters of these treaties to show that the United States has any discretion whatsoever in the naming of these four Panamanian out of nine members of this United States-Panama Canal Commission. We have to take whoever they name. I do not care whether they be men of poor character, violators of laws, rascals if you please, we have to accept those four Panamanians. Not one word about the United States having any discretion.

That is the sort of treaty that has been dumped in our lap. I feel that there are major amendments that should be made.

Another provision, Mr. President, I think needs careful attention. We have about—well, I shall not say the number. We have several thousand U.S. citizens working for the Panama Canal Company. Already, there are some 75 percent—I heard the distinguished Senator from Maryland use the figure 80 percent the other day—of the employees of the Panama Canal Company who are Panamanians. Of this 20 percent that is left who are citizens of the

United States, do you know what the treaty provides? It provides that, within 5-years, we have to reduce that 20 or 25 percent that we have by 20 percent. I feel that there ought to be an amendment protecting the U.S. employees, U.S. citizens who are employees of the Panama Canal Company. They should be protected in their employment. If they are doing a good job, they should not be booted out.

The United States is supposed to have the operation of the canal for the next 22 years. What kind of operation is that? What kind of control is that, Mr. President, if we have to agree that we are going to reduce this 25 percent of employees that are U.S. citizens by 20 percent in 5 years?

Then, Mr. President, they talk about the dignity of Panama, when we cannot put any American employees down there, U.S. employees, add them to the work force down there, unless such person has a skill that is not available in Panama.

Well, it is one thing to give them the canal 22 years from now and to say that in the interim, we are going to keep control of the canal, we are going to operate it, and yet, we find that we have to start a systematic reduction right away of employees who are citizens of the United States.

How much more do they want, Mr. President, than 75 percent of the employees? That is a pretty good percentage on an operation that is supposed to be a U.S. operation. They are not satisfied with that. But we cannot send anybody down there unless he has a special skill and, of the employees that are there, we have to get rid of 20 percent of them in the next 5 years.

Mr. President, I was reading a moment ago, and I did digress somewhat. I was pointing out the steps in the ratification of the 1955 treaty. Mighty little has been said, Mr. President, about the 1955 treaty, entered into over 50 years after the first treaty. They talked about how helpless Panama was back in 1903, that we just took advantage of them down there and did not respect their sovereignty and they sent a Frenchman up here to sign a treaty for them, and all of that; even though some nine members of thhe Panamanian cabinet did sign the instrument of ratification showing approval by the Panamanian Government of the 1903 treaty. We have not heard a great deal about the 1955 treaty, more than 50 years later. I guess by that time, Mr. President, we were not exerting undue influence on them.

The charge has been made here, on the floor, that if the Panamanians had not signed the 1903 treaty, if they had not agreed to it, they would have faced a Colombian firing squad.

(Mr. Sasser assumed the chair.)

Mr. ALLEN. But I do not believe anybody feared a Colombian firing squad in 1955.

Let us go on here where it says, "Ratified by the President of the United States of America, August 17, 1955."

That is the 1955 treaty, ratified by Panama.

August 15, 1955, 2 days before the President ratified:

Ratifications exchanged at Washington, August 23, 1955, proclaimed by the President of the United States of America, August 26, 1955, entered into force August 23, 1955.

Now, let us see what the Panamanians agreed to with respect to the monopoly as to a canal and other interoceanic communication in this treaty 50 years later when they had arms'-length bargaining between sovereign states.

I mentioned the provision in the 1903 treaty that did give us a monopoly on all interoceanic communication across Panama by railroad, by canal, even by roads.

Mr. President, in 1955, article III of that treaty, let us read the first paragraph. I think it will shed some light on it:

> Subject to the provisions of the succeeding paragraphs of this Article, the United States of America agree that the monopoly granted in perpetuity by the Republic of Panama to the United States for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean, by Article V of the Convention signed November 18, 1903, shall be abrogated as of the effective date of this Treaty in so far as it pertains to the construction, maintenance and operation of any system of trans-Isthmian communication by railroad within the territory under the jurisdiction of the Republic of Panama.

So by this article, in the first paragraph, the United States had a monopoly throughout Panama on any type of interoceanic communication from the Pacific to the Caribbean, whether it be by railroad, by canal, or even by roads.

But in this treaty, article V, the next paragraph, has to do with releasing this monopoly as to roads, but it retained the monopoly as to canals.

So we do not have to go back to 1903 to see this right that the United States has to have a monopoly in perpetuity on another canal.

In releasing it, in releasing as to railroads and roads, they just released, Mr. President, as I read it, the monopoly; they do away with the monopoly as to railroads and roads in Panama outside the Panama Canal Zone.

They retain that monopoly inside the zone. But they retain the monopoly on additional canal construction in all of Panama. This is a sovereign state in 1955, not worried about that Colombian firing squad as the proponents of the treaty say was one of the inducements to agreeing to the 1903 treaty. They reiterate in 1955 this monopoly.

So it seems passing strange to me, Mr. President, that with this right so deeply embedded in the law, reconfirmed in 1955 that the United States has a veto on canal construction in Panama, having that right already and then to proceed to release that right in the Panama Canal Treaty we have before us.

Then in order to get that right back, a right we now have, it seems rather strange Panama forcing our negotiators to put in a provision against our best interests and putting a limitation on the United States of America on negotiating with another nation for the construction of another canal in such other nation.

Why in the world would our negotiators put such a provision as that in there? They say it is put in at our request. Well, they say it was put in in order to get this veto power against another canal by another nation in Panama when we already have that veto power.

Now, what kind of trading is that? The Yankees are supposed to be pretty good traders. It looks to me like the Panamanians outtraded our fellows at every turn.

They get us to release rights and then when we want them back, they say, "Well, we will give them back to you provided you will do something else."

That is how this provision came into the treaty, that we cannot negotiate with another nation for the construction of another canal in a country other than Panama.

So this needs to be adjusted, Mr. President. This is going to be a major test, as I see it, of whether the leadership and the managers of the treaty are going to agree to provisions that will knock out provisions in the treaty directly against the best interests of the people of the United States.

If the leadership says, "Well, this is not needed," it is needed. Without an amendment at this point or later on in the treaty, we are going to find ourselves giving up a right we now have and, in order to get it back, making a concession that is a most ridiculous concession.

Why in the world should this be? The United States has a right to negotiate, I assume, with any nation on any subject. Why should it commit itself in this treaty not to negotiate with another nation for another canal, outside Panama for 22 long years. That is what the treaty provides.

This amendment would knock out those provisions, or it would have the effect of knocking them out, because it goes directly contrary to what it later says in the treaty; and I imagine it would be a mere formality to knock out the two provisions when we get down to them. But this is an issue that needs to be faced right at the very beginning of this debate.

I say again—I cannot emphasize too strongly—that we are really just now getting to the basic issue of these treaties. All that has been decided up to now is that in the year 2000 we are going to defend the canal. Well, many of us felt that the defense provisions were not strong enough. Be that as it may, we voted that under certain conditions we are going to have the right to intervene in Panama for the defense of the canal, even though at some time under this treaty we are providing that our troops have to be out of there, under the Neutrality Treaty, that our troops have to be out there by the year 2000. That is all we have decided—that we are going to defend the canal.

So the basic thrust of the treaties still has to be addressed. Are we going to give the canal away? Are we going to protect the American taxpayer? If this treaty is approved, it would breathe life into the other treaty. It is absolutely dormant at this time—in a state of suspended animation, as it were, not worth a thing. It has no life, has no effectiveness, has no being, until this treaty is approved.

If this treaty is defeated, the other treaty fall. I argued in the first days of the first debate that we should take up this treaty first, decide first whether we are going to give the canal away, before worrying about whether we are going to defend it in the year 2000.

Let us see how the pending amendment would hlep cure this defect in the treaty—a major defect in the treaty, I might say. As I say, this is going to be a test of the leadership willingness to accept constructive amendments whether the managers of the bill are

going to insist on rubberstamping the approval of the treaty, whether they are going to stonewall against every amendment that is offered, no matter what its merit, whether we are going to be forbidden from submitting and obtaining passage of a single word change.

Mr. President, I wonder whether the leadership is going to come forward with a leadership amendment on this treaty. They saw some great defects in the other treaty, and they came forward with an amendment that they said takes care of these defects. Well, the amendment was the memorandum, word for word, entered into between the President and the dictator. They saved that treaty. They all said it was doomed. Both leaders said it was doomed, the members of the Foreign Relations Committee said it was doomed, unless the leadership amendment was adopted, and that was going to cure everything.

We discussed the leadership amendment quite a bit here. It had about as many defects as the treaty had, but the amendment is supposed to make acceptable something that was absolutely unacceptable, that was headed for defeat. It made the treaty so acceptable that no other amendments were permitted, not one. I wonder whether the leadership is going to come forward with an amendment to cure the manifest defects in this treaty. I hope they will. I will support it, just as I supported the inadequate leadership amendment on the other treaty. Let us see if the leadership is going to come up with perfecting amendments on this treaty.

I must say, Mr. President, that the Foreign Relations Committee did not make a single committee amendment. They had witnesses for weeks on end. They did not offer a single committee amendment. They gave approval to the leadership amendment, but the committee did not make a single committee amendment to either treaty—not one. I believe there is enough ability on that committee to see these defects and to offer amendments to correct them, but they have not done it. I am going to be watching with great interest to see if the leadership will offer leadership amendments to this treaty, which is full of holes and ambiguities and defects.

Back again to the amendment. It is in two parts. One part, and this is the one on which we will be voting first—there will be two separate votes—reads:

> It is expressly provided that nothing contained in this treaty shall deprive the United States of the right it has under the 1903 and 1955 treaties to prevent the construction of a second canal in Panama by any nation other than the United States.

Is that a radical departure? Is this putting in a surprise provision? Why, no. It is the present treaty between the two countries. It says that whatever the law is under the treaties now in existence between Panama and the United States—and I am referring not only to the 1903 treaty but also to the 1955 treaty—whatever is there, be it much or be it little, with respect to this one issue, the building of another canal in Panama by a nation other than the United States or Panama, whatever rights we now have under these treaties, they are not going to be done away with by the treaty we have before us, the present Panama Canal Treaty. That is all it does.

That is all it does. It does not put in this ignoble provision saying that we cannot negotiate with another nation about a canal in that other country.

Mr. President, what if the opponents of these treaties—or I might say those who have sought to strengthen these treaties—what if those who had thought to strengthen both of these treaties had suggested, I say to the distingished Senators from Utah (Mr. Hatch and Mr. Garn), what if we or other like-minded Senators had sought to put a provision in either of these treaties that Panama could not negotiate with another nation for the building of a canal? Would there not have been a tremendous outcry from the leadership and the managers of the treaty that we should not heap this indignity on Panama, that we should not prevent them from taking lawful acts to protect their interests, that that would be a gross violation of the dignity and the sovereignty of Panama if we should seek do any such outrageous thing? But yet we provide that, put that prohibition on ourselves under this treaty, and the managers of the bill apparently are going to seek to keep that provision in there. I will pose that question rhetorically to the distingished Senators, and I am going to yield the floor in just a minute after I explain the second provision. That says that we will continue to have the right to prevent the construction of a second canal and then the other provision about which I was alluding to a moment ago:

> * * * nothing contained in the treaty shall prevent the United States from negotiating with any other nation for the construction, maintenance, and operation of a transoceanic canal anywhere in the Western Hemisphere, or from constructing, maintaining, and operating any such canal.

That is the rule now between the two countries, and our negotiators very foolishly allowed them to impose that prohibition upon the sovereign United States. This is the kind of stuff that you might think about having happen in reverse order back in 1903. You would not think a provision like that would be inserted in a modern-day treaty, to say the United States shall not have the authority to seek to provide another canal in another country, but for 22 long years we cannot take that action.

The first matter says that we shall continue to have our veto power over the construction by another nation of a canal in Panama irrespective of other provisions in the treaty. That will be the first question to be decided by the first part of this amendment.

I do yield the floor at this time, after asking Mr. President, how much time remains to the Senator from Alabama?

The PRESIDING OFFICER. The Senator from Alabama has 13 minutes remaining.

Mr. ALLEN. I thank the Chair.

I reserve the remainder of my time.

Mr. Sarbanes addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I have listened carefully to the distinguished Senator from Alabama, as I always try to do, and I appreciated him yielding on occasion for a question, although I understood and, of course, respected his desire not to do that too frequently and his desire to simply be allowed to go on and make his statement with respect to the amendment he has pending at

the desk; the amendment he has offered to article I which has been now divided. So there will be two votes with respect to the provisions of the amendment One at 1 p.m. today and one at 3:30 p.m. today.

The first point I wish to make, Mr. President, and it was a point that did come out in the colloquy that we were able to have earlier in the morning, is that as to the Panama Canal Treaty which is now pending before us, the provisions in that treaty to which the Senator from Alabama is now raising questions and concerns are found in article XII of the treaty, in article XII of a treaty which encompasses 14 articles. Yet the amendment that has been proposed to deal with provisions found in article XII has been proposed to article I of the treaty. Under the procedure for considering treaties in the Senate we proceed through the treaty article by article. In other words, article I is first before us for amendment, and when all amendments to article I have been disposed of and if there is no further debate we then move on to article II. Article II will then be before us for amendment. When all amendments to article II have been disposed of and if there is no further general debate we move on to article III, and in that way we move through the treaty article by article.

In addition, Mr. President, at the end of the consideration of all of the articles in sequence, article by article, it is then open to any Member of the Senate, if he wishes, to go back and offer an amendment to any of the articles through which we have passed.

What has happened here is that an amendment has been laid down to article I of the treaty which I do not think anyone would deny deals with article XII of the treaty. I think that is very clear. The distinguished Senator from Alabama in fact quoted the provisions of article XII of this treaty in the course of his exposition with respect to his amendment. I simply want to suggest to the Members of the Senate, that, if we are going to consider every amendment to any provision of the treaty first as an amendment to article I of the treaty and then quite possibly again when we reach the relevant and pertinent article to which the amendment is actually addressed, in this instance article XII, and then, in addition, at the conclusion of having gone through all of the articles to go back and offer an amendment yet again, we are on a procedure which would appear to have no end to it.

It is, of course, the prerogative of the distinguished Senator from Alabama and any other Member of the Senate to frame their amendments in such a way as they choose and to offer them when they choose to whatever article they choose to do so. But I simply wish to suggest that the more logical and orderly way to proceed would be to offer amendments to the article to which the amendments are addressed and not to put the Senate in the position of considering amendments when the article to which the amendment applies is not pending before the Senate.

We have a situation here in which an amendment, which clearly goes to article XII of this treaty, has now been laid down to article I of the treaty. There is no provision in article I of the treaty that relates to the question to which the amendment is addressed. The provisions in the treaty that relate to the questions to which the

amendment is addressed are to be found in article XII of the Panama Canal Treaty.

For the sake of some order and logic in how we proceed, it seems to this Senator that it would be a more sensible procedure for amendments to be presented at the time when the relevant provisions of the treaty to which they are addressed are before the Senate.

Now, turning to the amendment—and the Senator from Alabama has divided his amendment—turning to that portion of it which will be before us at 1 o'clock for a vote, which seeks to give the United States the right to, in effect, control the use of Panamanian territory with respect to the construction of any other canal in Panama, reference has been made back to the 1903 treaty, and it has been asserted that this is a right which we have under the 1903 treaty.

That may be. But the reason we are here considering these treaties that are before the Senate, the reason we are engaged in this entire debate, is that the 1903 treaty has not proven a satisfactory basis upon which to rest the relationship between the United States and the Republic of Panama.

We have been through that issue at great length in the consideration of the permanent Neutrality Treaty which this body approved by the quite sizable margin of 68 to 32. We have been through that issue, that the 1903 treaty, given how it was arrived at and given the nature of its provisions, has not proven to be a stable basis upon which to rest the relationship between the United States and the Republic of Panama.

We are here to renegotiate that relationship and to arrive at a different, more equitable, more permanent, more stable relationship between our two countries.

One of the things the people of Panama have always been sensitive to with respect to the 1903 treaty is that they do not have jurisdiction and control over their country like any other nation has; that the United States holds a corridor of land through Panama which divides that country in two. It is their territory, their country, and we hold a part of it and exercise jurisdiction over it. Of course, it has always been the contention on the part of the Panamanian people that this is unacceptable to them.

We discussed at great length on the floor of the Senate over the course of the 6 weeks we have now been engaged in this debate how the 1903 treaty was arrived at, the nature of the negotiations by Philippe Bunau-Varilla, the Frenchman, with our Secretary of State, without any Panamanians being involved in the negotiations; the hasty signing of a treaty document in advance of Panamanian negotiators arriving in Washington since it was perceived that the terms would clearly not be acceptable to the Panamanians; and then the subsequent ratification of that document by the Panamanians under the threat that unless they did so the American protection for the Panamanian revolution, leading to their independence from Colombia, that our protection of that would be withdrawn, and that those who had led the independence fight would be left at the mercy of the Colombian armed forces which, under the circumstances fairly clearly meant death at the hands of a firing squad.

Therefore, I think it is understandable, given that choice, why they chose then to subsequently ratify the treaty. But the treaty of 1903 was never accepted, and over the years the resentment toward it and the feeling that it was a completely unfair bargain imposed upon the people of Panama has grown and grown in that country.

It does not really answer anything to take the floor of the Senate, as the Senator from Alabama did earlier this morning, and say, "Well, this is a provision that is in the 1903 treaty and, therefore, it ought to be carried forward."

There are many provisions in the 1903 treaty which are not acceptable for negotiating a new basis of our relationship with Panama.

The whole exercise in which we are engaged is to arrive at a new basis for the relationship between the United States and the Republic of Panama, a basis which is perceived to have equity to it, a basis that protects the interests of both countries, and a basis that is mutually acceptable and, therefore, gives us something on which to rest our relationship in the future.

So the fact that some provision was in the 1903 treaty and is not being carried forward is not an argument for that provision, because the whole 1903 treaty is before us for renegotiation. That is an argument for adhering to the 1903 treaty and, of course, I note there that the distinguished Senator from Alabama has been opposed to revision of our treaty relationship with Panama, has taken early, before these treaties were even presented to the Senate so that we knew their texts and what they involved, the position that he was opposed to revision of that relationship.

In fact, the other day, in all fairness to him, when he talked about amending the treaties and he suggested we should have considered them in reverse order, and he then suggested that had we done that there might have been 90 or 95 Senators or he said even 99 Senators who would then support the treaty—he was careful not to include the 100th—and, of course, in a genial response to a question he allowed as how he could not include the 100th because his own position would, of course, have been in opposition, which conforms to a pledge which he made to his constituency with respect to his position on the treaties. So we understand his opposition, as it were, from the very beginning, even before there was a treaty document before us to consider with respect to these treaties.

Reference was made to the revision in 1955, in the treaty of 1955, and it was mentioned that the preclusion of a canal by another party was carried forward in the 1955 treaty. That is correct.

The fact is that the revisions in 1936 under President Roosevelt's Good Neighbor Policy, and the revisions again in 1955 by President Eisenhower when he held the office of Chief Executive in this country, neither fully answered the concerns of the people of Panama with respect to the treaty of 1903.

Both sought to improve the situation, and did, in fact, improve the situation. But neither treaty was put forward by us, and certainly neither treaty was perceived by the people of Panama, as rectifying fully the 1903 treaty.

It is very important to appreciate that because what we are seeking to do here today is to move from the 1903 treaty and place

the relationship between our two countries on a basis that can have a lasting quality to it.

That is why the treaty we approved only last week in a 68-to-32 vote, is called the Permanent Neutrality Treaty. That treaty runs without limitation as to time and is, of course, designed to insure the permanent neutrality of the Panama Canal or of any other canal constructed through the Isthmus of Panama. And I want to underscore that last point.

The regime of neutrality under the Neutrality Treaty which provides for the neutral operation of the Panama Canal and which provides that the Republic of Panama and the United States can take such actions as each of the countries deems are necessary to maintain the neutrality of the canal, those provisions would apply to any canal through the Isthmus of Panama, and those provisions, of course, take effect not after the year 2000, but take effect along with the Panama Canal treaties 6 months after the exchange of instruments of ratification with respect to these treaties.

Now that is very important because it insures a regime of neutrality of any canal through the Isthmus of Panama, and, of course, one of the premises of these treaties is that a neutral canal serves American interests. It best insures our ability to continue to use the canal both for military and for commercial purposes, and as it has been repeatedly said in this debate, the importance of the canal to the United States is its use. If we could not use the canal, if we could not make use of the canal for purpose of transit from one ocean to the other, the canal would not have any value. The canal value lies in its use and that is very important to be understood.

So the 1903 and the 1955 treaties to which the Senator from Alabama has referred constitute the past relationship and that relationship has proven to be inadequate. That relationship is not sufficient to structure a mutual cooperative and constructive framework between the people of Panama and the people of the United States. We are now trying to revive that relationship and arrive at an understanding that will enable us to move forward between the two countries in a way that serves our interests, the interests of the United States, and in a way that serves the interests of the people of the Republic of Panama.

Now I wish to address the Senate with respect to this question of a canal through Panama or through somewhere else and the importance of the provisions that Panama will not, as this new treaty states, allow anyone else to build a canal until the end of the century through their territory without the approval or the permission of the United States, and that we in turn will not negotiate outside of the country of Panama to construct such a canal.

I wish to read testimony that was given before the Foreign Relations Committee by Col. John P. Sheffey, U.S. Army, retired. When he appeared before the committee, Colonel Sheffey stated the following, and I am now quoting:

Mr. Chairman, gentlemen, I am Colonel John P. Sheffey, U.S. Army (Ret.). My experience in Panama Canal affairs has been rather extensive—five years as the Secretary of the Army's Military Assistance for Canal matters, five years as the Executive Director of the President's Atlantic-Pacific Interoceanic Canal Study Commission, and three years in the Department of State as Special Advisor to the U.S. Canal Treaty Negotiator on an appointment that was terminated by the

Department of State in 1974. Subsequently, I have maintained contact with the State and Defense negotiators and have followed the development of the current treaty drafts.

He then goes on to say:

First, as the former Executive Director of the $22 million sea-level canal study in 1965–70, I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new Isthmian canal outside Panama. The only feasible routes are in Panama. The economic, technical and political objections to the far longer routes in Colombia and Nicaragua eliminate them from practical consideration. Limiting the choice to Panama for the remainder of this century costs the U.S. nothing, and the treaty proposal for this prevents other powers meddling in the matter.

The theoretically feasible routes in Nicaragua and Colombia are 140 miles and 100 miles in length, respectively, as compared with 40 miles or less for the Panamanian route. The movement of large ships in narrow canal waters is a slow and hazardous operation. Ship operators would not readily accept the risk and time lost in transit on these long routes. The construction and operation costs of these longer canals would be three or four times the cost of the shorter canals in Panama, and even the shorter Panamanian routes are not economically feasible at currently forecast traffic levels.

I will read that sentence again. This is from the statement of Colonel Sheffey, who had been the executive director of the $22 million sea-level canal study from 1965 to 1970.

We have here the report of the Atlantic-Pacific Interoceanic Canal Study Commission, the final report which is a very thick document. I think it is fair to say it is over a thousand pages and it has extensive backup documents as well.

That was a special commission authorized by Public Law 88–609 of the 88th Congress. It was chaired by Robert B. Anderson and included as its members Milton S. Eisenhower, Raymond A. Hill, Kenneth E. Fields, and Robert G. Storey.

Mr. President, this was a very extensive study. Anyone interested in this issue really ought to examine carefully the study of this commission.

For example, they have chapters in this book which deal with the Isthmian canal interest of the United States and other nations. They analyze the potential canal traffic and revenues. They considered the matter of excavation by nuclear methods. They considered important environmental matters. There was a very extended analysis of the alternatives, very carefully analysis of financial feasibility. They deal with the issue of the management of a sea-level canal and its construction and operation.

Now their conclusions, as Colonel Sheffey stated, was that the only feasible routes are in Panama. The economic, technical and political objections to the far longer routes in Colombia and Nicaragua eliminated them from practical consideration.

Colonel Sheffey stated:

Limiting the choice to Panama for the remainder of this century costs the U.S. nothing, and the treaty proposal for this prevents other powers meddling in the matter.

Then Colonel Sheffey went on to say:

The construction and operation costs of these longer canals would be three or four times the cost of the shorter canals in Panama, and even the shorter Panamanian routes are not economically feasible at currently forecast traffic levels.

He then stated:

In the 1970 study, the Nicaraguan and Colombian routes were considered only for a sea-level canal constructed by nuclear excavation. Nuclear excavation is of questionable technical feasibility at best, and is politically infeasible beyond doubt. Conventional excavation costs on these longer routes were so great that they were not even estimated with any precision. Today's construction costs on either route would be in excess of $20 billion, and this could easily double by the time such a canal might be needed.

In the question period involving Colonel Sheffey, he was asked about the sea-level canal, and he made the following points:

The argument that we need the right to build a canal outside Panama for some unforeseen purpose is an empty one. We cannot build a canal outside Panama.

He went on to say:

When we entered this study in 1965, one of our purposes was to prove that we could build a canal, a technically satisfactory canal, outside Panama because it would give us far better negotiating leverage to renegotiate our relationship with Panama.

We spent $22 million of the taxpayers' money in 5 years and proved only that we could not build outside Panama.

This is from the executive director of the study commission. I have not heard anyone question the quality of work which has gone into the interoceanic canal study commission.

To come back again to the provisions of the amendment of the Senator from Alabama, now before us, it, in effect, seeks to carry forward into this treaty the provisions of the 1903 treaty. I simply want to underscore again that we are here considering these treaties because it is clearly in our interest and has proven necessary to renegotiate the terms of the 1903 treaty. It does not advance us very far in considering these documents to fasten on to some provision of the 1903 treaty and insist that it be carried forward in terms of the relationship between the two countries.

The reason we are here with these new treaties, trying to arrive at a new relationship which will protect our interests, which is fair to the Panamanians, which will be the basis on which we can move into the future, is that so many of the provisions of the 1903 arrangement have proven to be unacceptable. That is the issue which is before the Senate.

Senators only avoid that issue, and the country only avoids it, if one proceeds on the premise that we are going to carry forward provisions of the 1903 treaty. If we could carry forward the provisions of the 1903 treaty as a basis of the relationship between the United States and Panama, we would not be here considering these treaties. That is the reason we are here and the reason we have been here for 6 weeks.

I would hope, Mr. President, that at some time we would reach an understanding on when we are going to conclude our considerations with respect to this treaty. I think it quite reasonable that an appropriate period of time should pass for considering each of the articles. However, I hope we can at least settle when that process is going to come to an end as we did with the Neutrality Treaty.

The reason we are here considering these treaties and have now spent 6 weeks on it, or over 6 weeks on it, is because the provisions of the 1903 treaty are not acceptable. Now to come with an amendment which seeks to carry those provisions forward is to proceed

on an assumption that belies the realities of the situation with which we are confronted.

I feel that the proposal offered by the distinguished Senator from Alabama is really premised on the notion that the appropriate course for us to follow is to maintain the 1903 treaty, as revised in 1936 and 1955. Those revisions do not fully answer the problem, and we have to deal with the problem as it is. That is what we are trying to do with the treaties which are before us.

Mr. CHURCH. Mr. President, first of all I commend my colleague, the able Senator from Maryland, for a very fine argument against this amendment. I wonder if he would mind an exchange between us in which he might play the part of Panama and I might play the part of the United States. I ask this because it is useful to remind ourselves that we are dealing here with a treaty, one that has been negotiated at arm's length between two governments.

Normally, the Senate, in exercising its constitutional prerogative, does not undertake to rewrite a treaty that has been negotiated between two governments. We exercise our powers, either by consenting to the treaty as negotiated, or by refusing to consent to it, thus rejecting the treaty as negotiated; or by attaching conditions to our consent. Those conditions can take the form of reservations or understandings affixed to the instrument of ratification.

It has been 54 years since the Senate undertook to amend a treaty by actually changing its language.

A few days ago, it is true that the Senate, in adopting the amendments proposed by the leadership, as recommended by the Senate Foreign Relations Committee, amended the permanent Neutrality Treaty. It was the first time in 1954 years that this has happened, though during that period the Senate has considered hundreds of treaties.

In amending the text of the permanent Neutrality Treaty, however, the Senate was careful to adopt interpretative language which had already been consented to by the two governments. Indeed, that language had, in effect, been submitted to the people of Panama and had been passed upon in their earlier plebiscite.

Mr. HATCH. Will the distinguished Senator yield for just one question?

Mr. CHURCH. Yes, I yield.

Mr. HATCH. I have enjoyed the comments of the distinguished Senator from Idaho, but I hope I am not misinterpreting. The distinguished Senator, although he indicates that most treaties, if not the vast majority, have not been amended on the floor of the Senate, is not arguing that the Senate does not have the prerogative or the right to amend, if the Senate finds that the treaties are not properly written, do not protect the United States, are ambiguous, or have other difficulties? It is within the prerogative of the United States to amend for any reason it so desires, even though past practice may have dicated otherwise.

Mr. CHURCH. Of course. I was just now mentioning our adoption of the leadership amendments.

Mr. HATCH. I thank the Senator.

(Mr. Hodges assumed the chair.)

Mr. CHURCH. In fact, as I have stated, the Senate saw fit, for the first time in 54 years, to amend the actual text of the Neutrality

Treaty in order to clear up certain ambiguities that the Senate Foreign Relations Committee had identified. Obviously, it is within the power of the Senate to amend the treaty itself, but we were careful to do so in a way that had already been agreed upon by both the Government of the United States and the Government of Panama, the two parties to the Neutrality Treaty.

Mr. HATCH. Will the Senator yield for just one other question on that precise point?

Mr. CHURCH. Yes, I yield.

Mr. HATCH. Just so we understand at this point, the Senator is emphasizing that, although this is the first time in so many years that a treaty has been amended, the treaty was amended to use the precise language of the two governments. if I understand the Senator correctly, and just to correct the record, it is my understanding, and I believe the Senator would concur, that the Senate has the authority, the power, and the right, if it so desires, to amend a treaty for any reason the Senate desires, whether or not it is to amend to clarify language agreed upon by the two respective powers.

Mr. CHURCH. Of course, the Senate has that power.

Mr. HATCH. I thank the Senator.

Mr. CHURCH. But the usual practice of the Senate, when it has wished to impose a condition or make a change, has been not to amend the text of the treaty itself, but to amend the articles of ratification by adding reservations or understandings, so that the Senate's consent rests upon the conditions stipulated in the articles of ratification.

Now, this is the normal way of proceeding, for the reason that a treaty represents a contract negotiated between two sovereign governments. If we choose to change the treaty language, then, of course, the effect of that, unless we adopt language that has already been agreed to by the two governments, is to force a renegotiation of the treaty.

The able Senator from Maryland is a lawyer, and a good one. I, myself, am a lawyer——

Mr. SARBANES. And, I may add, Mr. President, a good one, a very good one.

Mr. CHURCH. Well, now that we have established our credentials——

Mr. SARBANES. We have to have some reciprocity here, just as we do in treaty negotiations.

Mr. CHURCH. Very well, I am going to ask if the Senator from Maryland would, for the moment, just for purposes of this debate, consent to play the role of lawyer for the Government of Panama and I shall act, for purposes of the debate, as the lawyer for the United States.

Mr. SARBANES. Let me say I am willing to do that for the purposes of the debate, as the able Senator from Idaho has suggested, but I want it very clearly understood, because the argument has been asserted on the floor of this body that there is an oversensitivity to Panamanian concerns, that those of us supporting these treaties do it, first and foremost, because we believe that the treaties serve American interests.

Mr. CHURCH. Absolutely.

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Mr. SARBANES. We happen, among other things, to have a perception that American interests are served if there is a relationship between the United States and Panama which is aceptable to both peoples and protects their mutual interests; such a relationship may well serve American interests better than a situation like the 1903 treaty, which was arrived at in such a way and was so unfairly structured that it has provoked constant resentment and antagonism on the part of one of the parties to the relationship. That is one of the reasons these treaties are important and why they serve American interests.

Mr. CHURCH. Of course.

I ask the Senator to join me at an imaginary negotiating table only for the purpose of making a point that seems to be lost in this debate. As the Senator has correctly observed, the 1903 treaty was so odius to the Panamanian Government and its people that indignation over it led, in 1964, to serious riots and bloodshed, in which American lives, as well as Panamanian lives, were lost. The shock of such violence erupting in that small country led to a Presidential decision that the time had come to work out new treaty arrangements with Panama.

Now, if the Senator would, for a moment, take off his Senatorial hat, as I shall take off mine, and cast himself in the role of a lawyer negotiating for the Government of Panama, I shall cast myself in the role of a lawyer negotiating for the United States. Now, I put to you the following proposition.

The proposition is contained in this amendment offered by the Senator from Alabama. I ask you to agree to the following provision for the new treaty: First, that the United States, under the new treaty, will retain the rights it had under the old treaty; namely, to hold in perpetuity the exclusive right to construct a new canal in Panama. That is to say, we want to exclude any other country from ever building a new canal in Panama, thus depriving the Government of Panama, in perpetuity, from ever negotiating with any country except our own for the purpose of building a new canal in Panama.

However, the United States will not be so bound. For we shall insist on our right to negotiate with any government we please, should we decide to build a new canal.

All I am asking you to do, as the representative of Panama, is to relinquish Panama's right to negotiate with any country forever, while the United States shall have an unfettered right to negotiate with any country, at any time, for a new canal.

Now, Panama, are you willing to accept this provision in the treaty?

Mr. HATCH. If the Senator will yield——

Mr. SARBANES. Having put the question, I think the questioner himself ought to recognize an absence of any element of evenhandedness in that approach.

Mr. CHURCH. Well, after all, Panama should give a little here.

Mr. SARBANES. I must say I am being very restrained in that response, because I have great respect and affection for the questioner and I, in the end, want to have a good relationship between our two parties. But if you would just read your question again, and think about it for a moment, I would have to say to you that it

is all take and no give. I cannot regard that as even the semblance of an evenhanded proposal.

Mr. CHURCH. All I am asking you to do is to give us the right in perpetuity to exclude any other country from negotiation with Panama for a new canal. Only the United States may build a new canal in Panama, provided we want one there.

On the other hand, the United States must naturally preserve its option to build a new canal in another country, should we decide some other place better serves our needs. Even then, Panama would remain bound by this provision to deal with no other government.

Now why do you find that unacceptable? I am sure it would be approved in the United States overwhelmingly.

Mr. SARBANES. I am not fully familiar with all of your slang or phrases, but I think there is the phrase about having your cake and eating it, too, that well applies to this proposal that you are putting forward.

Mr. HATCH. Will the two distinguished lawyers yield for maybe a thought here, for just a second?

All I know is that I would have to admit both Senators are distinguished lawyers, but if I am a citizen of the United States, if I might play that role, I think I might want a different counsel representing me in these negotiations. [Laughter.]

As a matter of fact, I think I would want a counsel who would not start off by asking what I consider to be an objectionable question, but might start off pointing out the relationship that we have had, a good relationship, the $250 million that we put into the economy last year, and many other things, to try and show that maybe there is some reciprocity that might be very much interesting to our Panamanian friends.

Mr. CHURCH. I thank the Senator for his intervention.

Mr. HATCH. Well, I would rather have you be U.S. Senators who are actively working for our country. If we are going to have lawyers working for our country, have lawyers who know how to negotiate.

Mr. CHURCH. May I say to the Senator, even if he were there with all his skills, and made this proposal at the negotiating table I doubt that he would get any different response from the Panamanians than the reply offered by the Senator from Maryland.

Mr. HATCH. Will the Senator yield on that point?

Mr. CHURCH. I would prefer not to be interrupted again.

Mr. HATCH. It would be fair if the Senator would on that point, just that point, and then I will sit down.

Mr. CHURCH. I thought the Senator——

Mr. HATCH. And allow it to continue.

Mr. CHURCH [continuing]. Wished me to yield for a question.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CHURCH. I am happy to yield for a question.

Mr. HATCH. I would be very appreciative of the Senator from Idaho.

I would like to have been the negotiator of these treaties because I believe that we would have had a more forceful negotiation which would have benefited both countries, not just the country of Panama.

In addition to that, I think there would have been a lot of things pointed out that would have been for the benefit of both countries.

Mr. CHURCH. And the Senator's question?

Mr. HATCH. And the Senator's question is this: if the distinguished Senator from Idaho was the negotiator, would the distinguished Senator from Idaho beginning the negotiations for this canal, have started off with a question like the question he just asked of the other distinguished Senator and lawyer from Maryland and expect any nation, I do not care how small, insignificant, weak, ineffectual, or unrelated to the United States, to even negotiate? The answer is probably "no."

Mr. CHURCH. If I may supply my own answer to the Senator's question, it is this: The proposition I put to the Senator from Maryland was taken from the test of the amendment offered by the Senator from Alabama.

Mr. HATCH. Yes, out of context and——

Mr. CHURCH. Oh, no, not out of context.

Mr. HATCH. Surely.

Mr. CHURCH. It was paraphrased quite accurately. The Senator is wrong. He obviously knows that the proposition is so one-sided it could not possible float.

Mr. HATCH. In the context it was given.

Mr. CHURCH. Well, the context in which it was written. It was the amendment itself which I read from.

Mr. HATCH. If we are going to be lawyers, let us at least be fair lawyers and fair negotiators, and let us consider all ramifications and not just take something out of context that seems to be repugnant to everybody and act as if that is going to be an effective negotiation for the United States of America, because it certainly is not, nor is it, I might add, good law.

Mr. CHURCH. Nor, I might add, a proposal worthy of serious consideration.

Mr. SARBANES. Does the Senator from Utah, with all of his great skills, think there is any possibility that, if a plane was placed at his disposal, he could fly down to Panama now and say to the Panamanians, "I want you to agree to the following proposition. No other country is to be able to build a canal through Panama except the United States, but the United States can go anywhere else it wants other than Panama in order to build a canal," and expect the Panamanian people to agree to that?

Mr. HATCH. If I may answer that——

Mr. SARBANES. As being an evenhanded proposition?

Mr. HATCH. I can answer that. I think I will be able to.

If I were negotiating this, I would not start off with that proposition.

Second, I would not have negotiated these awful treaties.

Third, as a lawyer who has written a lot of contracts and negotiated a lot of contracts and millions and millions of dollars in contracts, I certainly would not have had the imprecise, poor legal language that had to come from imprecise, poor negotiations.

Now, with the fair accompli——

Mr. SARBANES. Having said all that, what is the answer to the question?

Mr. HATCH. Let me answer it in my way. I know the Senator asked the question.

All I am saying is this, if I were negotiating, I believe I could have gone down to Panama and come back with new treaties which would have benefited both countries and which would have had that provision in it.

I know I could have done it. But, on the other hand, I would not have negotiated from a position of weakness, as our two lawyers are doing here. I would have negotiated from a position of strength and I would have come up with treaties that benefitted my Nation first and foremost, and yet still would have been fair to the Panamanians.

I am willing—and I am not a betting man—but I am willing to bet I would have come back with that exact provision in the treaty.

Mr. CHURCH. Mr. President, if I may reclaim the floor, I must say that the Senator's confidence in himself is limitless.

Mr. HATCH. I think Senator Allen could have, also, and a number of other Senators I have confidence in, a number of other people.

Mr. CHURCH. If I may reclaim the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. CHURCH. Perhaps, the Senator from Utah has been endowed with the gift of working miracles. But the proposition we are faced with is a very plain one. I read it from the pending amendment.

It is a proposition which, in effect, stipulates that the United States, in perpetuity, shall have the exclusive right to build a new canal in Panama, that Panama can deal with no other country. But, on the other hand, the United States need not build a new canal in Panama, but reserves the right, on its part, to negotiate with any other country it may choose.

It would take a magician, indeed, to get the other party to agree to such a proposition in an arms-length negotiation.

Now, what proposition was agreed to?

Well, it is contained in section 2 of article XII and it is a proposition based upon some semblance of balance between the two countries. It is based upon a quid pro quo, which is always the case when governments negotiate at arm's length.

The provision is as follows:

> 2. The United States of America and the Republic of Panama agree on the following:
>
> (a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree.

In other words, the two governments consent that no new interoceanic canal will be built in Panama unless both governments agree.

Now, that gives us a veto. The Panamanians have conceded it to us. They may not go to another government—they cannot go to Japan, for example—and say, "You come in and make an arrangement with us whereby we will permit you to build a sea-level canal across our country." Under this treaty, they have given up that right. They have said, "We will not allow a new canal to be built unless the United States consents to it." That is an important right we have obtained, and the Panamanians have agreed to it, under the terms of the treaty.

What did they get in exchange for giving us the exclusive option, in effect, to build a new canal in Panama, or at least a veto that could prevent them from dealing with any other country for that purpose? What did they get in exchange? That is covered in part (b) of section 2, article XII, of the treaty. It reads:

> During the duration of this treaty, the United States of America shall not negotiate with third states for the right to construct an interoceanic canal on any other route in the Western Hemisphere except as the two parties may otherwise agree.

So we got a veto preventing Panama from dealing with any other country to build a sea-level canal across Panama; and the Panamanians, in return, got a veto to prevent us from negotiating with any other country for that purpose, for the duration of the treaty. That was the quid pro quo.

We felt, on our side, that it was a good trade, because we do not have any intention of building a canal in any other country, anyway. We had already spent $22 million hiring the best of engineers to explore thoroghly all alternative canal routes in Central America. They came back to us, after careful study, and said in their report to the President of the United States that they found no feasible route for a sea-level canal in any other country except Panama.

So, in effect, we gave away little or nothing in return for the Panamanian concession that we should have the right to veto their dealing with any other country on a new canal for the duration of the treaty.

As a matter of fact, I am told by those who negotiatied the treaty that this was a provision we sought on our initiative, because we felt it served the American interest so well.

It is obvious what is intended here. If the Senate were to adopt this amendment, it would simply gut the treaty. It is an amendment unacceptable on its face. No self-respecting government could accede to it. If we are going to have a treaty entered into voluntarily by two sovereign governments, then it has to be based a certain evenhandedness. There has to be fair consideration given to the legitimate interests of both sides. Otherwise, of course, no treaty can be consummated; no agreement can be reached.

So, Mr. President, since we did not have magicians negotiating and had to deal with normal considerations of fair play, we have in this treaty a provision that reflects not only the sensitivities but also the interests of both parties.

I believe it is a provision highly favorable to the United States, one of the better provisions in the treaty from the standpoint of American interests.

However, if the Senate should decide against this provision, if the Senate should wish to preserve for the United States its option to deal with other countries in Central America on the building of a sea-level canal, the way to do that is by reservation to the articles of ratification, not by attempting to amend the text of the treaty itself.

Perhaps Senators believe that the exhaustive study that has been made heretofore on this subject, and the large amount of money spent on it, is insufficient to convince them that the engineers were right when they concluded that the alternative routes outside of Panama were not feasible. Perhaps the Senate wants a

new investigation of that question, on which we could spend $35, $40, or perhaps $50 million, to reinquire into the matter during the next 5 years.

If that is the judgment of the Senate, the way to reach this provision in the treaty is not by trying to substitute a proposition so one-sided that it could not possibly be accepted by Panama, and thus kill the treaty; the way to do it is through an appropriate reservation to the articles of ratification.

For these reasons, Mr. President, I hope the Senate will reject this amendment.

I ask the Chair how much time remains to the two sides on the amendment?

The PRESIDING OFFICER. The Senator from Alabama has 13 minutes, and the Senator from Idaho has 20 minutes.

Mr. CHURCH. I thank the Chair.

I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. I yield myself as much of Senator Allen's time as I may require.

Mr. President, I have enjoyed the remarks of the distinguished Senator from Idaho. I know that he is very sincere and dedicated in his approach to try to resolve these problems and to try to put forth the best logic and position he can for the proponents of these treaties.

On the other hand, I had to interrupt him when the two attorneys were talking, because I felt that if we are going to negotiate these treaties, let us start from the beginning.

I was almost ready to interrupt him again, before the distinguished Senator admitted that it is his understanding that we voluntarily offered to do this. We voluntarily offered to put this provision in, binding the United States to not be able to build a new sea level canal anywhere else without the country of Panama's basically expressed provision. I do not think that is negotiating for our benefit. I do not think our negotiators were taking care of the good old United States of America, when they voluntarily bound us to the will or whim of a country of 1.7 million people, however much we want to have good relations between the two nations. The fact is that nobody else is going to build a sea level canal in this hemisphere. As a matter of fact, back at the turn of the century, when this matter was being considered, the preferable route was thought to be through Nicaragua.

We all know the historical aspects surrounding the preferable route through Nicaragua and the force and power of Teddy Roosevelt, and others, who gradually overturned what seemed to be the overwhelming sentiment at the time and allowed us to go into the relations and negotiations with Panama which resulted in the 1903 treaty.

What I am saying is this: If we are going to have negotiators representing the United States of America, then let us get negotiators who represent the United States of America who are not people going down there just to volunteer binding commitments of the United States of America which we would not otherwise have to have.

I am not an engineer and I do not purport to say which route would be better and whether routes through Nicaragua would be better or whether there could even be a sea level canal or whether a route through Panama is better.

I have heard both sides, and I have heard both arguments. I have heard persuasive arguments both ways.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. SARBANES. Has the Senator read the interoceanic canal study of the Atlantic-Pacific canal study?

Mr. HATCH. No; I have read parts of it. I have not read it all. I have not read all 1,000 pages.

Might I ask the Senator from Maryland has he read it?

Mr. SARBANES. I think it is fair to say I have, yes.

Mr. HATCH. All of it, every page, from beginning to end?

Mr. SARBANES. No, I cannot guarantee the Senator that.

Mr. HATCH. That is what I cannot guarantee.

Mr. SARBANES. I think I studied this commission report and I know what is in it and I know its conclusions and recommendations.

Mr. HATCH. I have, also. I would say I have studied it as much as the Senator.

Mr. SARBANES. I do not know how the Senator knows that but, in any event, what does the Senator then think of the conclusions and recommendations?

Mr. HATCH. I think it is a good study, and the conclusions may be accurate. I do not know. I have also read the background materials for the 1903 study from what Senators at that time who wanted the Nicaraguan canal. I do now know. I am not an engineer. I cannot make the ultimate decision on that matter, and it may very well be this is the only definitive and important study.

My point is not that. My point is why do we bind the United States of America in any way? Why did we not negotiate to allow us without question to build it if we want to or not? I think we could have done it. I think when we volunteer to bind ourselves to the whims and fancies of Panama we did not have to do that.

That is one of the things that I find some fault with in the negotiations. It is only one of the things. I think there are many, many things we can find some fault with.

I know a lot of people in our society believe that our negotiators, at least one of them was representing certain banking concerns to which are owed upward of $1½ billion, and that there was a definite conflict of interest, and that he was appointed for only 6 months for no other reason than he could avoid the confirmation process of the U.S. Senate, so that he did not have to come in and present his credentials and justify them in front of the Senate committees and prove that he did not have any conflicts of interest.

That is going to be a cloud that hangs over these treaties forevermore if they are passed.

And for anyone to act like it does not hang over bothers me, and fore anyone to think we had the best negotitations in this matter bothers me also, especially when we look at the language of the treaty, which I think as a composite whole does not protect the

United States of America the way it should. That is why some of these——

Mr. SARBANES. Mr. President, will the Senator yield on my time on that point?

Mr. HATCH. I am delighted to yield.

Mr. SARBANES. I do not want to consume the Senator's time.

Mr. HATCH. I understand our time is going rapidly.

Mr. SARBANES. I do not think the Senator should take the floor of the Senate and place a cloud over the integrity of Ambassador Linowitz. The Senator may want to quarred with the negotiators on the substance of what they achieved—that is what we are supposed to be here arguing about as reasonable people. But to cast doubt on people's motives or integrity, that is an entirely different matter and I deplore it.

Ambassador Linowitz received from the Department of State a letter on the matter of conflict of interest. That letter has been placed in the record and has been referred to previously in this debate. The letter set out a ruling from the legal adviser to the State Department that there was no conflict of interest present between his role as a negotiator and the various holdings which he had.

The Senator from Utah may want to differ with the negotiators over the substance of the treaty provisions, but I do not think he should place a dark cloud over people who have served the country well in many capacities, including both Ambassador Bunker and Ambassador Linowitz, and others.

Mr. HATCH. Let me add to the statement of the distinguished Senator from Maryland that I said "some people."

Let me go further. I do not think what has——

Mr. SARBANES. I do not think that takes care of the situation. If the Senator will yield. I think we are proceeding on my time.

Mr. HATCH. I am happy to allow the Senator to proceed on his time. But let me respond when I start.

Mr. SARBANES. Let me make the point.

I do not think it takes care of the point for the Senator to raise the issue and then attributed it to some other people and leave that dark cloud hanging.

If the Senator subscribes to that view, and if he does then I am most disappointed to hear it, he should let us know what his position is. I do not think he should trot out something which casts a dark cloud on the personal qualities of very distinguished people and then attribute it over to some other people.

If the Senator wants to disagree with the substance of what the negotiators have reached and question that, this is what a good part of this debate is about, but do not cast aspersions on the personal qualities of dedicated individuals.

Mr. HATCH. Mr. President, if I might respond——

Mr. MATHIAS. Mr President, will the Senator yield?

Mr. SARBANES. I yield to my colleague from Maryland.

Mr. HATCH. Mr. President, who has the floor?

Mr. SARBANES. Mr. President, it is on my time.

The PRESIDING OFFICER. No. I think the floor is held by the Senator from Utah.

Mr. SARBANES. I see. I thank the Chair.

Mr. HATCH. Mr. President, I am delighted to yield to the distinguished Senator from Maryland, Senator Mathias. Is it on this point?

Mr. MATHIAS. Yes, it is.

Mr. HATCH. Mr. President, could I make a point before he does that if I may?

I wish to answer the other distinguished Senator from Maryland. Let me say this: I did not put the cloud of Ambassador Linowitz's service over these treaties. The President did.

When there was a fuss raised about him being on the board of directors of Marine Midland Bank, he resigned temporarily, saying he will go back on, as I understand it, as soon as these treaties are concluded and any conflict of interest is resolved.

Mr. SARBANES. No.

Mr. HATCH. That is my understanding.

Mr. SARBANES. No.

Ambassador Linowitz, prior to that, had received a letter from the legal adviser of the State Department saying there was no conflict of interest.

Mr. HATCH. Then why did he resign?

Mr. SARBANES. Because a number of people perhaps including the Senator from Utah——

Mr. HATCH. Not including the Senator from Utah.

Mr. SARBANES. I do not know for a fact—who attacked him in any event, and he said, so that we do not even leave the basis for the attack he was quite happy to get off the board, but he had received an authoritative letter telling him there was no conflict of interest in response to his own careful inquiry.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, who in the devil is the State Department to do the job of the U.S. Senate? The Senate is the body that should decide whether or not there is a conflict of interest in the case of a nomination of a person to perform a diplomatic service. It may be true that someone in the State Department issued such a legal opinion, but as far as this Senator is concerned, that is no answer for me.

Mr. SARBANES. No; but that is an answer as far as the integrity of Ambassador Linowitz is concerned. He put the issue to appropriate legal officials and received a response.

Mr. HATCH. Who preselected them?

Mr. SARBANES. The Senator might want to say that he may disagree with the legal adviser, but the question is——

Mr. GRIFFIN. We did not get a chance to.

Mr. SARBANES. The question was put. The Senator had his opportunity.

I want to pursue with the Senator from Michigan——

Mr. HATCH. On the Senator's time. Is this on the Senator's time?

Mr. SARBANES. Yes. I assume all of this is on my time.

Mr. HATCH. All of this is on the Senator's time.

Mr. SARBANES. Because the Senator from Michigan never raised that point until after——

Mr. GRIFFIN. Now the Senator is going on to a different issue, is he not?

Mr. SARBANES. No. It is the same issue and as the Senator knows we have discussed it before.

Mr. GRIFFIN. The Senate can be concerned about it just the same. Even if this Senator were negligent in any way, that does not resolve the matter. Let us go back to whether or not he was a member of the board of directors of this bank; let us go back to whether this bank made a loan in the neighborhood of $50 million to the Government of Panama headed by Mr. Torrijos, and did he remain on the board of directors after he undertook the job of negotiator? If he did, never mind what this Senator did or did not do. Maybe I did not do my duty. I thought I did. But it seems to me that is beside the point. The Senator from Maryland is dodging the issue.

Mr. SARBANES. No; I am not dodging the issue.

I will ask directly to the Senator from Michigan whether he is asserting that Ambassador Linowitz had a conflict of interest and that his integrity in negotiating this treaty, therefore, should be questioned?

Mr. GRIFFIN. Under the Constitution those who are appointed to perform diplomatic functions are supposed to be confirmed by the U.S. Senate. As I have said before, I think it was very ill advised for President Carter—when he knew he would have to come to the Senate with the treaty for our consent after it was negotiated—to circumvent the Senate by obviously appointing Mr. Linowitz on a temporary basis, so the nominee would not have to come before the Senate.

Whether being a member of the board of directors of a bank which has a $50 million loan outstanding to the Republic of Panama, headed by the dictator Torrijos, is a conflict of interest in such a situation is a question that the Senate should have had an opportunity to pass upon.

It troubles me, frankly, that the administration and Mr. Linowitz himself, did not go through the regular channels and bring this out in advance. That would have been the thing to do, and then to have explained it.

Mr. SARBANES. Mr. President, I ask unanimous consent to have printed at this point in the Record the exchange of correspondence between the chairman of the Committee on Foreign Relations and the Secretary of State concerning the appointment of Ambassador Linowitz to a temporary 6-month appointment, an appointment which I might point out was authorized under legislation enacted by the Congress of the United States. I ask unanimous consent that that material be printed at this point in the Record.

There being no objection, the material was ordered to be printed in the record, as follows:

JANUARY 31, 1977.

Hon. CYRUS R. VANCE,
Secretary of State, Department of State, Washington, D.C.

DEAR MR. SECRETARY: I am writing you with respect to our recent conversation concerning the appointment of Mr. Sol Linowitz.

It is my understanding that this appointment will be made for a period not to exceed six months and for the purpose of putting Mr. Linowitz in the position of U.S. co-negotiator on the Panama Canal talks. As I indicated to you, I have no

objection to this arrangement for a not-to-exceed-six-month period, so long as the negotiations from the U.S. side are headed up jointly by Ambassador Bunker and Mr. Linowitz. I am sure you will agree with me that Ambassador Bunker has performed admirably throughout his tenure as chief negotiator and I am confident, as I am sure you are, that he will continue to perform in this fashion until these negotiations are brought to a successful conclusion.

I know that you will apprise me of any misunderstanding on my part about Mr. Linowitz's role. Similarly, I would appreciate being informed beforehand of any change in the co-negotiating procedure.

Sincerely,

JOHN SPARKMAN,
Chairman.

THE SECRETARY OF STATE,
Washington, February 10, 1977.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: Thank you for your letter of January 31 concerning the appointment of Mr. Sol Linowitz. This is to confirm that your understanding that Mr Linowitz is to be appointed as Co-Negotiator with Ambassador Bunker on the Panama Canal Talks, with the personal rank of Ambassador for a period not to exceed six months, is entirely correct. There has been absolutely no change in the co-negotiating procedure.

Sincerely,

CYRUS VANCE.

EXCERPT FROM FOREIGN SERVICE ACT OF 1946, AS AMENDED

APPOINTMENTS

SEC. 501. (a) The President shall, by and with the advice and consent of the Senate, appoint ambassadors and ministers, including career ambassadors and career ministers.

(b) The President may, in his discretion, assign any Foreign Service officer to serve as minister resident, chargé d'affaires, commissioner, or diplomatic agent for such period as the public interest may require.

(c) On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister in accordance with subsection (a) of this section or clause 3, section 2, of article II of the Constitution, relating to recess appointments, except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months.

EXHIBIT 2

DEPARTMENT OF STATE,
Washington, D.C., March 7, 1977.

Hon. JOHN J. SPARKMAN,
Chairman, Senate Foreign Relations Committee,
U.S. Senate.

DEAR MR. CHAIRMAN: In light of certain statements by a member of the Senate and a member of the House with respect to Ambassador Sol M. Linowitz, I would like to make the following observations which may assist you and the members of your Committee in responding to questions or inquires.

Ambassador Linowitz was appointed, last February 10, as Co-Negotiator for the Panama Canal Treaty, in the capacity of Special Government Employee with a six-month appointment to the personal rank of Ambassador, in accordance with applicable Federal and Department of State regulations and established procedures. He is serving in this capacity without compensation.

The Department of State conflict of interest regulations provide that no Department employee may "have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and

responsibilities" (22 CFR 10.735-205). Pursuant to these regulations, Mr. Linowitz prior to his appointment submitted to the Department a full statement of his memberships on boards of directors as well as his financial holdings. These were reviewed thoroughly by the Office of the Legal Adviser.

In the cases of two companies, Pan American World Airways, Inc., and Marine Midland Banks, Inc., Mr. Linowitz furnished information from them outlining their activities and financial interests in Panama. Appended are the statements from the Presidents of these two companies. Based on the Department's review, Mr. Linowitz agreed that in the unlikely event any aviation issues arise during the course of the treaty negotiations which might be of possible interest to Pan American, he would recuse himself from participation in the negotiation of any such issues. Continued membership on the board of Marine Midland Bank did not violate the applicable regulations because of the relatively low level of financial transactions of the bank with and in Panama.

Mr. Linowitz also agreed that his law firm "is not now and will not while I am serving in this capacity, represent any client on any matter related to the Panama Canal Treaty negotiation or the Canal Zone."

In the case of Mr. Linowitz' financial interests, two companies in which he had small shareholdings—AT&T and Texaco—did have business which the Legal Adviser believed might be affected by the outcome of the Canal Treaty negotiations. Consequently, Mr. Linowitz agreed to sell his shares in those companies, and has done so.

As a result of the Department's review and the foregoing undertakings by Mr. Linowitz, the Acting Legal Adviser gave a written opinion which concluded that the requirements of the applicable statutes and Department of State regulations on conflicts of interest had been satisfied.

Sincerely yours,

KEMPTON B. JENKINS,
Acting Assistant Secretary
for Congressional Relations.

NOTE

Note to F. C. Wiser.

Re Pan Am Activities in Panama—Intertrade.

Intertrade is a small distribution company, wholly-owned by Pan Am. Established in 1972, its principal functions are:

Provides bonded warehouse services, including customs clearance services and some inventory management services. It now has facilities at three locations: Colon Free Zone, Panama Airport, and Panama City.

Provides extensive local trucking services primarily between the Airport and its bonded warehouses.

Acts as Pan Am's General Sales Agent in Colon and certain other points in Panama.

Provides sea-air transhipment services; arranges for the receipt of goods by sea from Japan and other points in the Orient and for onward shipment, usually by air to points in Central and South America.

As indicated in the attached 1977 projections, 1977 Intertrade sales are expected to increase from the 1976 level of $703,000 to $946,000 and net profit before tax from $125,000 to $142,000. Pan Am originally invested $10,000 to establish the company. The underlying book value of our equity is now $170,000.

Intertrade is under the direction of Art Sumner, who has been with Pan Am 35 years, most of them as a resident of Panama. The other 58 employees are citizens of Panama.

Also attached is a recent brochure on Intertrade which may be on interest.

I understand you are being provided with information on SDISA through Art Best.

CHARLES W. TRIPPE.

JANUARY 7, 1977.

Note to F. C. Wiser.

Subject: Pan American Operation, Panama.

Sales office location: Edificio Hatillo, Avenida Justo Arosemena, Panama City, Republic of Panama.

Hours/Telephone: Mon.-Fri. 8:00 am-12 Noon/1:00 pm-5:30, Sat.-Sun. closed. Telephone: 25-5425.

Airport/location: Tocumen International Airport, located approximately 18 miles from Panama City. The Airport operation at the present time is 100% handled by Pan American personnel, with the exception of inbound cargo, which is handled by Intertrade.

Director: Reeder Chaney Office Phone: 25-6510. Home Phone 26-0859.

Mr. Chaney is the only international employee in Panama, and is responsible for not only Panama, but offline west coast/South American General Sales Agents in Colombia, Ecuador, Bolivia and Peru.

Present Employment: 151 people.

Passenger Operations: 75 movements/month.

Passenger Sales/1976: $10,000,000.

Cargo Sales/1976: $4,000,000.

General Information: New Airport and terminal facilities will be in operation by fall of 1977.

Separate Corporations in Panama:

(a) Intertrade (separate report being prepared by C. Trippe).

Intertrade is wholly owned Panamanian cargo company and is the general Sales Agent for Pan American on the Atlantic side of the canal for cargo passengers. They are also general Sales Agents for Pan Am for the balance of the Republic of Panama, other than the City of Panama.

An agreement has recently been signed with Intertrade to do all of our inbound cargo handling at Tocumen Airport.

(b) SDISA (Servicios y Diversiones Internacionales, S.A.).

A Pan Am wholly owned Panamanian Catering operation located at Tocumen Airport servicing all carriers.

A. S. Best.

Pan American Operation, Panama

Prior to World War II, Pan American operated from both the Atlantic and Pacific side of the Canal Zone in Panama. When World War II started, the operation at France Field, located on the Atlantic side, was consolidated with the operation at Albrook Field on the Pacific side.

Pan American's operation continued at Albrook Field until the Republic of Panama developed an International Airport at Tocumen in October, 1949.

At one time, our operation in Panama was considerably more active than at present. Due to retrenchment in military forces, reduction in Panama Canal Zone international employees, long-range and wide-bodied aircraft, Pan Am has decreased its total activity through Panama.

The present 151 employees represent only 9.2 percent of our employees in Latin America or slightly over 1 percent of our employees worldwide in the field marketing group. Likewise, today the total sales of $10,000,000 for passengers and $4,000,000 for cargo represents .8 percent of our revenue.

Marine Midland Banks, Inc., Operations Related to Panama

A. Past or Dormant Investments.—

1. Banco Inmobiliario de Panama S.A.—This is a small mortgage bank in Panama that engages in medium- to long-term housing mortgages and the warehousing of mortgage paper. We have just sold our 2½ percent interest.

2. Financiera Centroamericana S.A.—This is a general finance company engaged in commercial, industrial, and real estate lending in Central America, as well as holding an equity interest directly and indirectly in bonded warehouses in Central America and the Carribbean. This 22.4 percent investment was just disposed of.

3. Servicio de Anuario Telefonico International S.A.—This company sold and distributed telephone books in serveral Latin American countries. We have preferred shares at modest value. This investment will be written off.

B. Current Investments.—

Marine, through Intermarine London, owns Bream Shipping, which was formed a few years back in conjunction with the international lending operations of Intermarine London. This company is presently not being used; however, it has limited assests resulting from prior activities conducted external to Panama.

C. Branch Operations.—

Most international banks have involvements in Panama consistent with that country's currency relationship with the dollar and its favorable climate as a

financial center. Accordingly, the Marine started in Panama with a Regional Representative Office for Central America in 1971. It subsequently opened a branch operation in October 1973 to complement the Representative Office with a primary focus on gnerating corporate business in Panama and Central America, as well as deposit gathering from Latin America. As of November 30, 1976, it has total claims of approximately $32.4 million (of which $18.5 million is claims in Panama, and the remainder is almost entirely claims due from other Central American corporate clients). In Panama much of its business involves financing trade of corporations located in the Colon Free Trade Zone. The combined Representative Office and Branch have a staff of 25, 3 of whom are U.S. nationals. This operation is not large when compared to the activities of several others.

As a large international money center bank, the Marine conducts business throughout the world. Panama has long been a center for trade, as well as a notable financial center. Loans in Panama are a national consequence of the position of the bank and the country.

Marine Midland, either directly from New York or through the Bahamas or Panama Branch or foreign affiliate, has a $100,000 short-term, unsecured loan available to the Hydroelectric Power Authority of Panama.

There is a $100,000 loan to the Agricultural Development Bank in Panama.

There is a $4 million loan to the Republic of Panama, due in November, 1983.

There is Marine's share in a $115 million international syndicated loan, managed by Citibank/New York. InterUnion/Paris, in which Marine directly owns 45 percent, also has a loan of $2 million to the Republic of Panama.

In addition to these direct loans to the Government of Panama or institutes of the Government, the Marine is engaged in normal short-term lending operations through the banks and the private sector in that country.

* * * * * * *

Intermarine owns two Panamanian special-purpose shipping companies, International Ship Finance (Panama) Inc., and Avon Shipping, Inc., These companies each own a Panamanian flag vessel on behalf of Japanese owners, which vessels are financed by Intermarine. These corporations are financing vehicles, and they are only notionally involved with Panama.

Mr. HATCH. Mr. President, how much time do we have remaining for the Senator from Alabama and the other Senators?

The PRESIDING OFFICER. The Senator from Alabama has 3 minutes remaining. The Senator from Maryland has 15 minutes.

Mr. HATCH. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. All of this last colloquy was supposed to be charged to the Senator from Maryland. I believe we have more time.

Mr. SARBANES. Mr. President I think what I said was that in order to be fair to the Senator from Utah, whatever time I consumed from the point I arose either to make responses or ask questions should come out of my time. If that is not reflected in the time figure just given to us by the Chair it should be.

The PRESIDING OFFICER. The time was allocated to the Senator who was speaking; 15 minutes and 3 minutes.

Mr. HATCH. Let me just say this, in closing: I believe that when we talk about negotiating treaties we ought to talk about why these treaties are not negotiated well, and when our ambassadors voluntarily bind the United States to something which they would not ordinarily have to bind them, then I call that pretty poor negotiation.

Having to go through the approach made by the distinguished Senator from Idaho in taking it out of context, as though he were negotiating for the United States, was not quite accurate in my judgment.

In addition, I think there will be a cloud over these treaties because Ambassador Linowitz, whether he is right or wrong—and I

am not passing judgment on that—was appointed for only 6 months so he could avoid the confirmation process of the Senate, when they knew he was a member of the board of directors of Marine Midland Bank; when he has still maintained his membership on the board of directors, as I understand it, of Pan American World Airways, which has extensive interests in Panama; when he was a full partner, as I understand it, in the Coudert Brothers law firm, an international law firm, representing various international interests, and because of other, I think, pretty important issues.

It is my understanding—I do not believe I am incorrect in stating—that these treaties were negotiated in the last hours of that 6-month appointment.

Those things bother a lot of American citizens and deserve to be brought up here on the floor.

When I hear this type of a colloquy and interchange, as though they are negotiating effectively for the United States of America, and when we volunteer through these ambassadors to bind ourselves to things to which we would not have ordinarily been bound, I do not think we have been represented well.

I thank the Chair.

The PRESIDING OFFICER. All the time of the Senator from Utah has expired.

The Senator from Maryland.

Mr. SARBANES. Mr President, how much time remains to the managers of the bill?

The PRESIDING OFFICER. Fifteen minutes or all of the time until 1 o'clock.

Mr. SARBANES. I thank the Chair.

Mr. President, I want to go back to this strange idea that some opponents of the treaties were to have that, when you negotiate a treaty or negotiate an agreement, you can unilaterally impose all of the terms and conditions.

By definition an agreement has to be arrived at between two parties. These agreements have been negotiated between the executive branch of our Government and the Government of Panama, and they are now presented to the Senate for advice and consent.

It is clear that the Senate has not simply taken the treaties as presented. We have, in fact, amended the Neutrality Treaty. Senator Byrd and Senator Baker joined in proposing amendments to the Neutrality Treaty, and those were accepted by the Senate, by an overwhelming vote.

A number of reservations and understandings were adopted to the resolution of ratification, so the Senate has been working its will on these treaties.

On the other hand, when a treaty comes before us we should recognize, while it is wide open to do anything we want to it, that in doing so we may in fact, lose the agreement with the other party. Then we have to make the judgment in terms of what is being proposed, whether it is of such sufficient consequence that it is worth running the risk of losing the agreement. That is simply what it boils down to, and people ought to recognize that as these amendments are proposed and judged. Many of the amendments, are not really addressed to a substantive concern but are designed to be simply for one purpose, and that is to defeat the treaties by

indirection by making it impossible to have an agreement between the two parties.

I yield to my distinguished colleague from Maryland.

Mr. MATHIAS. I think my colleague for yielding.

As he knows, I was trying to get the floor a moment ago to make a very simple and brief statement. The name of Sol Linowitz has been raised in this debate, and I merely want to say that I have known Sol Linowitz for a number of years. I view him as a man of obvious talent and capability. But beyond that he has always been a man who has been of the highest integrity. He has always been conscious of the special obligations of public service, and has been scrupulously observing the limits which bind and restrain the lives of those who are engaged in any form of public service.

I think the United States has been fortunate in having Sol Linowitz available to perform important public service when we have needed him.

I thank the Senator for yielding.

Mr. SARBANES. I thank the able Senator for his thoughful and sensitive comment.

I want to return to that subject because I think it is quite important. I do not think in the course of debating these treaties and their substance we ought to cast any reflections or aspersions on American citizens who have served this country with distinction and dedication. I want to read into the Record a letter from the Department of State, from the Acting Assistant Secretary for Congressional Relations, to the chairman of the Committee on Foreign Relations, dated March 7, 1977, in other words, just over 1 year ago. The letter follows:

DEAR MR. CHAIRMAN: In light of certain statements by a member of the Senate and a member of the House with respect to Ambassador Sol M. Linowitz, I would like to make the following observations which may assist you and the members of your Committee in responding to questions or inquiries.

Ambassador Linowitz was appointed, last February 10, as Co-Negotiator for the Panama Canal Treaty, in the capacity of Special Government Employee with a six-month appointment to the personal rank of Ambassador, in accordance with applicable Federal and Department of State regulations and established procedures. He is serving in this capacity without compensation.

The Department of State conflict of interest regulations, provide that no Department employee may "have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially with his Goverment duties and responsibilities" (22 CFR 10.735-205). Pursuant to these regulations, Mr. Linowitz prior to his appointment submitted to the Department a full statement of his memberships on boards of directors as well as his financial holdings. These were reviewed thoroughly by the Office of the Legal Adviser.

In the cases of two companies, Pan American World Airways, Inc., and Marine Midland Banks, Inc., Mr. Linowitz furnished information from them outlining their activities and financial interests in Panama. Appended are the statements from the Presidents of these two companies. Based on the Department's review, Mr. Linowitz agreed that in the unlikely event any aviation issues arise during the course of the treaty negotiations which might be of possible interest to Pan American, he would excuse himself from participation in the negotiation of any such issues. Continued membership on the board of Marine Midland Bank did not violate the applicable regulations because of the relatively low level of financial transactions of the bank with and in Panama.

Mr. Linowitz also agreed that his law firm "is not now and will not while I am serving in this capacity, represent any client on any matter related to the Panama Canal Treaty negotiation on the Canal Zone."

In the case of Mr. Linowitz' financial interests, two companies in which he had small shareholdings—AT&T and Texaco—did have business which the Legal Adviser believed might be affected by the outcome of the Canal Treaty negotiations.

Consequently, Mr. Linowitz agreed to sell his shares in those companies, and has done so.

As a result of the Department's review and the foregoing undertakings by Mr. Linowitz, the Acting Legal Adviser gave a written opinion which concluded that the requirements of the applicable statutes and Department of State regulations on conflicts of interest had been ratified.

Now, that is the letter that was sent to the chairman of the committee in response to an inquiry from the chairman concerning the conflicts-of-interest question. Now, the attachments to those letters, which, of course, set out, as pointed out in the letter, both the activities of Pan American and Marine Midland loans—this lists the loans, and this has been referred to earlier——

Mr. GRIFFIN. What was the loan level of activity of the Marine Midland Bank?

Mr. SARBANES. I was just about to read that. It has listed under "loans" the following:

As a large international money center bank, the Marine conducts business throughout the world. Panama has long been a center for trade, as well as a notable financial center. Loans in Panama are a national consequence of the position of the bank and the country.

Marine Midland, either directly from New York or through the Bahamas or Panama Branch of foreign affiliate, has a $100,000 short-term, unsecured loan available to the Hydroelectric Power Authority of Panama.

There is a $100,000 loan to the Agricultural Development Bank in Panama.

There is a $4 million loan to the Republic of Panama, due in November, 1983. There is Marine's share in a $115 million international syndicated loan, managed by Citibank/New York. InterUnion/Paris, in which Marine directly owns 45 percent, also has a loan of $2 million to the Republic of Panama.

Mr. GRIFFIN. Forty-five percent of how much?

Mr. SARBANES (reading):

In addition to these direct loans to the Government of Panama or institutes of the Government, the Marine is engaged in normal short-term lending operations through the banks and the private sector in that country.

In addition to these direct loans to the Government of Panama or institutes of the Government, the Marine is engaged in normal short-term lending operations through the banks and the private sector in that country.

Mr. GRIFFIN. That was 45 percent of how much?

Mr. SARBANES. If the Senator will let me conclude, the attachment also covers what are referred to as "past or dormant investments," and it also covers the branch operations of Marine Midland with respect to their branch operations in Panama. Of course, as has been pointed out on this floor, Panama serves as an international banking center for South America and Central America, and has, I think, some 85 banks, not only American but a number of Japanese and European banks as well.

Now, this material from which I am quoting, as I pointed out in reading the letter from the Department of State, was made available to the State Department, setting out the activities—

Mr. GRIFFIN. Will the Senator yield for one inquiry?

Mr. SARBANES. Let me just quote that section:

In the cases of two companies, Pan American World Airways, Inc., and Marine Midland Banks, Inc., Mr Linowitz furnished information from them outlining their activities and financial interests in Panama. Appended are the statements from the Presidents of these two companies.

So those statements were submitted to the Department of State for examination by the acting legal adviser prior to giving this written opinion, which concluded that Mr. Linowitz had met all the

requirements of the applicable statutes and Department of State regulations on conflicts of interest, that those requirements had been satisfied.

Mr. GRIFFIN. Before the time runs out, will the Senator yield to me for just one inquiry?

Mr. SARBANES. Sure.

Mr. GRIFFIN. The Senator has said that the Marine Midland Bank had a 45-percent interest in a particular loan arranged by a group of banks. I do not think the figure of 45 percent of what was clear. What was the size of the loan, 45 percent of how much, that the Marine Midland Banks had outstanding to the Republic of Panama in that one loan?

Mr. SARBANES. Well, as I read this, I thought I read that paragraph, but I will read it again.

Mr. GRIFFIN. If so, I did not catch it.

Mr. SARBANES. For the benefit of the Senator from Michigan:

There is a $4 million loan to the Republic of Panama, due in November, 1983. There is Marine's share in a $115 million international syndicated loan, managed by Citibank/New York InterUnion/Paris, in which Marine directly owns 45 percent, also has a loan of $2 million to the Republic of Panama.

Mr. GRIFFIN. Of how much? Forty five percent of how much; If the Senator does not have the information, I will tell him: It is 45 percent of $115 million.

Mr. SARBANES. I thought I read that for the Senator.

Mr. GRIFFIN. I am trying to get the Senator to say how much. I did not hear him say that; 45 percent of $115 million.

Mr. SARBANES (reading):

There is a $4 million loan to the Republic of Panama, due in November, 1983. There is Marine's share in a $115 million international syndicated loan, managed by Citibank/New York InterUnion/Paris, in which Marine directly owns 45 percent, also has a loan of $2 million to the Republic of Panama.

Mr. GRIFFIN. I am sorry.

Mr. SARBANES. Mr. President, I just want to go on.

Mr. GRIFFIN. So that is about $57 million.

Mr. SARBANES. That is the third time that I have read that paragraph to the Senator from Michigan, and I hope he has heard that paragraph now.

Mr. GRIFFIN. You stated that was a low level activity.

Mr. SARBANES. Mr. President, if I may proceed, this information was submitted to the Department of State by Mr. Linowitz, who asked for a ruling with respect to whether there were any conflicts of interest, and he did that prior to this appointment:

Pursuant to these regulations, Mr. Linowitz prior to his appointment submitted to the Department a full statement of his memberships on boards of directors as well as his financial holdings. These were reviewed thoroughly by the Office of the Legal Adviser.

In the cases of two companies, Pan American World Airways, Inc., and Marine Midland Banks, Inc., Mr Linowitz furnished information from them outlining their activities and financial interests in Panama. Appended are the statements from the Presidents of these two companies.

And then the Department then went on and said, in concluding:

As a result of the Department's review and the foregoing undertakings by Mr. Linowitz, the Acting Legal Adviser gave a written opinion—

The PRESIDING OFFICER. All time has expired.

Mr. SARBANES [reading]:

* * * which concluded that the requirements of the applicable statutes and Department of State regulations on conflicts of interest had been satisfied.

[The following proceedings occurred later in the day and are printed at this point in the record by unanimous consent.]

Mr. SARBANES. Mr. President, earlier in the day I had an exchange with the distinguished Senator from Utah and the distinguished Senator from Michigan concerning Ambassador Linowitz and some conflict-of-interest questions which they raised, and I pointd out that material had been submitted to the State Department and examined and he had been given a legal opinion that there were no conflicts of interest before he entered on his assignment, a temporary 6-month appointment, as an ambassador to be involved in the negotiations.

In the course of that I read from a submission that was made by Marine Midland, on whose board he served, concerning their interest in Panama and, of course, the State Department ruled that the extent of their interest was at such a low level of financial transactions that there was no violation of any conflict of interest.

In reading a paragraph from that submission there was a misprint in the CONGRESSIONAL RECORD which made the meaning somewhat unclear, and I want to correct that RECORD and read now the exact, correct, disclosure or submission made by Marine Midland as to its loans to Panama.

The Statement that they filed at the time when Ambassador Linowitz had requested a ruling with respect to any conflict of interest pertaining to his various holdings included the following provision:

LOANS

As a large international money center bank, the Marine conducts business throughout the world. Panama has long been a center for trade, as well as a notable financial center. Loans in Panama are a national consequence of the position of the bank and the country.

Marine Midland, either directly from New York or through the Bahamas of Panama Branch or foreign affiliate, has a $100,000 short-term, unsecured loan available to the Hydroelectric Power Authority of Panama.

There is a $100,000 loan to the Agricultural Development Bank in Panama.

There is a $4 million loan to the Republic of Panama, due in November, 1983. This is Marine's share in a $115 million international syndicated loan, managed by Citibank/New York. InterUnion/Paris, in which Marine directly owns 45 percent, also has a loan of $2 million to the Republic of Panama.

That paragraph is where the misprint occurred, and there was some question raised that Marine Midland had a 45-percent share in the $115 million international syndicate loan. That was not the case. Marine's share of the $115 million loan was $4 million only.

The 45-percent figure referred to Marine Midland's ownership in InterUnion/Paris which had a $2-million loan to the Republic of Panama. So Marine Midland had an ownership interest of 45 percent in a bank which had a $2-million loan to Panama and in addition Marine Midland had a $4-million share in the $115-million syndication, and that was the extent of this loan involvement on the part of Marine Midland.

Understandably, I think because of the typographical misprint the Senator from Michigan took the view and suggested that

Marine Midland had a 45-percent interest in the $775-million syndicated loan.

That was not the case. They had $4 million which was their share in that. In other words, their share of it was about 3½ percent, not 45 percent. I think that is an important fact to get on the record since the State Department, in its legal opinion, indicated "that continued membership on the board of Marine Midland Bank did not violate the applicable regulations because of the relatively low level of financial transactions of the bank with and in Panama."

I ought to point out that later on, even after obtaining this ruling, that there was no conflict of interest; Ambassador Linowitz, because of the queries some people had raised and, I think, because of the sensitivity that has always characterized his public service, and his own deep sense of integrity, went ahead and resigned from the board of Marine Midland voluntarily, although he was clearly not required to do that and, in fact, had been given a legal opinion that there was no conflict of interest.

I mention all of this again simply to underscore the outstanding service which Ambassador Linowitz has rendered this country, and to once again urge that while people may disagree with the substantive judgments of our negotiators or, in fact, with other people involved in the treaty, that we ought not to cast any aspersions on people's personal qualities in the course of carrying forward this debate.

It is important to underscore in this debate that Ambassador Linowitz has behaved throughout with a very high sense of standards and an uncompromising sense of integrity.

(This concludes proceedings which occurred later in the day.)

Mr. THURMOND. Mr. President, I rise in support of part 1 of the Allen amendment to the pending Panama Canal Treaty.

This amendment would expressly provide that nothing contained in the treaty would deprive the United States of the right to prevent the construction in Panama of a second canal by any nation other than the United States.

Many might feel that this privilege granted to the United States in the 1903 and 1955 treaties is protected by article 12, part 2, section a of the current treaty.

That section reads as follows:

> The United States of America and the Republic of Panama agree on the following: (a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree.

Thus, we can see upon examination of the pending treaty that the prohibition against construction in Panama of an other canal by another State is negotiable and may be accomplished if the United States and Panama agree to it.

Mr. President, much has been said about what the United States had to give up to get an agreement from Panama that they would not allow another country to build a second canal in Panama. To keep what we already had in the original treaties it is claimed the United States had to offer a quid pro quo in the form of a provision preventing us from even negotiating to build another canal elsewhere.

The Senate must remember that the greatest giveaway of all is the treaty itself, in which we are giving the canal to Panama. One would think that after that giveaway we would not have to offer a quid pro quo to balance each provision of the treaty.

By surrendering the right to even negotiate with another country for another canal route, we not only surrender the canal, but surrender as well our leverage over Panama to keep the canal open.

Mr. President, this is the Western Hemisphere we are dealing with in these treaties. It is our national security and our economic health involved here. We are the ones with a small Navy which has to be shifted back and forth through the canal. We are the ones who need minerals from other nations that have to be shifted through the canal.

Once we act on these treaties it is final. When we pass a law and make a mistake we can do it over. If the Senate passes this treaty then the action is final. We will have to live with it forever.

Mr. President, I urge acceptance of this amendment by the Senate.

The PRESIDING OFFICER. All time having expired under the previous order, the hour of 1 o'clock p.m. having arrived, the Senate will now proceed to vote on the division 1.

Mr. SARBANES. Mr. President, have the yeas and nays been ordered on division 1?

The PRESIDING OFFICER. They have not.

Mr. HELMS. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. I ask unanimous consent that further proceedings under the quorum call be dismissed and I ask for the yeas and nays.

The PRESIDING OFFICER. Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SARBANES. Mr. President, I move to table the pending amendment of the Senator from Alabama and I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. The Senator can only move to table division 1.

Mr. ROBERT C. BYRD. That is what he is doing.

Mr. SARBANES. That is what I am doing. I am moving to table division 1, which is now pending for a vote at 1 o'clock, and I ask for the yeas and nays on the motion to table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

(Mr. Nelson assumed the chair).

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Hawaii (Mr. Inouye), the Senator from South Dakota (Mr. McGovern), the Senator from New Hampshire (Mr. McIntyre), the Senator from Alabama (Mr. Sparkman), and the Senator from Georgia (Mr. Talmadge) are necessarily absent.

I further announce that the Senator from Colorado (Mr. Haskell) is absent on official business.

I further announce that, if present and voting, the Senator from New Hampshire (Mr. McIntyre) and the Senator from Alaska (Mr. Gravel) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Nebraska (Mr. Curtis) and the Senator from Arizona (Mr. Goldwater) are necessarily absent.

The result was announced—yeas 56, nays 35, as follows:

[Rollcall Vote No. 74 Ex.]

YEAS—56

Abourezk	Hart	Morgan
Anderson	Hatfield, Mark O.	Moynihan
Baker	Hathaway	Muskie
Bayh	Hayakawa	Nelson
Bellmon	Heinz	Pearson
Bentsen	Hodges	Pell
Bumpers	Hollings	Percy
Byrd, Robert C.	Huddleston	Proxmire
Case	Humphrey	Ribicoff
Chafee	Jackson	Riegle
Chiles	Javits	Roth
Church	Kennedy	Sarbanes
Clark	Leahy	Sasser
Cranston	Long	Stafford
Culver	Magnuson	Stevenson
Danforth	Mathias	Stone
Durkin	Matsunaga	Weicker
Eagelton	Melcher	Williams
Glenn	Metzenbaum	

NAYS—35

Allen	Garn	Randolph
Bartlett	Griffin	Schmitt
Biden	Hansen	Schweiker
Brooke	Hatch	Scott
Burdick	Hatfield, Paul G.	Stennis
Byrd, Harry F., Jr.	Helms	Stevens
Cannon	Johnston	Thurmond
DeConcini	Laxalt	Tower
Dole	Lugar	Wallop
Domenici	McClure	Young
Eastland	Nunn	Zorinsky
Ford	Packwood	

NOT VOTING—9

Curtis	Haskell	McIntyre
Goldwater	Inouye	Sparkman
Gravel	McGovern	Talmadge

So the motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.
The motion to lay on the table was agreed to.
Mr. Robert C. Byrd addressed the Chair.
The PRESIDING OFFICER. The Senator from West Virginia.

SCHEDULE FOR NEXT WEEK

Mr. ROBERT C. BYRD. Mr. President, may I have the attention of the Members of the Senate?

Mr. President, there is at the desk House Concurrent Resolution No. 544 which provides for adjournment of the House on today over until 12 o'clock meridian on Monday, April 3. That resolution also provides that when the Senate recesses at the close of business tomorrow, it stand in recess until Wednesday, March 29, or April 3, as determined by the Senate on tomorrow, Thursday, March 23.

Now, Mr. President, I have asked that the verbiage of the resolution be worded in this manner so as to give the Senate the option no later than the close of business tomorrow to either recess until next Wednesday or the following Monday.

I have sought to secure an agreement on this treaty for a final vote.

I think that in view of the fact that the Senate has been debating the treaty now for 27 days, it is a part of the package. While the Senate was considering the Neutrality Treaty, the debate was wide-ranging and actually covered both treaties because, as I have said, and as some others in here have said many times, the two treaties constitute the package.

So we have been on the treaty now for 27 days. There is other legislation that is important and we are going to have to attend to it sooner or later.

I think Senators are entitled to know whether or not they are going to be required to come back next Wednesday or whether or not they can fulfill the schedule which was originally laid out for them which would allow them to come back on April 3.

Now, in my judgment, 27 days constitute an ample time for debate on these treaties.

I am not pressing to close the debate today, or tomorrow, or even the first week of April. But it seems to me that we ought to be able, and I think Senators are entitled to know, to reach a date, to agree on a date for a final vote, because I think all Senators want to be here when the final vote occurs, those who oppose and those who support the treaty. They want to be here. They want to cast their vote on that occasion and they are entitled to know sometime in advance when that date is going to occur.

I would like to see the Senate proceed to recess until April 3. The joint leadership made that announcement earlier this year, that that would be the period of time for the Easter nonlegislative period.

We cannot always foresee what eventualities may occur. I never anticipated that the debate on the treaties would extend 7, 8, or 9 weeks, and we are already in the sixth week.

I think it is about time that we reached an agreement, if it is at all possible, on a date certain when a final vote will occur. That was done on the first treaty. I respect the opponents of the treaty

for their consideration in that matter and for their helping us to reach an agreement.

We have been on these treaties now a total of 175 hours as of 11 minutes after 1 p.m. today. I cannot understand why it is not possible at this time to say that we will have had enough by April 10, or April 15, or some such. We could easily give the Senate another 10 days after it returns, if we stayed out until April 3, and that would seem to me to be a very reasonable length of time.

That is not pressing the opponents. That is not any attempt to gag anybody to institute the gag rule or to stop the debate suddenly. But the time has come when the leadership needs to know so that we can tell our Members on our respective sides of the aisle what they can expect.

I would hope that those who are opposing the treaty would see what they can do to help the leadership to bring about an agreement as to a time to vote.

I am not suggesting that it be April 3. I am not suggesting that it be April 10 even. But it would seem to me that we could agree on a date during the week of April 10, say April 14, that is on a Friday, Friday of that week. That would give the Senate 10 days, not counting Saturdays, 10 days after returning on April 3.

Having been on the treaties for 27 days already, we would still be on them tomorrow, that would mean we would have been on the treaties 37 or 38 days before reaching a vote on this second treaty.

So I hope that Senators will accept what I have said in the spirit in which I say it. I do not speak in criticism of anyone. I understand how strongly the opponents feel about the treaty.

But there has to come a time when we close the debate on this treaty and go on to other things. It seems to me it is only reasonable on the part of the leadship to ask those Senators who oppose the treaty if they would please get together during the afternoon, or tomorrow morning, and see if they cannot give the leadership an agreement so that that agreement can be announced and Senators can proceed to take the time off that was originally laid out by the joint leadership.

I want to bend over backward. I want to be fair. I want to be reasonable. But I think that in return all the members of the Senate are being discommoded when they cannot be give a definite time now, after 27 days of debate, on which we can reach a final vote.

The Senate itself is being discommoded. We have other legislation. There are deadlines that have to be reached in connection with some of the legislation.

I would hope and I implore and beseech the opponents to continue in their efforts.

I want to thank Senator Laxalt. He has made efforts, very sincere efforts, he and others, to arrive at a time certain.

So I would just simply urge him to continue to try today and tomorrow, because, if we can reach an agreement tomorrow, then the Senate can resort to the alternative of reconvening on April 3. It will not be too late to do it tommorrow. But I will have to get the resolution up today because the house is waiting on it. The House is ready to adjourn.

Before calling up the resolution, I would be glad to yield to the distinguished minority leader.

Mr. BAKER. Mr. President, nothing, I suppose, in the nature of the leadership is more sacrosanct than the right of the majority leadership to set schedules for the Senate. However, as the majority leader knows. I am really concerned about the possibility that we might abbreviate the Easter recess—not because it will discommode me. It will do that. But I am perfectly prepared to be here at whatever time and all the time the Senate is in session. I am concerned because of the fact that the people on this side of the aisle—and I am sure those on the other side of the aisle—have come to depend on the published schedule and have made their plans and representations in reliance on it.

I hope very much that the majority leader will consider any other alternative and other facts that could lead us to a reconciliation and a resolution of this problem without abbreviating the recess.

I urge that the opponents of the treaty and the proponents of the treaty and the distinguished majority leader try to arrive at some solution to this dilemma. Otherwise, I think it will cause an enormous hardship on Members of the Senate on both sides of the aisle. I urge that we try to find a solution to it.

I do believe, Mr. President, that we should go ahead with the full recess. I must respectfully disagree with the majority leader in that respect. While we are on the same side with reference to the ratification of these treaties, I find that we do not agree on this particular item.

I urge that we try to find a way out of this dilemma, to remove the possibility that the recess will be abbreviated.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader. I appreciate everything he has said. I realize that to bobtail the recess would discommode Senators on both sides of the aisle. I know that no Senator needs me to say that our first responsibility, I think, is to attend to the business of the Senate. I think the Senate would be severely criticized if, after spending 28 days on the treaties, it proceeds to take 10 days off, knowing that when we get back, we have no agreement as to a final vote and that we have no way of knowing how long the debate is going to continue, with important legislation backed up, committees being hampered in their operations, with other legislative matters scheduled far down the road, and keeping in mind that it is hoped that the Senate can close down a scant month before the election in November.

So I think the Senate would be severely criticized—and it would be justifiable critcism—if the leadership took off 10 days, without an agreement as to a final vote.

I am very sorry, Mr. President. If Senators want to blame anybody, I will take my share of the blame. But I have diligently sought to get an agreement. I hope the opponents will rise to this occasion and help the leadership to get an agreement, so that not only they but also their colleagues will not be discommoded.

I cannot—as majority leader, I simply cannot—say that we are going to go out until April 3, unless we get an agreement, and I will not say that. I just cannot see that as my responsibility. I have

to have an agreement, or we will have to call the Senate back next Wednesday. That discommodes me, too, but I see no alternative.

I am perfectly willing to continue to work today and tomorrow, in the effort to get an agreement. But I think it is about time that we agreed on a target date for a final vote. I do not believe that is unreasonable at all, after all the time we have spent on these treaties. I think the American people want to see us get this issue behind us one way or the other.

If the opponents win, that is fine with me. But let us have a showdown; let us have a vote. If the proponents win, that is fine with me. I happen to be a proponent. I think the American people are entitled to have their business consummated in the Senate, and I do not think they want to see the Senate stay on and on and drone on and on with respect to these treaties.

I have had my say.

Mr. LAXALT. Mr. President will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. LAXALT. Mr. President, I would like nothing better, representing the opposition, than to be able to comply with the majority leader's request. But I have consulted with several of my colleagues during the course of the last couple of days, and I simply am not prepared to enter into any firm time agreement at this time.

The fact is that, upon evaluation of the entire subject matter, we have had extensive debate here, but there are vital areas in connection with the canal treaty that we really have not touched. We really have not dug in detail into the administration aspects in connection with the Commission. We certainly have not dug into the economic aspects in connection with the payment schedule.

Above all that, our problem is a mechanical one. If I could offer the majority leader a time agreement today, I would, because, as I have indicated to him, I want the debate to be expedited; I want this matter to be concluded. I think all the colleagues in opposition share that view. But at this point, from the standpoint of pure mechanics, we are not prepared to do that.

The fact is that we presently have in the works, among opposition Senators, major amendments to the canal treaty, some in the nature of a substitute, which are going to take some time to prepare. They would like the period during the recess to do that. When that is done, we will sit down and evaluate how much time is going to be required to process those amendments adequately.

My own view, I say to the majority leader, is that, in all probability, upon returning here from the recess, we can conclude this matter by April 14 or so—perhaps before. But I cannot, in this position, at this point, much as I would like to settle upon a firm time agreement, make such an agreement.

I ask the majority leader, in terms of what the minority leader said, to preserve the recess. Plans have been made by many Senators to go back to their constituencies—it is not any form of vacation—and do their public service, see how the people have reacted to their votes on the canal treaty.

Then we will come back, and as soon as I have an opportunity to develop these amendments, I assure the majority leader that we can sit down and arrive at a time agreement. Until that point, I do not think we will be able to do that.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. GRIFFIN. Mr. President, I should like to supplement what the Senator from Nevada has said.

I think it important that everyone realizes, particularly the American people who have been listening to the Senate debate, that it requires unanimous consent of the Senate to impose such a time agreement. It is not just a matter of the leadership, of the opposition, or a majority vote of the opposition.

If there is one Senator out of a hundred who will not go along with a time agreement, then obviously we cannot impose the restriction that the distinguished majority leader seeks.

I, for one, will say that I am in the opposition group, but I would favor the proposal of the distinguished majority leader. However, that leaves us a long way from having the unanimous consent of a hundred Senators.

Mr. MCCLURE. Mr. President, will the Senator yield?

Mr. LAXALT. I yield.

Mr. MCCLURE. Mr. President, there is no one who is aware of the burdens of scheduling the matters before the Senate who cannot sympathize with the problem that the Senator from West Virginia is confronted with in trying to expedite this matter and others. I think there is a great deal of sympathy with that problem on the part of the vast majority of the Members of the Senate.

However, there is another side to that problem as well, and that is that there are 99 other Senators who also have problems with their own schedules. That is one of the reasons why many of us have pressed for a fixed recess schedule, so that we can attend to some of the work that must be done among the people whom we have the duty to represent here.

The Panama Canal treaties are very important issues. There are, as the majority leader has said, a number of other important issues. I am among those who find it advisable as well as proper that I draw from the experience and the judgment of the people of Idaho in order to assist me and guide me in how I should answer the questions which will be asked us on a number of legislative issues.

I regard the legislative recess schedule as simply a way of allocating our time between the work we do here and the work we do outside of these Chambers. I assure the Senator that I will share with him my fixed schedule for all of next week, starting on Sunday evening and running through the entire week, based upon the firm assurances I have had from the joint leadership over a long period of time that I could make that schedule. I have any number of people and groups of people in my State who have sought to reach me, to tell me what they think should be done. They all cannot come 2,500 miles across the country to reach me here. I try to make myself available to them here.

My schedule next week is full—absolutely full—of firm commitments I have had for weeks, based upon firm commitments made to the Senate that we would be able to do that.

I know from my converstions with the Senator from Nevada that this matter can be expedited as soon as it is possible for Senators who have various amendments to get together and try to work out

which ones have to be offered and which ones might be left without being offered.

Mr. LAXALT. Mr. President, will the Senator yield at this point?

Mr. MCCLURE. I yield.

Mr. LAXALT. I indicate to the Senator from Idaho as I previously have to the majority leader that we have been the process on a staff level of attempting to distill and coordinate some 55 amendments, reservations, and understandings we have at the desk. That has been quite successful. I think realistically, I say to the majority leader, looking at it less from the standpoint of what is on the desk, between 20 and 25 amendments. The unanswered questions, I must emphasize again, are the unprinted amendments, which are going to be substantial in nature. They will be drafted as soon as we recess and we will evaluate them when we come back.

Mr. MCCLURE. Mr. President, will the Senator yield?

Mr. LAXALT. I thank the Senator from Idaho. I yield.

Mr. MCCLURE. I thank the Senator for yielding.

Let me add this: We have yet a half day remaining this week, today, we have Thursday and Friday; that is 2½ days yet this week, and we are talking about coming back on Wednesday of next week in order to gain 3. I suspect if we had a unanimous-consent agreement entered into right now we would end up having no votes on Thursday and Friday, and we would have then given up 2 days in order to avoid giving up 3 next week. The 2 that are being given up this week are where every Senator had reason to expect that we would be here on legislative business. As to the 3 that are affected next week, every Senator had reason to believe we would not be here. So I really most sincerely request of the majority leader that he give sensitive concern to the needs of 99 Members of the Senate, many of whom have very grave commitments and commitments that are very difficult for us individually either to break there or to break here. It is a matter of extreme urgency as far as the Senator from Idaho is concerned because I think it is a part of our job to be there. If we do not have certainty in scheduling we cannot be there. It goes to the credibility of our process. It goes to the credibility of assurances given to us by the leadership and of our assurances, in turn, to the people of the States that we represent.

I say that in all sincerity and with full recognition of the problems that the majority leader has in trying to expedite the legislative schedule here.

Mr. ALLEN. Mr President, will the Senator yield?

Mr. ROBERT C. BYRD. Mr. President, there is not a day, not a day, that I am not reminded of the sensitive concerns of the other 99 Senators. I am very well aware of those concerns and if there has ever been a majority leader who has attempted to bend over backward in order to accommodate the needs, problems, and concerns of the other 99 Senators any more than I have I would like for someone to speak up and say that name right here and now. I am aware of the concerns.

I get no satisfaction. I have been wrestling with this very question for several days, and I have been going back and forth to Senators

who lead the opposition side, and they know that; and Senator Laxalt has reacted in a very splendid way. He has sought to get an agreement. But this brings me no satisfaction, not any, and I know my colleagues on this side of the aisle, I am sure, do not look upon an abbreviated recess with any joy or satisfaction.

So, let no one be under the impression that I have not already wrestled with this matter, and it has been quite tortuous to me, but I recognize where my duty lies, and I think my duty is right where I have stated.

I do not want to come back in the middle of next week, but if we could go out with an agreement that would say we would vote on April 18, which would be Tuesday, 2 weeks from next Tuesday, that would give Senators all of the recess in which to prepare their amendments. They would have all of the first 2 weeks after the Senate reconvenes on the 3d, and they would have Monday and Tuesday of the third week. It seems to me that is ample time, but we would at least know when the vote is going to occur. So do not hold me responsible alone in this bobtailing of the recess. I am simply trying to get the Senate to move on to other business.

We have been on this matter 27 days, and the arguments have been made and they have been repeated ad nauseam, and they will continue to be repeated. So let us all share this responsibility.

Mr. MUSKIE. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Do not put the responsibility on the majority leader. The majority leader has to do what he thinks he has to do in order to keep the legislation moving.

So I would hope that the Senator from Nevada (Mr. Laxalt) and his colleagues on his side of the question would continue to discuss this today and tomorrow. We do not have to decide at the moment, but I have laid out a suggestion here that seems to me to be amply reasonable and which would give the opponents plenty of time. We know that the implementing legislation still has to come on. So, this treaty is not the end all. We are going to have implementing legislation in which the House of Representatives will have to vote.

Mr. MUSKIE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. MUSKIE. Mr. President, I did not intend to say anything on this point. But given the number of Senators who have expressed concern about the majority leader's decision, I think he needs some support, and I must say I concur in his decision. I do not intend to repeat any of the reasons of the majority leader, but I wish to add one.

I have been around here many years in which an overriding issue that was very time consuming hit the session, and the result all too often was that we consumed and wasted so much time on that single issue that we gave inadequate attention to the issues that followed, that were thereby crowded into too few days and too few weeks. I have seen that happen too many times with time agreements becoming shorter and shorter and speeches on the floor more and more meaningless.

I understand the importance of these treaties and the importance of giving everyone adequate time to address the issue.

But we have other difficult issues coming down the pike and I for one wish to see those given the kind of adequate attention they have not always gotten when they have followed an issue of this kind that consumed a lot of time. I am concerned about that. I can see some of those issues down the road.

I do not like to give up an Easter recess either. It takes me a little longer to get around my State than it did when I was younger, so I like ample time. But I really think the majority leader is on target. He has indicated he is willing to go to the 13th, 14th, the 18th, and I suspect he would even give a couple more days on top of that in order to get certainty.

Mr. ROBERT C. BYRD. No question about it.

Mr. MUSKIE. And I think that is reasonable.

We are always crowded with legislation. We have to begin markup on the budget resolution on the 4th of April. We must finish that by the 15th. If we did not adopt some time-collapsing procedures we would never get that bill marked up, and we have to cover the whole range of Government programs, $500 billion worth, in a week or more.

But we recognize time is a constraint. We discipline ourselves to live within that constraint and we get our work done or at least we have never failed up to now. It may be more difficult this year. But I really think what the majority leader has been proposing provides ample time to do the kind of thing that the Senator from Nevada is describing as being necessary.

I want to join the majority leader in complimenting Senator Laxalt on his management of this side of the debate. I think he has been responsible, I think he has been decent, and I think he has been accommodating. So I am not being critical.

But I really think we have to discipline ourselves in this case to reach a date certain, and I do not care whether it is the 10th of April or the 20th of April. Certainty will enable us to address all the other problems that we have more effectively and with greater service.

So I join the majority leader, and I do not expect a response to these comments immediately, and I suspect the majority leader does not. But I would hope that all who are involved will take the next day-and-a-half to consider these matters, and this is why I rose to add this one other reason.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Maine for his fine statement.

Mr. SCOTT. Mr. President, will the Senator yield briefly?

Mr. ROBERT C. BYRD. I yield.

Mr. SCOTT. Mr. President, I was not here when this colloquy began, and yet I believe I grasp the substance of the matter. Let me say for the benefit of the majority leader we have 100 not 99 Senators who need to be accommodated, and I think certainly our distinguished leader, the majority leader, should be included rather than just to refer to 99.

I have heard the objection made, the statement made, that we do not need more than 2 weeks, from among people on this side of the aisle, and some on the other side. I would believe, and certainly it is

agreeable with this Senator, but more importantly, it is agreeable with a number of Senators, to have a time limitation if the matter was presented after the recess.

The resentment that I see—and I use the word "resentment" advisedly—is that we set a time that we are going to have recesses, and the schedule was made up a long time ago. The leverage is used of denying us some time off provided we will agree to something, a question of pressure being applied, saying, "You children are not going to get off for a period of time unless you agree to a time limitation."

That is where I see the opposition, and I say that in all candor and in a friendly manner to our distinguished majority leader.

I believe when we come back there will not be the slightest difficulty in a 2-week or thereabouts limitation on debate. I would hope that my distinguished friend from West Virginia might consider that because that is the complaint I have heard, and I am talking just candidly and frankly to the majority leader.

Mr. ROBERT C. BYRD. I appreciate the Senator's candid statement. But I do not think such resentment, if there is any, is justified.

The leadership has not attempted to keep the Senate in late. All Senators know that. The leadership has not attempted to bring the Senate in early day in, day in, and day in. The leadership has sought to give committees an opportunity to meet; did not come in on Saturdays. I have not pressed for Saturday meetings, and there has been no effort to invoke cloture. As a matter of fact, I have tried to discourage any consideration of a cloture motion, and I do not think that is the way to go in this situation.

Mr. LAXALT. Mr. President, will the Senator Yield?

Mr. ROBERT C. BYRD. So the leadership, I think, should be given the benefit of the doubt in a situation like this.

I do not know how Senators can complain about the leadership utilizing what was originally laid out as nonlegislative periods as a threat or as a stick to get an agreement. I do not see how they can say that because, after all, this action that I feel bound to take brings me pain, even more pain than those Senators who have been speaking.

Stand in my shoes, wear my shoes, a little while, and see how you would feel about it.

I need a week off as much as anyone needs a week off. I need that time off as much as anyone needs it off. I also make appointments; I make speeches; I have to run for reelection. I have the same problems that any other Senator has here.

But I wish you would consider the position that the leadership, the joint leadership, is put in when we lay out a schedule.

If in the future we are going to have these kinds of problems—I can remember when we did not lay out nonlegislative periods. There were no periods set aside for Senators to count on. We went out on Thursday night before Good Friday, and we came back in on Monday or Tuesday. There were no nonlegislative periods.

I can remember, and the Senator from Louisiana can, when we did not have a month off every other year in August. Things have come a

pretty long way, and I have made my contribution toward the fact that we now have nonlegislative periods.

But I think we are all going to have to share this responsibility. If we have to come back next week on Wednesday do not point to the majority leader. Just say, "Those of us who are opposing the treaties and who would not enter into an agreement, we will share it with him; we share that with him," because I think I would not be unfair in stating if we took that nonlegislative period, some of the opponents would be the very first to criticize the leadership of the Senate for not staying in. That would be the first thing they would say, "Well, they ought to have kept us there. We should have stayed on the job."

Well now, you cannot have it both ways. I am willing to bear the brunt of any criticism, but I will have to say to the American people who are listening that we all share responsibility here to reach a decision on these treaties in due time and get them behind us. I am willing to let the chips fall where they may. If the opposition has the votes, that is the end of it. If the proponents have the votes, that is the end of it, but we do have to get on to other things.

May I just say once again——

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes. The Senator has been seeking the floor, and I will give him the courtesy of yielding.

I do not want to carry the argument any further. I have stated the condition I think the Senate is in. I have stated the reason why we ought to have a time agreement, and I have stated my hopefulness that we will take throughout today and tomorrow and obtain an agreement. I think reasonable men can certainly obtain an agreement by tomorrow that will give all Senators a certain target date.

I do not care—I said the 18th of April a minute ago. I say the 21st of April. That will give the Senate 3 full weeks, and we can come in on Saturdays if the opponents want more time. We can come in on Saturdays during that period. But 3 full weeks—just give us a date, that is all I am asking so that Senators will know how to plan.

You say that Senators—you point to the leadership and you say, "The leadership laid out a schedule. Now, if it bobtails it, it impairs our capabilities of making plans. We cannot make plans with certainty." That is what I am asking for now. Give us a target date so that we can all make plans with certainty, so that we will know the day and hour when we will reach a final decision on this treaty.

Mr. STENNIS. Mr. President, I do not want to reargue anything, but I do feel like perhaps I want to say just a word along this line. There has been no prior discussion with the leader. But as one of many who have been holding a lot of hearings on matters that are to follow this important matter, it seems to me that we ought to follow the leadership here. He has had cooperation from many others, but I

think he has handled this thing very skillfully in keeping it going and getting it along. I think we are going to have to make a choice between changing our rules where we will not have the freedom of debate, and so forth, that we have now or tightening up on ourselves more with some self-discipline, and giving the benefit of the doubt to the leadership, if I may express it that way, when they so honestly feel that they should take this course.

I am frank to say I will not be making any sacrifice by staying here, I have a lot of appointments, but many others will. But this is our place of duty. This budget resolution has got to be met. Time is running out on that. There are a lot of matters coming following this. I expect in all other things we ought to follow the leader.

Mr. LAXALT. Mr. President, will the leader yield for just a moment?

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Mississippi, as I thank the distinguished Senator from Maine.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I did promise to yield to Mr. Allen.

Mr. LEAHY. I wonder if Mr. Allen will yield to me for a couple of minutes.

Mr. ALLEN. Yes.

Mr. LEAHY. Go ahead. I will proceed after you complete your remarks. I am perfectly willing to wait.

Mr. ALLEN. I thank the Senator.

Mr. President, I say to the distinguished majority leader, whom I admire and respect so much and whose leadership I enjoy following here in the Senate, that I am mindful of the duties and responsibilities and the burdens of the leadership, and even though the distinguished majority leader of necessity has to be in almost daily contact with each Member of the Senate, either directly or through the minority leader, yet I see that the majority leader's position is a lonely one, somewhat like the Presidency; it is a lonely position, and he does come in for criticism as well as praise. That is one of the burdens of the office.

I stated with respect to the other treaty that I felt we could agree on a time certain to vote, and we were able to reach a reasonable agreement that gave satisfaction on all sides, and certainly gave the leadership and the managers of the treaty, and the President himself, I am sure, the opportunity to get sufficient votes to obtain approval of the first treaty.

I believe that there would be no great difficulty in reaching a time agreement—a reasonable time agreement—after we come back from the recess; and I do feel that if we did not have the problem of the recess, we would have no difficulty today in reaching an agreement on a time limitation. But when you mix the two

together, when you mix the recess with the demand or the request, shall I say, that we agree to a time limit, that is where we meet considerable difficulty; because if it is said to us that we must reach a time agreement or the recess is to be canceled, or half of it, that is not conducive to reaching an agreement.

I do not care about the recess myself; I would just as soon stay here. I have a full schedule of speeches down in Alabama; I would like to keep it, but that is not important. What is important is whether we are going to be called on, as I see it—others may not see it that way—to sacrifice a principle for the little comfort that is contained in a recess.

We need not have another day's recess, as far as I am concerned, if that is the way it is felt, but I do believe that we should not be called on to agree before we recess on a time limit, or else we will forfeit these days of recess; I just feel like that does not please Senators so very much.

I recognize that the Senate is going to go along with the majority leader; but I do hope that the majority leader will accept the assurances, the sincerity, and the good faith, the bona fides of Senators, and feel confident that when we return from the recess, good faith efforts will be made to come to a time agreement; and I would anticipate that the agreement that would be reached would not be greatly different from the time suggested by the majority leader, possibly well within that.

What is resented, I will say with all the deference, respect, and admiration that I have for the majority leader, is that coupling these together does not sit well, at least with the Senator from Alabama—possibly it does with others, but I believe possibly it does not—that we are told, "Agree today or tomorrow or a time limit, or we are going to cancel half of your recess."

I just question whether the right course is being pursued, and I hope the majority leader will accept the assurances of those who do not want to be forced into a time limit that a good faith effort will be made.

Before I stop, I want to say that not only do I admire the distinguished majority leader, I admire the distinguished minority leader for the position that he is taking on this matter. I do not believe the fate of this treaty is at stake in permitting this recess. I do not give a rap about the recess personally. It does not make a bit of difference to me; I had just as soon consider this treaty for days on end. That suits me fine. But I do believe we can come to an agreement after the recess, and I hope we will not be put to this requirement that we reach an agreement before the recess.

I appreciate the majority leader's strong stand on this issue, and I thank the distinguished majority leader for yielding to me.

Mr. ROBERT C. BYRD. Mr. President, the Senator from West Virginia does not just indicate now that we must have an agreement today or tomorrow or the holiday will be bobtailed. I have indicated this for several days, and the majority whip, in his whip notice, I believe of last Friday, indicated that if an agreement were not reached we would probably have to shorten the holiday. This is not something that has just suddenly come up. Members have been put on notice for quite some time that this would be a distinct possibility.

Mr. ALLEN. Well, I would like to say to the distinguished majority leader and Senators that if this "agree or we cancel the recess" is the penalty that is being placed on the opponents of the treaties, it would seem to me that this penalty, like the rain that falls on the just and the unjust alike, is going to fall on the 68 Senators as well as the 32 Senators, because they are going to be inconvenienced also.

Mr. ROBERT C. BYRD. Mr. President, we all know that, and we know it is not a penalty being placed on the opponents, so let us clear the Record on that. It is a penalty being placed on all of us.

If we cannot sit down as reasonable men and agree on a time limit now, how does the Senator think he can assure the majority leader that when we come back on April 3 we can agree on a time limit and reach an agreement then, if it only takes one Senator at that time to object?

Mr. ALLEN. It only took one Senator the other time, I would remind the majority leader.

Mr. ROBERT C. BYRD. I am glad the Senator reminded me of that. But I am willing to work today and tomorrow to reach an agreement, and it seems to me that reasonable men should be able to reach an agreement today or tomorrow as easily as 10 days from now, and I hope we can.

But this is not a penalty on those opposing the treaty. It is a penalty on all of us. I guess I would be the one who would have the greatest whiplash of all, but that is a thing I have to contend with.

I yield to the Senator from Vermont.

Mr. LEAHY. Mr. President, I heard a thing or two that disturbed me somewhat when the distinguished Senator from Mississippi (Mr. Stennis) was speaking earlier. I might say I know of no Member of this body I admire more than Senator Stennis. I know of no one in this body who has more of a sense for the history and traditions of the Senate than Senator Stennis. When I hear him saying that he is concerned that we either reach a point where we can make agreements on time limitations on some of these matters or we may be faced with a position where the rules of the Senate themselves will have to be changed, I think when someone of Senator Stennis' caliber and background and known philosophy in this area would make a statement like that, it shows the amount of concern it has caused.

I think the Senate owes a tremendous debt of gratitude to our leaders, Senator Robert C. Byrd and Senator Baker, for the amount of work they have done during the time they have been the leaders of the Senate in working out time agreements. As Senator Byrd knows, I am ordinarily one of the first to ask, "Can we not have some exact times when we will be here and we will not be here?" As the distinguished majority leader knows, I have, during the past 3 years, been back to my home State just about once a week, for one thing or another. The people of Vermont want to see me back there, and I want to be back there. But I support the majority leader on this matter very, very much.

Even though I have matters planned all of next week in every part of the State of Vermont, and which would begin well before dawn every day and extend past midnight, talking with the people of Vermont to find out how they feel about various issues, discuss-

ing among other issues the treaties, I know there will be one question I will be asked by every single person who has any question in Vermont. That is going to be: "You have been on this treaty now for a month and a half."

I might say, incidentally, Mr. President, that every reliable poll taken in Vermont shows the people there split right down the middle, half in favor of the treaty and half against.

All will say the same thing. We have been on this treaty now for a month and a half. When we ratified the NATO treaty, the treaty which set up the most significant alliance in recorded history, it took us 12 days. The people in Vermont know that we are facing energy problems, we are facing farm problems—and I believe we will have the farm bill coming back here—we are facing taxes, social security, and all the other issues which impact on them directly every single day of the year.

They say, "My God, is there anybody down there who can make up their mind at this point? We can certainly make up our minds." Every one of those Vermonters have made up their mind. They say, "Can you tell us, Pat, old boy, what day you will finish that up and get on to these other matters which are really necessary to us?"

Quite frankly, Mr. President, I would rather see the distinguished majority leader cancel the whole recess so I can tell the people in Vermont that we are down here working, trying to get this matter cleared up so we can get to the other things that are of far more importance. I support the majority leader.

Mr. ROBERT C. BYRD. I thank the Senator. I would like to read a note which was handed to me. I was supposed to make a speech today at 1:45, or something like that. It would have been a speech which would have been of benefit to me. I have been handed a note:

The speech was canceled as the people had to leave at 2 p.m.

So this cuts across all of us when we stand here and do our duty and have to cancel a few speeches. I thought it might be appropriate to indicate that I did not cancel this one; the people who were going to have me speak canceled it because of my having to be here to take a stand on what I think is in the best interest of the country.

Mr. LONG. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. LONG. I thank the distinguished majority leader.

The Senator from Louisiana all the time has been thinking that if we are going to pass this treaty we will have to enter a motion and limit the debate. We have a rule for that. Some of us did not enjoy setting anew precedent, when some of our Members were fully employing their rights under the rules and conducting, we might say, a filibuster after cloture. But they had a right, certainly. They had precedents on their side to do it. It would seem to me that from time to time we just have to live by the cloture procedure even though we prefer not to.

I honestly think it really serves no purpose to change the plans, to change the schedule. If the Senator has to do it, he can get it to a vote just as quickly by filing a cloture motion. I applaud the

Senator for pleading with Senators to cooperate. I think he ought to do that. Before he comes out with a cloture motion, he definitely ought to plead with everybody, cajole, or just beg, just do anything he can to try to intrigue Senators to cooperate and bring the matter to a vote.

If the Senator cannot have the cooperation, it seems to me he ought to just face the fact that he can file a cloture motion and force the matter to a vote. We have a rule for that purpose. If he has to do it, he ought to just do it.

We do not like to tell people they cannot talk as long as they want to, but when we get down to it, does the Senator think the Amercian people understand our sitting here for 3 solid months on something which is controversial, but where people do have the chance make up their minds? It is pretty clear to this Senator most people know how they are going to vote.

In the end, do we not resolve the position of Senators by calling the roll at some point?

Mr. ROBERT C. BYRD. Exactly.

Mr. LONG. It seems to me that the Senator, whether he likes it or not, will find himself forced into that rather unhappy position. I know he does not like to apply for cloture, but I think he will be forced to do it, unless he can bring Senators around to him.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. President, I yield the floor.

The PRESIDING OFFICER [Mr. Melcher]. The pending question is on the second division of the amendment by the Senator from Alabama. The Senator from Washington is recognized.

Mr. MAGNUSON. Mr. President, I have an emergency matter that I would like to take up with the leadership. It should not take over 2 minutes.

Mr. ALLEN. I yield to the Senator.

Mr. MAGNUSON. This is a rescission from the White House. The Senator from Maine should be interested in this. The President has requested that Congress rescind the expenditure of close to $60 million. It must be acted upon today because time will run out shortly.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Washington may proceed as in legislative session for not to exceed 5 minutes.

Mr. ALLEN. Reserving the right to object and I shall not object, Mr. President, I would like to ask the majority leader if we are going to be able to return to the amendment this time which has been used.

Mr. MAGNUSON. Mr. President, I ask unanimous consent——

Mr. ALLEN. I am not talking about the House message. We have been talking for an hour and a half. Will that be taken from the time of the amendment or will it be added back to the time on the amendment?

Mr. ROBERT C. BYRD. Mr. President, there will remain something like and hour and 10 or 15 minutes after this. I am sure the proponents of the treaty will yield all but 5 minutes of that, or 10 minutes, so the Senator would still have his time.

Mr. ALLEN. I have no objection to the Senator from Washington proceeding.

Mr. HARRY F. BYRD, Jr. Mr. President, reserving the right to object, if $60 billion is involved——

Mr. MAGNUSON. $60 million.

Mr. HARRY F. BYRD, Jr. $60 million?

Mr. LEAHY. $60 million here and $60 million there would add up to a lot of money.

Mr. HARRY F. BYRD, Jr. Even if it is only $60 million, we should have a little more time than just 5 minutes.

The PRESIDING OFFICER. Does the Senator from Virginia object?

Mr. HARRY F. BYRD, Jr. No.

The PRESIDING OFFICER. Is there objections?

Mr. ROBERT C. BYRD. Will the Senator yield for a request?

Mr. MAGNUSON. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote on Mr. Allen's amendment occur at 4 p.m. today, and when the Senator from Washington completes his action that a Senator may put in a quorum call so that those of us who are nearby can arrive and discuss these matters further.

The vote on the amendment will occur at 4 p.m.

The PRESIDING OFFICER. Without objection, both unanimous-consent requests are agreed to.

The Senator from Washington.

SENATE RESOLUTION 424—SUBMISSION OF A RESOLUTION RELATING TO A NEW CANAL CONNECTING THE ATLANTIC AND PACIFIC OCEANS

Mr. MAGNUSON. Now, Mr. President, while I am on my feet, I have another matter which will take only a moment.

I send to the desk a resoultion on behalf of myself and many other Senators, I think, who will join me, dealing with a second transoceanic canal.

I must say that I have been interested in this issue for a long time, dating back to 1938, as I mentioned to the Senate some time back during an earlier debate on the need for a second canal.

This is a sense of the Senate resolution that the President of the United States should immediately begin negotiations with the Government of the Republic of Panama or with the government of any other appropriate country if agreed to by the two parties, regarding the construction, the maintenance, the operation of a new canal connecting the Pacific and Atlantic Oceans.

I thank Senators for yielding.

Mr. GARN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I yield now to the distinguished Senator from Maine (Mr. Muskie).

PANAMA CANAL TREATY

Mr. HELMS. Mr. President, I ask unanimous consent that Mr. Nick Nonnenmacher, of my staff, be accorded the privileges of the

floor during consideration of and any votes thereon of the Panama Canal Treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the Chair.

Mr. THURMOND. Mr. President, I rise in support of the Allen amendment.

Nothing contained in the Treaty shall prevent the United States from negotiating with any other nation for construction, maintenance, and operation of a transoceanic canal anywhere in the Western Hemisphere or from constructing, maintaining, or operating any such canal.

Article XII of the current treaty prevents the United States from negotiating with another country for the right to construct an interoceanic canal in the Western Hemisphere.

As stated in the debate earlier today this was supposedly a U.S. concession to obtain from Panama an exclusion that no other country build another canal in Panama.

The administration contends the concession is of no great significance since studies show Panama is clearly the best place for a future canal.

While this may be true, the concession was significant because it takes from the United States a strong leverage over Panama during the treaty period.

Since resort to military force, both legally and practically, would be no viable alternative to the United States, we would find it difficult to exert any real pressure on Panama in a dispute. However, if the United States were free to construct a sea-level canal elsewhere this would give the United States leverage on Panama not to take unreasonable actions.

The canal is of overwhelming economic importance to Panama, and the freedom of the United States to create a competitive and superior waterway elsewhere would form a most powerful incentive for Panama to come to reasonable accommodations in whatever disputes that might arise.

Although current studies indicate that Panama is the only place worth considering for a sea-level canal, I wonder why we felt compelled to sacrifice flexibility in taking advantage of unforeseen future developments which might open up a better solution in another location? When looking as far ahead as 22 years, one ought never say "never."

Mr. President, much has been said about what the United States had to give up to get an agreement from Panama that they would not allow another country to build a second canal in Panama. To keep what we already had in the original treaties it is claimed the United States had to offer a quid pro quo in the form of a provision preventing us from even negotiating to build another canal elsewhere.

The Senate must remember that the greatest giveaway of all is the treaty itself in which we are giving the canal to Panama. One would think that after that giveaway we would not have to offer a quid pro quo to balance each provision of the treaty.

By surrendering the right to even negotiate with another country for another canal route, we not only surrender the canal, but surrender as well our leverage over Panama to keep the canal open.

Mr. President, this is the Western Hemisphere we are dealing with in these treaties. It is our national security and our economic health involved here. In case of war especially we would be forced to shuttle ships from one ocean to the other, and it could be done quickly through the canal. We are the ones who need minerals from other nations that have to be brought through the canal, otherwise they would have to go around the Horn and travel thousands of miles further, using a lot more fuel and costing much more each trip.

Once we act on these treaties it is final. When we pass a law and make a mistake we can do it over. If the Senate passes this treaty then the action is final, and we cannot do it over. We will have to live forever with the treaty that we have ratified.

Mr. President, I urge acceptance of the Allen amendment by the Senate.

Mr. President, on January 17, 1978 I wrote the Secretary of State and propounded some questions with regard to defense installations and matters of that nature.

On March 20, 1978, over 2 months later, a letter has come to me in answer to those questions. I am not altogether satisfied with the answer given to question 3 in this letter. It was answered by Lawrence W. Jackley, colonel, U.S. Army, special assistant, Panama Canal Treaty negotiations. In question 3 the question I propounded to the Secretary was this:

Question 3. What use do the treaties give the United States of military installations, air bases, pipelines, forts and naval installations that go over to Panama upon ratification:

Answer. The few secondary, active military facilities transferred to Panama upon entry into force of the treaty include:

The troop area of Ft. Amador.

Albrook (East), which includes the light aircraft capable Army airfield and warehouse facilities.

The troop area of Ft. Gulick between three and five years after entry into force of the treaty. These facilities will be used by Panamanian Armed Forces which are assigned a Canal defense role. Under the terms of the Panama Canal Treaty, there are no naval installations or pipelines required to be transferred to Panama until December 31, 1999.

So, Mr. President, it can be seen that that answer is not completely responsive to the question I propounded. It does not address my question of what use the United States can make of these facilities should a requirement so develop.

Mr. President, I think it might be helpful to the Members of this body if these questions and answers are made available. They do provide for the Senate clarification of questions which the State Department could not or would not answer last fall. The listings in outline form are easy to read and should help clarify for the Senate what goes over to Panama, what may go over and what we keep during the treaty period. I ask unanimous consent that the letter dated March 20, 1978, addressed to me and signed by Col. Lawrence W. Jackley, with attachments, be printed in the Record following these remarks.

There being no objection, the letter and attachments were ordered to be printed in the Record, as follows:

OFFICE OF THE
SECRETARY OF DEFENSE,
Washington, D.C., March 20, 1978.

Senator STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: The Department of State has asked the Department of Defense to respond to your letter of January 17, concerning the lands and waters arrangements of the proposed Panama Canal Treaty. I regret the delay, caused through administrative error, in responding to your questions.

Question 1. What title transfers will be made in the Ports of Balboa and Cristobal? Are these properties essential to the operation of the Canal?

Answer. Article XIII of the Panama Canal Treaty transfers to Panama all rights, title and interest of the United States in property, installations and equipment in the Ports of Balboa and Cristobal, the boundaries of which are set forth in the Map Atlas supporting Annex B, Agreement in Implementation of Article III of the treaty (attachments 1 and 2). The United States retains the use of specific port installations, required to carry out our responsibilities to operate the Canal, described in detail in various articles of Annexes A and B of the Implementing Agreement cited above and retains our existing titles to them.

Article V of the Agreement in Implementation of Article III of the Panama Canal Treaty sets out the guidelines and conditions under which Panama will be responsible for the operation and maintenance of the Ports of Balboa and Cristobal and the Panama Railroad, which will be transferred to Panama without charge upon the entry into force of the treaty. It also establishes a Ports and Railroad Committee which has certain decisionmaking authority and certain coordinating responsibility concerning these Ports and the Railroad activities developed as a balance of our needs to ensure the continuation of essential port and railroad services and Panama's desire to obtain the economic and commercial advantages connected with these facilities.

ANALYSIS OF PORT PROVISIONS

Panama will have jurisdictional rights over vessels in the ports and must approve vessel movement to and from the docks and piers. The United States, however, will control all vessel movement in Canal waters including those within the ports in order to maximize Canal efficiency and to continue the excellent safety record of Canal operations. In the exercise of this authority the Commission may require Commission pilots to be aboard any vessel for which it deems a pilot necessary.

Paragraph 2 (c) and (d) refer to paragraphs in Annex B which contain lists of port installations and equipment which Panama agrees to maintain and over which the United States has certain use rights.

With reference to those facilities listed in paragraph 3 of Annex B, the Commission will have a right to their use on a guaranteed basis in accordance with the normal schedule for maintenance of its equipment and in emergency situations. Under this scheme, facilities which are required from time to time as a necessary part of Canal maintenance but are not fully utilized at present can be made available for related commercial uses under Panama's authority without impairing our right to use them when needed.

In paragraph 2(e), Panama agrees to schedule port services on a priority basis for vessels transiting the Canal in order to avoid all possible delays in the scheduling of Canal transits.

Paragraph 2(f) contains a general undertaking by Panama to operate the ports in a manner compatible with Canal operation and to terminate any activity found to be incompatible.

Finally, the United States is authorized to use the Naval Industrial Reserve Shipyard in the Port of Balboa in the event of an emergency relating to Canal defense. Panama has agreed that the United States may retake those facilities transferred to Panama under the treaty which are included within the Naval Industrial Reserve Shipyard as it is defined in paragraph 20(b) of the Agreed Minute to this Implementing Agreement.

Question 2. Does the treaty include transfer of the installation and equipment of the Panama Railroad Company?

Answer. Yes. Details are as described above. The treaty also provides that the U.S. shall have the right to reassume management and operations of the railroad if Panama decides that its continued operation of the railroad at the minimum levels of service agreed upon is no longer viable (paragraph 4(e), Article V, Agreement in Implementation of Article III, Panama Canal Treaty).

ANALYSIS OF PANAMA RAILROAD PROVISION

Panama makes the commitment to maintain it in efficient operating condition with service necessary for effective Canal operation and defense. The United States has the following rights with respect to the railroad:

(a) to have access to, construct, use, and maintain utilities along the railroad right of way;

(b) to use the railroad on a priority basis for purposes of Canal operation or defense at costs no larger than those charged Panama's most favored customer on a commercial basis;

(c) to retain responsibility for spur tracks and sidings servicing installations in Canal operating areas; and

(d) to resume operation of the railroad if Panama decides it is not viable to continue the operation of the railroad at the agreed levels of service.

Paragraph 5 establishes the Ports and Railroad Committee and sets out its functions. The Committee will be the appropriate body to agree upon additions to the Ports or Railroad areas from areas made available under the treaty for the use of the United States. The Committee must approve any change in land use in the ports or railroad areas before it takes place as well as any initiation of, change in or termination of services relating to the ports or to the railroad. The level and frequency of railroad services scheduled for 1977 will be maintained until the Committee is able to establish new ones.

The Committee also will maintain adequate safety, fire prevention and oil pollution standards for these facilities. Again, those Panama Canal Company standards in effect immediately prior to the entry into force of the treaty will be maintained until the Committee is able to establish new standards.

The Committee will also establish procedures to facilitate the movement of vessels and coordinate the activities of the two governments in the port areas.

Finally, the principle is established that the Committee will be guided by the premise that the operation of the ports and the railroad shall be consistent with efficient Canal operation and defense. Detailed understandings related to the operation of the ports and railroad are specified in the Agreed Minute to the Agreement in Implementation of Article III.

Question 3. What use do the treaties give the United States of military installations, air bases, pipelines, forts and naval installations that go over to Panama upon ratification:

Answer. The few secondary active military facilities transferred to Panama upon entry into force of the treaty include:

The troop area of Ft. Amador.

Albrook (East), which includes the light aircraft capable Army airfield and warehouse facilities.

The troop area of Ft. Gulick between three and five years after entry into force of the treaty. These facilities will be used by Panamanian Armed Forces which are assigned a Canal defense role. Under the terms of the Panama Canal Treaty, there are no naval installations or pipelines required to be transferred to Panama until December 31, 1999.

Question 4. Please provide a list by name, location and size of military installations or facilities to be transferred to Panama upon ratification of the Treaty.

Answer. At Attachment A is an overall status of the military facilities and installations as reflected in the Implementing Agreement to Article IV of the Panama Canal Treaty. Information concerning the size of each installation will be available on completion of the boundary survey required by Paragraph (1) of Annex A to the above Implementing Agreement.

I trust that this information will be helpful.

Sincerely,

LAWRENCE W. JACKLEY,
Colonel, U.S. Army, Special Assistant,
Panama Canal Treaty Negotiations.

TREATY DAY: STATUS OF MILITARY FACILITIES AND AREAS

I. Defense Sites: U.S. Control for Life of Treaty:

A. Howard AFB and Ft. Kobbe.

B. Rodman Naval Base, Marine Barracks, Cocoli, Arrijan and Farfan areas.

C. Ft. Clayton.

D. Albrook AFB (West).

E. Corozal Army Industrial Support Area.

F. Ft. Davis.
G. Ft. Sherman.
H. Galeta Island Naval Communications Station.
I. Semaphor Hill Communications Link.
J. US Navy Transisthmian Pipeline.
II. Military Areas of Coordination (Green): U.S. Control for Life of Treaty, or, as Long as Required, Unless Otherwise Noted:
A. Ft. Amador;
Troop area to Panama Treaty Day.
Housing and Community Support Areas: Retained as long as required.
B. Quarry Heights:
Military and Communications Facilities Retained for Life of Treaty.
Site of Combined Board.
C. Curundu Heights Housing and Antenna Field:
To Panama (for Military Personnel) in three Years (Except BOQ's).
Antennas Relocated to Howard AFB.
D. Curundu Housing:
Contractor Portion of Housing Area Retained as Long as Required.
Remainder Retained for Life of Treaty.
E. Corozal Cemetery:
F. Ft. Clayton Training Area (Retained as Long as Required).
G. Empire Firing Ranges (Retained for Life of Treaty).
H. Summit Naval Radio Station:
Retained for Life of Treaty.
Special Regime, Only U.S. Access.
I. Pina Firing Ranges (Retained for Life of Treaty).
J. Ft. Sherman Training Area (Retained for Life of Treaty).
K. Ft. Gulick and Ammunition Storage Area:
Housing, Community Service Areas and Ammunition Storage Area Retained as Long as Required.
Troop Area for One Panamanian Rifle Company Transferred in Three Years.
Remainder of Troop Area Transferred to Panama in Five Years.
L. U.S. Naval Station, Panama Canal, Ft. Amador:
Retained for Life of Treaty.
Special Regime, only U.S. Access.
M. Coco Solo Hospital:
Retained for Life of Treaty.
Special Regime, Only U.S. Access.
N. Coco Solo/France Field Housing:
France Field Housing to Panama in Five Years.
Coco Solo Housing Retained as Long as Required.
O. Schools and housing, medical health facilities and miscellaneous facilities as described in par (3), Annex A, Agreement in Implementation of Article IV of the Panama Canal Treaty.
III. Areas and Facilities Transferred to Panama by the Agreement in Implementation of the Panama Canal Treaty:
1. Ft. Grant:
No Military Facilities.
FAA Site Retained Under Separate Agreement.
2. Vera Cruz Strip:
Panama to Construct Road (Location Subject to U.S. Agreement).
Will Replace Panamanian Access Through Howard AFB.
3. Empire Range Parcels:
Not Required by U.S.
Moves Boundary Away from Urban Area (Arrajan).
4. Albrook (East) and Warehouse Area:
Provide Helicopter Facility to Panamanian AF.
Enable Panamanian Commercial Development.
Warehouse Area Phased to Panama in Three Years (U.S. Facilities Relocated to Defense Sites).
U.S. Helicopter Facilities Relocated Howard AFB.
5. Ft. Clayton Training Area Parcel:
Parcels not Required by U.S.
Border on Panamanian Urban Areas.
6. Cerro Tigre:
Former Ammunition Storage Area.
Not Used by U.S.

Rail/Highway Ammunition Transfer Point Retained.
7. Cerro Palado:
Former Ammunition Storage Area.
Not Used by U.S.
8. Pina Training Area Parcel (Not Required for Ranges).
9. Sherman Training Area Parcel (Not Required for U.S. Training).
10. Ft. Gulick Reservation Parcels:
(Not Used for Military Facilities).
11. Coco Solo Area, North of the "Colon Corridor":
Contains several unused WWII Military Facilities.
Except for Facilities/Areas Noted in Sections I and II Area is not Required for Military Purposes.
12. U.S. Army Tropic Test Center Parcel:
Surveyed for data collection.
Primarily used for static environmental tests.
If area is used for other purposes by Panama, test sites will be moved to Empire Range.

Mr. THURMOND. Mr. President, I yield the floor.

Mr. HELMS. Mr. President, I wonder if the distinguished Senator from Alabama will yield to me.

The PRESIDING OFFICER. There is no time limit.

Mr. ALLEN. I yield such time as he may require to the distinguished senior Senator from North Carolina.

The PRESIDING OFFICER. There is no time involved. The Senator from North Carolina may proceed.

Mr. HELMS. I thank the Senator.

Mr. President, I apologize for the raspiness of my voice. I think I caught my cold from my grandson, and in that case I will say it was worth it. But, Mr. President, I rise in support of the amendment of the distinguished Senator from Alabama.

Mr. President, I am delighted to yield at this time to the distinguished majority leader, if he desires the floor.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from North Carolina.

Mr. President, the proponents and the opponents have had an opportunity to sit down and discuss the matter as to when the Senate will reconvene and as to when we might view with some certainty the prospect of a final vote on the treaty, and the method by which we could reach an agreed-upon final vote.

There seems to be a consensus of agreement among the floor managers on both sides of the aisle and between the minority and majority leaders and supporters of both positions anent the treaties that the final decision as to a date and time for a vote on the resolution of ratification of the Panama Canal Treaty would be placed in the hands of the majority leader, the minority leader, and Mr. Helms; and that, further, the majority and minority leaders and Mr. Helms would sit down no later than April 5 and agree upon a date and time certain for the vote on the resolution of ratification, with the understanding that such date and time certain would not be later than the date of April 26.

With that understanding, I am agreeable to proceeding with the recess as it was laid out originally, and also with the understanding that upon our return we can meet and have a method, a modus operandi, for reaching a definite date for a vote on the resolution of ratification, with the outside date being no later than April 26.

The meeting among the majority and minority leaders and Mr. Helms would occur at 3 p.m. on April 5.

Mr. BAKER. Mr. President, will the Senator yield to me?

Mr. ROBERT C. BYRD. Yes, I yield to the minority leader.

Mr. BAKER. Mr. President, the proposal of the majority leader, as described, is one that I think is eminently fair, and was arrived at after extensive conversations with the distinguished Senator from Nevada (Mr. Laxalt), the distinguished Senator from Alabama (Mr. Allen), and others.

Mr. ROBERT C. BYRD. May I also say, Mr. Sarbanes and Mr. Church?

Mr. BAKER. And Mr. Church.

Mr. ROBERT C. BYRD. And the minority leader and myself.

Mr. BAKER. And has been discussed with the distinguished Senator from North Carolina, who has agreed to serve on this committee. I think it is a good arrangement, Mr. President.

I would only say that the agreement does not say that the vote will occur on April 26. It says instead that the parties described, that is, the majority leader and minority leader and the distinguished Senator from North Carolina, will meet at 3 p.m. on April 5, which is two days after we return, and that we will consider and make a judgment at that time, by majority vote, with regard to when the Senate will proceed to final action on the Panama Canal Treaty.

Mr. ROBERT C. BYRD. With the understanding that that date will not be later than April 26.

Mr. BAKER. That is correct, but I think it very well could be earlier.

Mr. ROBERT C. BYRD. Could be earlier, yes.

Mr. BAKER. I would like to express my appreciation to the majority leader, who I know has worked hard and diligently to get to this point, to the Senator from Alabama, who has been a careful and energetic opponent of these treaties, but has been eminently fair in trying to get to a decision, to the Senator from Nevada, and to all others who have made it possible to get to this point at this time.

Mr. DOLE. Mr. President, reserving the right to object, is there a precedent for vesting that authority in a committee of this kind?

Mr. ROBERT C. BYRD. I do not know if there is a precedent, but I would not want this to be one.

Mr. DOLE. The point I make is that there are 100 Senators in this body, and there are about 15 present right now, and we are about to enter into some unanimous-consent agreement whereby three Senators—we know the vote would be 2-to-1 in any event—would make a decision on when we would have a final vote on the treaty. I just wonder if that is the right way to proceed. I understand the desire to reach a vote, but there are some of us who have questions about up-or-down votes on some of the important amendments. Would that be addressed at a later time, or would we be boxed in on a time limit, so that we cannot raise that question effectively?

Mr. ROBERT C. BYRD. This agreement would not waive the rights of any Senator under the rules.

Mr. DOLE. But there is no precedent for vesting this much authority in such a committee?

Mr. ROBERT C. BYRD. I know of no such precedent. I would not say that in the history of the Senate something like this has not

been done before, but I certainly would not want this to be accepted as a precedent.

Mr. DOLE. Is the Senator from West Virginia satisfied that this is a proper precedent and the proper way to handle it? I have great respect for the majority leader, which is the reason why I ask the question.

Mr. ROBERT C. BYRD. Well, I think it is about the best way of reaching an understanding here that would, I think, be acceptable to both sides of the question, and certainly the representations in the meetings that we have had talking about it have been by proponents and opponents.

I do not want to see this as a precedent any more than the Senator from Kansas wants to see it as a precedent. It seems to me it does allow ample time for further debate of the treaties and yet it assures the Senate and the people that the day of decision is not going to be held beyond a certain point.

Mr. SCOTT. Will the Senator yield at that point?

Mr. ROBERT C. BYRD. As far as I am concerned, that would be the understanding.

Mr. DOLE. So it would be that the vote would be on the 26th of April and it would not necessarily add this other factor? I am willing to vote on April 26, but I am wondering about the committee arrangement, perhaps voting earlier than the 26th. There is the fact that we ought not to be spinning our wheels here, but we ought to be voting.

Mr. ROBERT C. BYRD. May I say to the distinguished Senator that I hope we could reach an agreement on a final vote before the 26th. If such an agreement is reached, it would seem to me it would be one that would be entered into with the understanding of both sides and it would be a reasonable way of handling this matter.

I sought to get an agreement earlier today to vote by a certain date. If that agreement had been reached, it would have been entered into by no more Senators, not a greater number of Senators, than are now on the floor. Quite often unanimous-consent agreements are entered into establishing a date and time certain to vote with only a few Senators on the floor. But I do this because on my part I feel I am speaking for the majority, and if there is a Senator on my side of the aisle with an objection he would have lodged it with me and I would certainly protect him.

Mr. DOLE. Basically, the question would be if we decided to vote on the 12th. If that does not meet with the approval of someone, could there be a motion on the floor, or how would we fix the date? Is that it?

Mr. ROBERT C. BYRD. I think, as we always reach that stage, if before the time certain it is agreed to for a vote on a very controversial matter, the majority leader, the minority leader, and their respective managers of the measure on both sides of the aisle reach an agreement. Many times we put out on the hotline what the agreement is going to comprehend and if there is any objection we go in another direction. I do not particularly like this approach, but I think it is one which protects both sides and protects all Senators.

Mr. DOLE. It would seem to this Senator that the vote is already 2 to 1, which would make the decision. I do not know what protection those of us who have objections would have. We have great respect for the majority and minority leader. We also know they are probably anxious to get this matter behind the Senate. I have not tried to delay this, but I do have some amendments on which I would like to get up or down votes. If I am deprived of the ability to say to the treaty proponents that I intend to debate this at length unless I can have an up or down vote because of some time agreement, I will lose that leverage.

Mr. LAXALT. Will the Senator yield for an observations?

Mr. ROBERT C. BYRD. I yield.

Mr. LAXALT. In response to the concern of the Senator from Kansas, I share that concern. The majority leader, and he can correct me if I am wrong, will say that the only thing which has been settled by virtue of this understanding timewise is that the vote will be taken by the 26th of April.

Mr. DOLE. I agree with that.

Mr. LAXALT. Within that, whatever comes out of the so-called committee of three will be subject to a unanimous-consent agreement, and if it did not fall within the objection of the Senator from Kansas, we would have to look for another solution. Is that correct?

Mr. ROBERT C. BYRD. The decision by the three Senators aforementioned would be the decision as to the date and time of the vote.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. SCOTT. Would it be the understanding of the distinguished majority leader that that would be a unanimous vote, that it would have to be a unanimous vote?

Mr. ROBERT C. BYRD. No.

Mr. SCOTT. Then there would be no protection at all. I would object. I do not object at this time, but I reserve the right to object. The distinguished Senator from North Carolina can very vigorously defend the position of those who oppose the treaty but be outvoted by those who favor the treaty, the majority leader and the minority leader. So we have no protection.

I was thinking that this would be coming back to the Senate and the Senate would probably agree to whatever final date was recommended. If it is this way, then the minority has no protection, if our minority leader and the majority leader, both proponents of the treaty, would vote one way and the distinguished Senator from North Carolina would be helpless, because his one vote would not outweigh the two votes.

Mr. ROBERT C. BYRD. What the Senator is asking is that the vote of the Senator from North Carolina outweigh the two votes of the minority and majority leaders. That is what he is suggesting.

Mr. SCOTT. No; I am not.

Mr. ROBERT C. BYRD. That is precisely what he is suggesting, that it would require a unanimous vote, which would mean that Senator Helms, by objecting, would be binding the hands of the two leaders.

Mr. President, I hope the Senator would have confidence in the two leaders. We will be as accommodating as we can be and as considerate as we can be of the needs and desires of the opponents. They will be well represented, I say to the Senator.

Mr. SCOTT. If the Senator will yield further, Mr. President, I do not have any reservation about the distinguished Senator from North Carolina or the distinguished majority or minority leader. But I am saying if the will of the Senate is to be carried out, it would seem reasonable that whatever agreement would be reached would probably be ratified and would probably be pro forma. But I still think that the definite date agreed upon at the April 5 meeting should come back before the Senate. I would undoubtedly support it and I believe others would.

Mr. ROBERT C. BYRD. If the Senator will allow me, I am perfectly agreeable to doing that. I am stating that was not our understanding. That is perfectly all right with me. I would really prefer it that way, if I may speak for my personal preferences at this point. I would prefer that whatever date the three decide upon be brought back to the Senate and be subjected to a unanimous-consent agreement, with the condition that there be no date later than April 26.

Mr. ALLEN. That is a good modification. I think that is a good modification.

The PRESIDING OFFICER. Is there objection?

Mr. ALLEN. Reserving the right to object, does the distinguished majority leader revise the unanimous-consent request?

Mr. ROBERT C. BYRD. I so revise it.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators for their cooperation in this matter.

THE PANAMA CANAL TREATY

The Senate resumed the consideration of the treaty.

Mr. ALLEN. Mr. President, I yield to the distinguished Senator from North Carolina.

Mr. HELMS. Mr. President, I rise in support of the amendment of the Senator from Alabama. It is entirely possible that the United States may wish to build another canal, if the present canal becomes unavailable to us.

There have been some attempts on this floor to assert that the canal is of declining importance commercially and militarily. But the Senator from North Carolina believes that it is the consensus of expert opinion that the canal is growing in importance and will be of even more importance to us by the year 2000.

There are two issues here which must be distinguished very carefully. The first is the need to have an interoceanic canal between the Atlantic and the Pacific. The second is whether the present canal is sufficient in its present size and configuration to meet the needs of the United States and of world shipping. There is no question but that the experts agree on both points, particularly if major modernization is carried out by the addition of a third lane of locks.

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Mr. President, frankly, there is only one situation that would justify the construction of a new canal: the circumstance that would arise if Panama were unbilling or unable to operate the canal efficiently and without discrimination. As a result of these treaties, ownership and control of the canal will pass to Panama. In other words, whoever controls Panama will control the canal. It is all very well to say that it is in Panama's interest to keep the canal open and efficient. By the same token, it was in Egypt's interest to keep the Suez Canal open and efficient. Yet Suez was closed twice, to the detriment of world shipping. International power pressures are often beyond the capability of small nations to resist.

Nor is there any guarantee that the Government of Panama will represent the interests of the people of Panama. Indeed, there is considerable doubt that Dictator Torrijos represents the interests of the people of Panama. Indeed, there is considerable doubt that Dictator Torrijos represents the interests of the people of Panama even today. Despite the fact that other governments of Panama have sought new treaties too, there is very little reason to conclude that the present dictatorship represents the interests of Panama.

When we consider the massive corruption of the Panamanian dictator and his family, their Swiss bank accounts, the lack of reliable accounting for public funds, the exploitation of the people through excessive state-controlled lotteries and gambling, the documented participation of the Torrijos family and Torrijos cronies in international narcotics trafficking, the gross mismanagement of governmental affairs and enterprises, the constant and gross violations of human rights—all of these things suggest that Torrijos does not have the interests of the Panamanian people at heart. For all practical purposes, we might as well be giving the canal to the Mafia. We are certainly not giving it to the Panamanian people, and that point ought to be clear to all. Torrijos is the only gangster in the world who issues his own postage stamps.

So there is no guarantee that the best interests of the people of Panama will prevail. It is far more likely that once Torrijos gets his hands on a $10 billion asset—to wit, the Panama Canal—it will be run for his benefit, not for the Panamanian people's benefit. Once the canal passses into Panamanian sovereignty, the United States will have no more say in the matter, if Panama chooses to ignore the treaty. We could only assert our rights through military force. And since there seems to be little disposition in this body to defend U.S. right in the Canal Zone by military force, at a time when the assets belong to us and are administered as part of U.S. territory, we must assume that there will be even less disposition to invade Panama to enforce our interpretation of treaty rights.

Moreover, we cannot evade the political implications of the ideological orientation of the Panamanian Government. I do not know that Torrijos is a Communist in the technical sense. I do not even know whether he can be called a Marxist in the technical sense. To call him a Communist would impute a sense of discipline and obedience to orders. He is probably too self-seeking to be part of the disciplines of the international Communist movement. Nor, to my knowledge, has anyone ever accused him of being an intellectual able to spin out ideological theory.

Be that as it may, Mr. President, but the fact is that both his parents were Communist organizers and that, by choice, he chose a dedicated Marxists intellectual, Romulo Escobar Bethancourt to negotiate this treaty. Just because he trots out some U.S.-oriented advisers to argue his case with visiting U.S. Senators does not tell us anything about the future. Those U.S.-oriented advisers may very well have to flee to the United States once these treaties are ratified.

Nor should we put any stock in supposed assurances General Torrijos gives to U.S. Senators who have visited with him. He gave assurances that he would never allow Communist in Panama. After all, we must remember that General Torrijos was doing a selling job when the Senators visited him. What was he supposed to tell those Senators in a sales talk? Was he supposed to tell us or them that he was waiting to turn everything over to a hostile power the minute the treaty is signed?

I have no idea whether he is going to do that or not, but I do credit the man with enough shrewdness not to tell us what he is going to do. So let us, regardless of all the rhetoric in this Chamber, let us not pretend to the American people that pronouncements of General Torrijos on Communism have any value whatsoever.

As a matter of fact, Mr. President, I remember that in 1946 and 1947 Mao Tse-tung was not a Communist, to hear the way some experts explained it to us at that time. They told us that Mao Tse-tung was an agrarian reformer. And back in 1958, Fidel Castro was not a Communist either, to hear these same experts come back home and tell us what a great fellow he was. Well, we fought two wars in Asia, because too many people believed the former; that is to say, that Mao Tse-tung was not a Communist. We fought two wars because the American people had been misled on that point and now we are rapidly losing our influence in Africa because too many people believed all of these experts when they said that Fidel Castro was not a Communist.

Now, Mr. Castro as soon as he took over Cuba at gunpoint, he declared, "I am a Communist now and always have been and always will be," but before he took over, the major news media of this country, the commentators, the political experts, went down and worshipped virtually at the shrine of Fidel Castro and came back and said he is an agrarian reformer.

Now if we look at the pattern of nationalization in Panama, the takeover of the Panama Light & Power Co., the takeover of the telephone company there, the pressures against the Chiriqui Land Co., that is, the banana plantations of United Brands, all of these betray that anti-U.S. nationalism which often becomes anticapitalism and alinement with nonmarket economies.

It is disheartening to see U.S. businessmen who have been taken to the cleaners by the Dictator Torrijos, businessmen pleading today on behalf of these treaties. Those businessmen who still retain some business interests in Panama, or hope to gain or retain the dictator's favor, are merely feeding the alligator, hoping that the alligator will eat them last.

Now we must not forget, Mr. President, that Panama is already a member of the bloc of nonalined nations, with Torrijos attending their meeting at Sri Lanka.

Now, Mr. President, neither is there any contradiction between Marxism and the development of Panama as a banking center. Marxism is basically opposed to private ownership of the means of production and the free market but not even communism is exempt from the need to raise and manage capital. The Communists are some of the best bankers in the world. They know the value of the dollar even better than we seem to know it in the United States. They speak the same language and they deal with the same money markets as do international banks in the free world. It is not surprising that the Red Chinese, for example, maintain one of the biggest banks in Hong Kong. It is not even surprising that, for their own purposes, they allow the existence of Hong Kong, which, like Panama, is an important offshore banking center.

And finally, Mr. President, I might point out that events often accelerate beyond the intentions or expectations of leaders, and that may be that the present dictator of Panama has no intention or inclination to go any further in anti-American actions. But the prelude to Castro and Cuba was Batista. And in some respects the comparison of Torrijos to Batista is even more appropriate, with regard to corruption and wholesale violations of human rights. By making ourselves the partner and guarantor of gangster rule in Panama, we are setting ourselves up to be the target of a Communist revolution there.

And let us make no mistake about it.

Now there is no attempt here by this Senator from North Carolina to prophesy. I do not have a crystal ball, Mr. President, and I doubt that any other Senator does. I am simply attempting to show that the development of a hostile government in Panama is a reasonable consideration. It is a contingency that prudence demands we be prepard for. It is reasonable to believe that the treaties may improve our relations with Panama. It is equally reasonable to believe that our relations might deteriorate.

The notion of some treaty proponents that only favorable circumstances can develop as a result of these treaties is pure fantasy. Life is full of surprises. We can hope for the best, but we should also be prepared to protect our interest if something less than the best happens.

Now the only leverage that the United States would have over Panama would be the threat to build a canal elsewhere. If Panama should become unreasonable, we must maintain the option to go somewhere else. In the judgment of the Senator from North Carolina, we probably would not have to go elsewhere; the threat to go elsewhere would probably be sufficient to bring Panama around.

But the one thing we would have no reason to do is to build another canal, a sea-level canal in Panama. The experts fully agree that there is no way to justify on an economic basis, a sea-level canal. The cost would be too high to be self-supporting. The economics of it do not make any sense. The advantage of a sea-level canal over the present lock canal is too slight to justify the enormous expenditure that would be required. It is simply not cost-

effective, particularly when we consider that the present canal could be modernized with a third land of locks to handle larger ships at about one-fifth to one-third the cost of building a sea-level canal.

However, if the present canal were denied to us, if Panama became hostile, or became, unwillingly the puppet of a state hostile to us, then we would need a new canal, and obviously we would build it somewhere else.

The treaty gives us a right we do not need; namely, the right to build another canal in Panama; and at the same time, gives up a right that we do need, that is, the right to go somewhere else. And this is plainly, Mr. President, a bad bargain.

So, again, I would say that I enthusiastically support the amendment of the distinguished Senator from Alabama, and I urge its approval by the Senate, and I thank the distinguished Senator for yielding to me.

Mr. ALLEN. Mr. President, we have only 10 minutes before the vote on the amendment, and I shall use only 5 minutes, in order that the proponents of the treaty may have an equal amount of time.

I commend the distinguished Senator from North Carolina (Mr. Helms) for his very fine speech on behalf of this amendment, and I commend the distinguished Senator from South Carolina (Mr. Thurmond) for his very persuasive speech in support of the amendment.

This is the second part of the amendment. The amendment has been divided into two parts, and a vote was had earlier today on the first part. The second part of the amendment knocks out, in effect, a provision of the treaty putting the prohibition on the United States that for the next 22 years we shall not have the authority to negotiate with another country for a transoceanic canal in the Western Hemisphere, connecting the two oceans; that we canal even negotiate with another nation; that we cannot build, operate, or maintain a canal other than in Panama.

If a prohibition such as this had been sought to have been placed on Panama, we would hear all sorts of objections from the proponents of the treaties, saying that we should not place this indignity upon Panama, but it is all right to place an indignity on the United States and provide that we cannot, for 22 years, negotiate with another nation for another canal.

The negotiators said that is necessary in order to get the concession that we shall have the veto power over the construction of another canal in Panama. Well, we already have that right of veto, not only in the 1903 treaty but also in the 1955 Treaty. This puts us in the anomalous position of having a right to say that no other nation can build a canal in Panama, while we have that right under both of those treaties. The treaties provides that we shall give up that right. Then, in order to get back that right—a right we already have, which the treaties have us do away with—we have to put in the humiliating provision that for the next 22 years, no matter what the need for another canal, no matter how dire the necessity for another canal might be, we cannot negotiate with another nation for such canal.

Who in the world would suggest that the United States build another canal in Panama, to cost us some $10 billion, and have Panama expropriate it or become so unhappy with the treaty that the United States would negotiate another treaty with them as to the second canal, giving them that canal?

So there is no danger of the United States wanting to build another canal in Panama; nor, as I see it, is there any danger of another nation spending some $10 billion to build another canal in Panama. How would they amortize that indebtedness? They could not possibly do it, because we have not even paid for the original canal. We still owe $319 million on it. Of course, under the treaty, that is going to be canceled. It is going to be given to Panama.

The amendment we have before us would merely eliminate the provision that we cannot negotiate with another nation for another canal. What is the reason for placing that prohibition on the United States? They say that we should not abuse the sovereignty of Panama. Well, we certainly should not abuse the sovereignty of the United States and place such a limitation upon the exercise of our right to negotiate with another nation.

Mr. President, I hope the amendment will be agreed to. I feel that this is going to be a test of whether the leadership is going to stonewall all amendments, whether they are going to call on the Senate to rubberstamp this treaty without amendments. I am going to be interested in seeing whether the leadership comes forward with a leadership amendment to this treaty, as they did to the other treaty. Things are going to be very interesting. This is one of the major tests of the leadership's willingness to accept provisions that will benefit the United States of America.

I yield the floor, Mr. President.

Mr. SARBANES. Mr. President, we go to a vote at 4 o'clock on this amendment. Therefore, not only will I be very brief, but also, I must of necessity be very brief.

I do make the observation that in listening to the concluding remarks of the distinguished Senator from Alabama, I think it is fair to say that almost every amendment he puts forward is a major test of one thing or another. I notice that this was characterized in that way, and I notice that virtually every other amendment he has presented in the course of these treaties has been characterized in the same way.

The study that was referred to earlier, the very extensive study on which the United States spent $22 million, the Atlantic-Pacific Interoceanic Canal Study Commission, concluded that the only feasible place to build a sea-level canal if you were to build one—and there are a lot of questions involved as to whether one should or should not be built, whether it is economically feasible, what the environmental consequences of doing it would be—in any event, if it were to be done, the only feasible place to do it is in the Republic of Panama. That is the basis on which the arrangement contained in article XII of the treaty before us was arrived at.

This amendment, As I noted earlier in the day, is being proposed to article I of the treaty, which has absolutely nothing to do with this subject matter. It is not being proposed to article XII of the treaty, which is the pertinent and relevant article. It is being brought in here to article I of the treaty. I hope that as we proceed,

we can get amendments offered to the pertinent articles of the treaty and not all brought in with respect to article I, with the possibility that they will be brought back again with respect to the article to which they are pertinent, and with the even further possibility that they will be brought back at the end.

What is ebodied in the treaty constitutes a reciprocal arrangement between ourselves and Panama. As the executive director of this study indicated, we have really obtained something for nothing, and I think the provision should be seen in those terms.

The distinguished Senator from North Carolina made some reference to the regime in Panama and their treatment of United Fruit, in their operations. I simply want to underscore that the chief executive officer of United Brands Co., of which United Fruit, which operates the banana plantations in Panama, is a division, appeared before our committee and stated:

> We are convinced that ratification of the Panama Canal treaties is the only fair conclusion to the good faith negotiations conducted by our two countries over the last several years.

He went on to say:

> Our most important reason for urging ratification of the treaties can be stated simply and succinctly: We believe it is the right thing to do.

It is important to point this out, because this company's experience in Panama was cited as a reason not to support these treaties; yet, here is the chief executive officer of the company that is being cited for that proposition taking a very strong position in favor of these treaties. He also points out that it is his view that the Panamanian Government and the Panamanian people are capable of assuming the responsibility for managing the canal over the period of time set forth in the treaty documents.

He points out that the company has a long history in Panama; that the United Fruit Co. Division, which is engaged in the production and distribution of tropical agricultural products, has operated in Panama for nearly 90 years; that they are the largest single user of the Panama Canal.

During 1977 their vessels transmitted the canal nearly 400 times, an average of 33 trips per month. They paid approximately $3 million in canal tolls and transit-related charges.

So here is a company with a very direct involvement which has been cited on the floor in terms of their experience as an argument against the treaties and here is this company on the basis of their experience urging, as strongly as they can, the ratification of the Panama Canal treaties as the only fair conclusion and as the right thing to do.

The PRESIDING OFFICER. Under the previous order the hour of 4 p.m. having arrived the Senate will now proceed to vote on division 2 of amendment No. 86.

Mr. SARBANES. Have the yeas and nays been ordered on the division?

The PRESIDING OFFICER. They have not.

Mr. ALLEN. I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SARBANES. Mr. President, I move to table division 2 of the amendment of the Senator from Alabama now pending before the Senate and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table division 2 of the amendment of the Senator from Alabama. On this question the yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

The PRESIDING OFFICER [Mr. Kennedy]. The Senate will be in order. The clerk will withhold until the Senate is in order.

The Senate is not in order. Senators are requested to take their seats and take their conversations to the cloakroom, please. The clerk will continue to suspend until the Senate is in order.

The Senate is not in order. The Senate is still not in order. Senators are requested to take their conversations to the cloakroom.

The clerk resumed and concluded the call of the roll.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. Gravel), the Senator from Hawaii (Mr. Inouye), and the Senator from Vermont (Mr. Leahy) are necessarily absent.

I further announce that the Senator from Colorado (Mr. Haskell) is absent on offical business.

I further announce that, if present and voting, the Senator from Alaska (Mr. Gravel) would vote "yea."

Mr. STEVENS. I announce that the Senator from Nebraska (Mr. Curtis), and the Senator from Arizona (Mr. Goldwater) are necessarily absent.

The result was announced—yeas 52, nays 42, as follows:

[Rollcall Vote No. 75 Leg.]

YEAS—52

Abourezk	Glenn	McGovern
Anderson	Hart	McIntyre
Baker	Hatfield, Mark O.	Moynihan
Bayh	Hathaway	Muskie
Bentsen	Hayakawa	Nelson
Biden	Heinz	Pearson
Bumpers	Hodges	Pell
Byrd, Robert C.	Hollins	Percy
Case	Huddleston	Proxmire
Chafee	Humphrey	Ribicoff
Church	Jackson	Riegle
Clark	Javits	Sarbanes
Cranston	Kennedy	Stafford
Culver	Long	Stevenson
Danforth	Magnuson	Weicker
Durkin	Mathias	Williams
Eagleton	Matsunaga	

NAYS—42

Allen	Burdick	DeConcini
Bartlett	Byrd, Harry F., Jr.	Dole
Bellmon	Cannon	Domenici
Brooke	Chiles	Eastland

Ford	McClure	Scott
Garn	Melcher	Stennis
Griffin	Metzenbaum	Stevens
Hansen	Morgan	Stone
Hatch	Nunn	Talmadge
Hatfield, Paul G.	Packwood	Thurmond
Helms	Randolph	Tower
Johnston	Roth	Wallop
Laxalt	Schmitt	Young
Lugar	Schweiker	Zorinsky

NOT VOTING—6

Curtis	Gravel	Inouye
Goldwater	Haskell	Leahy

So the motion to lay on the table division 2 of amendment No. 86 was agreed to.

Mr. ROBERT C. BYRD. I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE PRESIDING OFFICER. The Senator from Louisiana is recognized. The Senate will be in order; the Senator is entitled to be heard. The Chair requests the Senator to withhold until order is restored.

The Senator from Louisiana.

Mr. LONG. Mr. President, I ask unanimous consent to be recognized as in legislatives session.

Mr. ROBERT C. BYRD. For how long?

Mr. LONG. Five minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SENATE RESOLUTION 424—SUBMISSION OF A RESOLUTION RELATING TO A NEW CANAL CONNECTING THE ATLANTIC AND PACIFIC OCEANS

Mr. Magnuson submitted a resolution, which was referred to the Committee on Foreign Relations:

S. Res. 424

Resolved, that it is the sense of the Senate that the President of the United States should immediately begin negotiations with the government of the Republic of Panama, or with the government of any other appropriate country if agreed to by the two Parties, regarding the construction, maintenance and operation of a new canal connecting the Pacific and Alantic Oceans

(The remarks of Mr. Magnuson when he submitted the resolution appear earlier in today's proceedings.)

THE GREAT ADDRESS BY SENATOR McINTYRE ON PANAMA CANAL TREATIES

Mr. MOYNIHAN. Mr. President, the Panama Canal treaties debate will remain memorable, if for no other reason that the great ad-

dress made in support of ratification by Senator McIntyre of New Hampshire. I commented at the time that his courageous repudiation of the "politics of threat and vengence" reminded one of the granite of his native State, for surely that granite was there that day, in his honor and in his will. James Wechsler of the New York Post has written an especially insightful commentary on that event. He points out that Senator McIntyre rightfully equates the rhetoric and divisive politics of the radical new right with the similar efforts of the "purist left" of the 1960's.

I submit for the record the text of Mr. Wechsler's column. The column follows:

[From the New York Post, Mar. 9, 1978]

ONE MAN'S CRY OF CONSCIENCE AMID PANAMA PANIC

(By James A. Wechsler)

When he won a hard—fought election in 1962, Thomas James McIntyre became the first New Hampshire Democrat to achive a Senate seat in 30 years. Now, facing a reelection challenge in November, he has placed his political life on the line by declaring his support for the Panama Canal treaties.

He did so the other day in a Senate speech that will merit remembrance long after the Panama panic promoted by frenzied opponents of the agreements is a footnote in the casebook of ideological aberration.

McIntyre's address did not stop many presses or incite any brawls in our local taverns, but its echoes are being belatedly heard in many places. For McIntyre, a 62-year-old, self-described moderate did more than take a stand on an issue that has been inexplicably inflated into a bellicose battle of the century.

He delivered an impassioned indictment of the "politics of threat and vengeance" practiced by the rabble-rousers of the New Right.

"The campaign waged by certain opponents of ratification in my state and across the nation," he said, "has impugned the loyalty and motives of too many honorable Americans to be ignored or suffered in silence a minute longer . . .

"My polical fate is not my concern here today. My concern is the desperate need for people of conscience and good will to stand up and face down the bully boys of the radical New Right before the politics of intimidation does to America what it has tried to do to New Hampshire."

For those who were around in the oppressive years of Joe McCarthy, McIntyre's speech inevitably stirred recollection of another great moment in the Senate's history. On a day in June, 1950, another New England Senator—Maine Republican Margaret Chase Smith—rose to recite her "declaration of conscience" and decry those who sought political gain "through the exploitation of real bigotry, ignorance and intolerance."

McIntyre's utterance may hardly seem a comparable valor to those who dwell in areas like New York where no high antitreaty fever is discernible. But New Hampshire is far more explosive territory. There William Loeb, the Neanderthal publisher of the state's largest newspaper, and Gov. Meldrim Thomson, national chairman of the so–called Conservative Caucus, have been feverishly depicting sponsors of the treaties as agents or dupes of subversion.

They and their allies mounted a concerted war of nerves against McIntyre many months ago. Last summer, as McIntyre told the Senate, Howard Phillips, national director of the Conservative Caucus, urged his adherents to make "a political sitting duck" of Tom McIntyre and "make it a political impossibility for McIntyre to vote for that treaty."

Last December, New Hampshire's branch of the caucus formally censured McIntyre for a speech in which he took no stand on the treaty but promised to weigh all conflicting testimony.

Angered by the "abrasive, threatening tone" of the censure verdict, McIntyre refused to appear for questioning before the caucus. The storm mounted.

Meanwhile, in another context, caucus director Phillips was quoted as saying: "We must prove our ability to get revenge against people who vote against us, We'll be after them if they vote the wrong way."

And Paul Weyrich, director of the Committee for the Survival of a Free Congress, was declaring:

"We are different from previous generations of conservatives. We are no longer working to preserve the status quo. We are radicals working to overthrow the power structure of this country."

Their rhetoric, McIntyre validly pointed out, bears remarkable resemblance to some of the manifestos of "the purist left." He had also suffered their taunts in the past. Indeed, Phillips' words might have been plagiarized from Mark Rudd and other fringe voices of the 1960s.

McIntyre shunned any plea for mercy from Thomson and Loeb. He recalled Thomson's charge that the Carter Administration was pursuing "a pro–Communist course," his attack on Martin Luther King as a man who "did great harm to the American way of life," and his tributes to South Africa's John Vorster as "one of the great statesmen of today"—a pronouncement warmly defended by Loeb's paper after it had been assailed by 14 New Hampshire clergymen.

"I cannot believe," McIntyre said, "that the loutish primitivism of Meldrim Thomson and William Loeb is what the American People want in their leaders, no more than I can believe that the American people want the divisive politics of the radical New Right to determine the course of the nation."

McIntyre's speech had begun with the sober statement that "after six months of hard study, I have concluded that on balance the new treaties are the surest means of keeping the Canal open, neutral and accessible to our use and are in keeping with our historical committment to deal justly and fairly with lesser powers."

But his message transcended the traumas of the Panama dispute. It was addressed more urgently to the poisonous tactics of the radical right in 1978 than to the disposition of the Canal in the year 2000.

"If you want to see the reputations of decent people sullied, stand aside and be silent," he said.

"If you want to see the fevered exploitation of a handful of highly emotional issues distract the nation from problems of great consequence, stand aside and be silent.

"If you want to see your government deadlocked by rigid intransigence, stand aside and be silent . . .

"In the long run, I am confident that the forces of decency and civility will prevail over the politics of intimidation . . .

"But if that does not occur in time to save the treaties—or those of us who support them—I for one will go home to Laconia, N.H., sad to leave this office but content in heart that I voted in what I truly believed were the best interests of my country."

The outcome of the campaign of fear and smear against Tom McIntyre may reveal a lot about the state of the nation.

[From the Congressional Record—Senate, Apr. 3, 1978]

THE PANAMA CANAL TREATY DEBATE

Mr. HATCH. Mr. President, the proposed Panama Canal treaties will soon be reaching the Senate floor for a vote. It is not fashionable to oppose these treaties, a situation reflected most clearly in the news coverage of the ongoing debate. Opponents have been consistently characterized as indulging in grade-school chauvinism, and the overwhelming disapproval expressed by the American public has been repeatedly represented as "backward" and "blind to present-day realities."

This attitude of condescension is dangerous for several reasons. It calls into question the integrity of a system that was originally designed to reflect the will of its citizens. It divests treaty proponents of their responsibility to answer the very many serious question that remain unresolved by the present version of the treaties. And it deprives the issue at hand of the larger context within which a matter of such grave implications should necessarily be considered.

An extremely perceptive article, appearing in the December issue of the American Security Council's Washington Report, does a great deal toward restoring the perspective vital to the consideration of these important treaties. I commend it to the careful attention of my colleagues, and ask unanimous consent that it be printed in the Record at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the Record, as follows:

WHY WE MUST KEEP THE CANAL

The abysmal level of the public debate over the Panama Canal was epitomized in a national interview with a prominent undecided Senator. Asked what considerations he was weighing, in making up his mind, the first thing he mentioned was the veto power the new treaties give Panama over a second canal. The public pondering of such details has spread the impression that only trivia is at stake in this debate. Nothing could be further from the truth.

The public advocates of keeping the canal, however, have missed the point almost as badly as that Senator. The primary issue is not the military importance of the canal. It is not the economic importance of the canal. And it is certainly not the details of the new treaties. The primary issue is the right of the United States to exist.

The moral principle at stake is the right of the United States to keep her values, her achievements, her wealth, in the face of overwhelming global opposition. And since a country, like a man, cannot survive without values, at issue is the right of the United States to survive.

That is why the American people oppose the new treaties. That is the principle behind their desperate feeling that giving away the canal would be wrong in some way much more important than they know how to say. When they tell reporters "we have given away too much already," and "we have to stop letting them push us around," that is what they are trying to say. Though they lack the words, they see surrender of the canal for what it would be: a step in the direction of renunciating the United States' right to her values and her life.

Unfortunately, a national debate cannot be won without the words. It is not enough for people to be right. They must know *why* they are right. They must have the words and principles to defend their position. What happens when they do not has been most evident in the United States Senate.

Because they did not know how to oppose surrender of the canal in principle, a number of Senators have tried to prevent its surrender by becoming enmeshed in debate over the details of the new treaties. In doing so, they have made several significant contributions to the other side.

They have accepted a context for debate where it is treated as already established that we should give up the canal and the dispute therefore, is only over the side conditions. They have trapped themselves in a position where, if the conditions to which they object are changed, they cannot vote against the treaties. And they have been diverted from giving any effective leadership or voice to their enormous support in the general population.

What position should they have taken? How should the new treaties be opposed? The most damning evidence against the treaties is the arguments that are given in their favor. Those arguments fall into two general categories: the practical arguments and the moral arguments; or the arguments from fear and the arguments from guilt.

THE PRACTICAL ARGUMENTS

The most extreme, and therefore the clearest, of the practical arguments holds that if the Senate rejects the new treaties, Panama will become "another Vietnam." In other words, we should give up the canal out of fear of a war with Panama or even more disgraceful, out of fear of independent guerrillas.

This argument marks a new low in the level of political discourse in this country and not many have had the effrontery to make it openly. That it has been left largely to implication and innuendo is the only sign that our leaders retain any respect for the American people.

For example, it was argued explicitly before the Senate Foreign Relations Committee that the best way to retain access to the canal is to give it to Panama so they will be on our side if we should have to defend it. It is very revealing (and somewhat frightening) that this argument was taken at face value by all the news media, and its implications went completely unnoticed.

Militarily, observe the helplessness of the United States implied by so desperate a need for support, and from Panama of all places, as to justify giving away the canal.

Strategically, observe the absurdity of assuring access to the canal by placing all the complex, delicate machinery and equipment and controls for its operation in the hands of a potential enemy.

And, finally, since attacks by Panama are the only current danger to the canal's security, observe the threat implied by raising the issue of, and hence doubts about, our access to the canal. The real meaning of that argument was that if we try to keep the canal, Panama will deprive us of its use, and therefore we had better give it to them. To spread this kind of thinking an unforgiveable campaign has been carried on through the media for the last several months, specifically directed at undermining the self-confidence of the American people and frightening us into giving up the canal. Its most disgraceful element has been the effort by our own military leaders to leave the impression, again by hint, insinuation, and innuendo, that the United States is militarily impotent to assure the security of the Panama Canal.

The argument about access to the canal, for example, was repeated several times before the State Foreign Relations Committee by military leaders. When the Panamanian dictator was making thinly veiled threats of guerrilla war, the chairman of the Joint Chiefs of Staff did not dismiss him as absurd. Rather he implied that the threat was serious by saying he could not defend the canal with 100,000 men.

In the face of this atmosphere of national self-abasement, when President Carter clearly stated that we can and will defend the canal, his declaration came like a breath of fresh air. Then, he threatened that it would be a major, difficult, dangerous undertaking, thus contributing to that atmosphere himself.

It is shameful that this kind of fear was a major factor in the negotiations for the new treaties. Fear is a disastrous motive on which to base policy in any case. But whatever consequences might have been expected from such a policy, ceding the canal out of fear of Panama would have been beyond anyone's ability to predict.

There is no way that Panama could become another Vietnam. Militarily, the two situations have nothing significant in common. Guerrillas could be even a minor problem only if we insisted on following the same insane policy we pursued in Vietnam of fighting effects rather than causes.

In this case, however, fighting of any kind can be avoided altogether. All that is necessary is a statement by the President that an attack on any part of the Canal Zone would be considered an attack on the United States, and that any country supporting such an attack would be considered an enemy of the United States and treated accordingly.

The practical argument also holds that surrender of the canal is essential for good diplomatic relations with the Latin American countries. But even if *they* were the

great powers of this hemisphere, it would be obviously self-defeating to curry their favor by giving away our possessions.

Yet, blinded by a frantic, suicidal anxiety over the good opinion of the world in general and our southern neighbors in particular, that is the course insisted on by most of our political and intellectual leaders. The tragic failure of their leadership to be worthy of the American people was never more evident.

It would undoubtedly be pointless to remind those leaders that it is *we* who are the great power here, and if anyone should worry about good opinions it is our southern neighbors who should worry about *ours*.

THE MORAL ARGUMENTS

But if the practical arguments are insulting, the moral arguments are worse, much worse.

It is said we stole the canal and our presence in the area represents a colonialist affront to the sensitive feelings of the Latin American people. We should give up the canal, it is implied, out of guilt for these offenses.

The charge of colonialism, though repeated mindlessly by everyone, is a transparent fraud. A colony was a settlement of *people*, not an industrial engineering enterprise. A colony, by definition, was administered for the economic benefit of the mother country. The Panama Canal is not a colony, nor has the United States *ever* had a colony anywhere in the world.

But the vilest distortion in the whole debate is the charge we stole the canal. It is the exact opposite of the truth.

The opposite of theft is production. We did not steal the canal; we built it. The moral right of the United States to the canal is the right of any creator to what he has created. That right, however, is a property right, the root of all property rights, and it is not surprising that modern intellectuals and politicians are unwilling to defend anything based on that source.

It is their view that control of the canal by the Panamanians is a legitimate aspiration of the Latin American people. But there is no such thing as a "legitimate aspiration" by some to an achievement created by others.

Not only did the United States pay the costs of constructing the canal, it was her citizens who figured out how to conquer the previously unconquerable obstacles and then directed the construction in an enormously heroic effort. The Panama Canal was the greatest engineering feat in the history of many up to that time and we did it.

Nothing is more depraved than ridiculing the American people for their pride in their canal, a tactic adopted by some, not all, of the advocates of the new treaties. No people ever had a better right to pride in any national accomplishment. The Panama Canal is a reflection and embodiment of all that is best in the American character.

Whatever shenanigans were involved in getting sovereignty over the Canal Zone, and no one's account makes them very serious, they are nothing next to the incredible achievement of the canal itself. Without us, the Canal Zone would be just so much empty, deadly, malaria infested lakes and jungle—as would the rest of Panama.

If one considers what Panama would be like today without the canal, it is clear who has received a disproportionate share of the benefits, and if moral debts were to be collected, who would owe what to whom. Then consider that an agreement reached in conjunction with the new treaties calls for us to pay them some 345 million dollars. This is over and above the negotiated increase in payments for use of the Canal Zone from 2.3 million to about 60 million dollars a year.

WHY THEY WANT THE CANAL

There is no moral justification whatever for the demand that the United States give up the canal. What then is the cause of that demand? The same cause that is the leitmotiv in the treatment of the United States by most of the undeveloped world.

It is the motive behind the burning of American consulates, the attacks on American diplomats, the seizure of American fishing boats, the expropriation of American property, the constant attempts to humiliate us in the U.N., all of it accompanied by demands for more money, and lately, by claims of a right to a share of our wealth.

Stripped of the meaningless vicious jargon about colonialism, imperialism, and exploitation, the moral argument holds that we must give up the canal to satisfy the malice, hatred, and envy of the worst elements in the Latin American countries,

and indeed, in the whole undeveloped world. Those are the "sensitive feelings" we are accused of affronting.

What is the cause of this global hostility toward the United States? It comes from two related sources.

First, whether communist, fascist, socialist, or non-ideological, the undeveloped countries of the world are almost all dictatorships. As such, their hatred and fear of the United States has a purely practical element.

We are the last, best, shining example of the kind of life that is possible to man on earth when he is left free. We are the unavoidable proof that the brutality, torture, terror, and death they have imposed on their people are unnecessary.

But the more fundamental cause of their opposition is also the cause of tyranny as such. It is "envy" in its most vicious, virulent, destructive sense. It is what Ayn Rand has identified as "hatred of the good for being the good."

Today that motive is widely regarded as normal and natural. It is sympathetically explained, "Of course they hate us and would like to see us destroyed. After all, we are rich, and they are poor; we are great and they are small; we have created achievements they cannot approach; we built a canal they could not conceive."

What that view sanctions and expresses is the ultimate evil in human psychology, the lowest and worst motive that is possible to man. It represents a hatred of every living human value, the same motive that sets up concentration camps, torture chambers, and dictatorships as ends in themselves.

The canal is a hatred symbol all right, but not of a nonexistent American colonialism. What the canal really symbolizes, and what the value-haters want symbolically to wipe out by making us give it up, is the overflowing abundance of energy, efficacy, and pride of a free people.

To surrender the canal in the face of such a motive is unthinkable. It would mean accepting their view of our virtues as vices and our achievements as stains on our national character. It would mean sanctioning hatred of the United States as natural and right and deserving a positive response. To what portion of our wealth and achievements could we claim a right after that and on what grounds?

That is the most important reason for keeping the Panama Canal. If there were no other reason whatever, that would be sufficient to hold on to it for dear life.

CONCLUSION

Those who think the Vietnam War demonstrated the unwillingness of the American people to fight for their values should think again. The only thing that war demonstrated was that the American people will not fight indefinitely for nothing.

The difference between Vietnam and the Panama Canal is the difference between fighting to save the house of a remote neighbor you have never met and fighting to save your own home.

The American people want to keep the Panama Canal. They are right to want it. And they will support the policies necessary to do so.

There is no practical reason for surrendering the canal. There is no moral reason. There is nothing but the pressure of a viciously irrational global opposition. The Senate should confound that opposition and assert the United States' rights to keep her values and life by rejecting the new treaties.

HALF OF HOUSE MEMBERS WOULD VOTE AGAINST CANAL TRANSFER

Mr. HATCH. Mr. President, on March 10, 1978, Scripps League newspapers, including the Daily Herald of Provo, Utah, published an article entitled "Half of House Members Would Vote Against Canal Transfer," by Lee Roderick and Mike Richins.

Based on an off-the-record survey of all 435 Members of the House of Representatives, the article indicates that if a vote on the transfer of the Panama Canal were held today in the House, a majority of the voting Members would vote against the treaties. Roderick and Richins suggest that Members of the House, who all face the voters every 2 years, reflect the sentiments of their constituents more accurately than their counterparts in the Senate.

As the Senate votes today on the future of the Panama Canal treaties, I would like to request that this article appear following my remarks to act as a timely reminder of the responsibility my colleagues and I must accept as we cast our votes.

There being no objection, the article was ordered to be printed in the record, as follows:

HALF OF HOUSE MEMBERS WOULD VOTE AGAINST CANAL TRANSFER

(By Lee Roderick and Mike Richins)

WASHINGTON.—If the House of Representatives voted today on whether to transfer the Panama Canal to Panama, nearly half of its 435 members say they would definitely or likely vote no. Less than one-third say they would definitely or likely vote yes.

This is the key finding of an off-the-record survey of all 435 offices by Scripps League Newspapers. The telephone survey was conducted between March 3–9. It suggests the treaties are in even more trouble on Capitol Hill than generally believed.

The House's role in the canal negotiations is a hot issue, with the Carter administration holding that the Senate alone, through its treaty power, can transfer Canal Zone property to Panama. Others cite Article IV, Section 3 of the Constitution to argue that the full Congress must vote on property aspects of the canal treaties as part of the ratification process—rather than after the fact. The House at least will be voting on implementation of the treaties.

Members of the House or their key aides were asked this question in the Scripps League survey: "If the House were allowed to vote today on transferring the Panama Canal and related property to Panama, how would you vote?" Offices not giving a firm "yes" or "no" were then asked: "Are you leaning for or against the property transfer?"

One hundred seventy congressional offices said they would vote no on transferring the property to Panama. An additional 38 said they are leaning against the transfer. The two groups total 208 representatives—48 per cent of the House membership.

Congressmen who say they would vote for transferring the canal to Panama number 102. Another 30 report they are leaning in that direction, for a total of 132 who favor the property transfer. The figure represents 30 per cent of House membership.

Seventy members are uncommitted on the issue and another 25 declined comment.

Almost an equal number of House Democrats and Republicans—106 and 102 respectively—are against, or leaning against, giving the canal to Panama. Only 22 Republicans say they would definitely or likely vote for the transfer along with 110 Democrats.

On a regional breakdown, only 13 members from southern and border states are for, or leaning for, transferring the canal to Panama, with 76 southerners going the other way. In the Northeast, 47 members favor the transfer, with 44 members opposed. In the Midwest, 41 members are in favor, with 53 opposed. In the Far West, 31 members are in favor, with 31 opposed.

The Scripps League findings reveal a sharp contrast between the House and the Senate, which is debating the two canal treaties. Senate Majority Whip Alan Cranston (D-Calif.) said Thursday that 62 Senators—which also means 62 per cent—are "almost surely" prepared to vote for treaty ratification, as opposed to only 30 per cent who feel that way in the House.

It is generally believed that representatives, a great majority of whom must face voters in November, reflect the sentiments of their constituents more accurately than their Senate counterparts. Only one-third of the Senators are up for reelection this year.

More than 230 Members of the House have signed a resolution introduced by Rep. George V. Hansen (R-Idaho), which calls for a House vote on property aspects of the treaties as part of treaty ratification.

Constitutional scholars are divided on whether the House has a right to participate in the property aspects of the treaties. The Senate alone clearly has the power, on a two-thirds vote, to ratify or reject a presidential treaty. However, Article IV, Section 3 of the Constitution says "The Congress shall have Power to dispose of * * * the Territory or other Property belonging to the United States; * * *"

Most scholars are in agreement that, if the House did have a say in the canal transfer, it would take a majority of its voting members to approve the transfer. The Scripps League survey indicates that if such a vote were taken today, the House would deny President Carter the right to sign away the canal and adjacent property to Panama.

PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of Executive N, 95th Congress, 1st session, Calendar No, 2, which the clerk will report.

The second assistant legislative clerk read as follows:

Calendar No. 2, Executive N, 95th Congress, 1st session, the Panama Canal Treaty.

AMENDMENT NO. 92

The ACTING PRESIDENT pro tempore. The pending question is on agreeing to the amendment (No. 92) by the Senator from Utah (Mr. Hatch), with the time thereon to be equally divided and under control.

Mr. HATCH. Mr. President, I have prepared a very lengthy statement in support of my amendment (No. 92) to the Panama Canal Treaty, which has been cosponsored by Senators Allen, Curtis, Garn, Helms, Laxalt, McClure, Thurmond, Eastland, and Goldwater. I would like to compliment all of those Senators for the work they have put forth, but in particular the Senator from Alabama (Mr. Allen), the chairman of the Separation of Powers Subcommittee of the Judiciary, for his excellent work and leadership in this regard. He has permitted me to speak first on this matter, and he will have some very cogent and important words to say as the debate continues. I would just like to mention that my distinguished friend and colleague, Senator Allen, has led the fight in the Senate as chairman of the Separation of Powers Subcommittee of the Judiciary Committee pertaining to raising the constitutional issue regarding article IV, section 3, clause 2.

My amendment states:

It is expressly provided that this Treaty shall, in no event, enter into force until the Congress of the United States, in accordance with the provisions of Article IV, section 3, clause 2 of the Constitution of the United States of America shall have disposed of, or shall have authorized the disposition of, the property belonging to the United States of America, or of any of its agencies in the Panama Canal Zone, as it existed on September 7, 1977.

Mr. President, as I have stated, I have prepared a very lengthy statement in support of my amendment to the Panama Canal Treaty, consisting of 89 pages. There will be a number of highly technical constitutional issues involved. I estimate that it will take me between 2 and 4 hours to deliver it.

For those reasons, I would appreciate the courtesy of my colleagues not to interrupt me, because it is technical, analytical, and difficult to deliver, and will be difficult to follow unless I deliver it toto before questions are asked.

Therefore, I would like to say at the outset that I do not intend to yield the floor for questions until I have completed the statement. As everyone knows, I have always yielded the floor at any

time in the past in this debate, but in the delivery of this particular message I will not be able to do that and have the message be as meaningful as we believe it should be. At the conclusion of the delivery of my statment, I shall be happy to respond to any questions Senators may have, and I am prepared to spend the entire day, tomorrow, and right up until Wednesday at 11 o'clock when we are supposed to vote on this amendment, on the floor, to answer questions if that is necessary. I have a few copies of the speech with me, and if any Senator wishes to have a copy of the speech to make notes, I shall be happy to provide him with a copy; but, in accordance with the statement I have just made, Mr. President, I do ask unanimous consent that the statement I am about to deliver be printed in the Record in its entirety, without interuption.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HATCH. I also ask unanimous consent that Kenneth Barron of the Congressional Research Service of the Library of Congress be accorded the privilege of the floor during the consideration and vote on my amendment No. 92.

The PRESIDING OFFICER (Mr. Harry F. Byrd, Jr.). Without objection, it is so ordered.

MAY THE PRESIDENT DISPOSE OF PUBLIC LANDS BY A SELF-EXECUTING TREATY?

Mr. HATCH. Mr. President, the Panama Canal Treaty raises the serious constitutional issue of whether the President of the United States has the constitutional authority to transfer U.S. territory in the Canal Zone to the Republic of Panama by treaty alone, without the approval of both Houses of Congress.

The Foreign Relations Committee, as well as representatives of the State Department and the Justice Department, argue that the President possesses authority to dispose of American territory and property by a self-executing treaty. Senate approval of the treaty, they insist, is all that is necessary in order to meet the requirements of the Constitution.

As a member of the Separation of Powers Subcommittee of the Senate Judiciary Committee, which has held extensive hearings on this constitutional question, I was somewhat surprised to learn that none of the State Department's legal advisers who testified before the subcommittee was able to cite a clear and unequivocal judicial precedent in support of this novel interpretation of the President's treatymaking power. The testimony of Attorney General Bell, who appeared before the Senate Foreign Relations Committee, was, in my judgment, equally deficient of valid judicial precedents that would justify this extraordinary exercise of Executive power. What is more, there appears to be no prior instance in American history when a President laid claim to the existence of such authority.

In effect, then, the President is now claiming for himself a new power, a power to enter a legislative field which Congress has definitively and exclusively controlled since the creation of the Constitution. The Canal Zone was acquired in accordance with the terms of a 1902 statute passed by Congress known as the Spooner

Act. By law, Congress authorized the President to acquire from Colombia perpetual control of the necessary lands for the construction of an interoceanic canal across the Isthmus of Panama. Acting in pursuance of this congressional authorization, the President negotiated the Hay-Buneau-Varilla Convention on November 18, 1903, between the United States and that portion of Colombia which became the Republic of Panama. In this manner did the United States acquire in perpetuity the rights to the territory now known as the Canal Zone, with sovereign and exclusive powers to administer it.

Since that time, the Canal Zone has remained an unincorporated territory of the United States. It is administered by the President of the United States, but only in accordance with enabling legislation enacted by Congress. This includes appropriation authority for its administration during the current fiscal year. Laws enacted by Congress have directed the form and substance of the administration and jurisprudence of the Canal Zone from the moment of acquisition to the present. In short, it is Congress which authorized treaty negotiations for the permanent acquisition of the land; and it is Congress which subsequently enacted legislation setting forth the legal status of the Canal Zone, establishing courts of justice, enacting civil and criminal codes, providing for defense, and appropriating money for the maintenance and operation of both the zone and the canal.

Comes now the President, standing on an unprecedented and previously unexercised claim of "concurrent authority," asserting that he has the right to abrogate the power of Congress and repeal the entire statutory structure which Congress has developed since the beginning of the 20th century, without the consent of both Houses of Congress. If the Senate stands aside and allows the President to usurp the powers of the Congress—as it has often done before—it will be preparing the way for further encroachments in the future.

In the first place, "the Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for concurrent jurisdiction of the President in the disposition of U.S. property. Acquiescence in such claims spells progressive attrition of congressional powers; it emboldens the Executive to make even more extravagant claims." Second, "it needs constantly to be remembered that a succession of Presidents have circumvented Senate participation in treaties of gravest import by resort to executive agreements."

These are the words, Mr. President, of Raoul Berger, the eminent constitutional authority whose scholarly writings on executive privilege were so vitally instructive to the Congress when we confronted the Presidential claim of self-serving "precedents" relied upon by the excutive branch for the purpose of withholding information from Congress or sending American troops into battle without congressional authorization. Today, the President seeks to circumvent the House of Representatives and gain approval for the disposal of billions of dollars worth of American territory merely by a two-thirds vote of the Senate. And what of tomorrow? How long will it be before another President seeks to dispose of other territories by an executive agreement—which is very similar in

power to a treaty and does not require any congressional consent at all?

Article IV, section 3, clause 2 of the Constitution states that—

> The Congress shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

The courts have repeatedly ruled that this is an exclusive power of the full Congress. Any authority of the Chief Executive to dispose of U.S. territory, therefore, must first be derived from authority given by an act of Congress.

In light of these considerations, Mr. President, I am offering an amendment to the treaty which would require that it shall enter into force only after both Houses of Congress have authorized the transfer of Canal Zone territory and property to the Republic of Panama.

Mr. President, this is an amendment which all Senators should eagerly support, whether they favor the treaty or oppose it, because it calls upon the Senate to debate the merits of the treaty in its proper constitutional context. It speaks not to our economic, political, or strategic interest, or to the advantages or disadvantages of transferring the canal to the Panamanians, but to the higher law which must govern our proceedings.

What is more important than whether the treaties are approved or rejected is whether they are approved or rejected in the proper constitutional manner. I appeal not to the supporters of the treaties or to the opponents, but to all Senators who believe, as I do, that our constitutional procedures must be obeyed.

Even if I favored this treaty in every respect, even if changes were to be made to make it acceptable, I would continue to insist that article IV of the Constitution be followed. For there is more at stake here than the Panama Canal. There is our Constitution to consider, our separation of powers, and our commitment to limiting the growth of executive power. I would hope that past experience has made it clear to every Member of this body that any President, be he Republican or Democrat, will be tempted to reach beyond the constitutional limits of his office if we neglect our responsibilities to check his advances.

Already we observe that a succession of Presidents have skirted the Constitution in order to get the treaties before the Senate. The Kissinger-Tack agreement of 1974, setting forth the general principles of agreement, was never submitted to the Senate for discussion and debate. Congress has never indicated that it favors any new agreements or treaties with Panama or asked the President to make a new treaty. Presidents have simply labored at their self-appointed task in total disregard of the wishes of Congress and the American people. At no stage of the proceedings, in fact, has the Senate participated in these negotiations, or been given an opportunity to give its advice and consent until after the treaty was signed. To be sure, the Executive has bypassed the Senate, just as it is now seeking to bypass the House.

Mr. President, even the Senate's confirmation process has been avoided by the acquiescence of the Senate in the interim appointment of Sol Linowitz, one of the chief negotiators of the treaties. Where does this abuse of Presidential power stop? At what point

does the Senate tell the Executive: "You shall go no further." I submit, Mr. President, that our last opportunity to confine the office of the President to its proper constitutional limits is embodied in the amendment to the treaty that I have already proposed and am speaking to today.

We have a constitutional duty to perform, and if we do not perform it this treaty will come back to haunt us for years to come. Not only will the legality of the treaty always remain in doubt, but other Presidents will use the treaty as a convenient precedent to bypass the legislative process in future international agreements involving property transfers and territorial cessions.

IS THE PANAMA CANAL ZONE A TERRITORY OF THE UNITED STATES?

Let us turn our attention, then, to the constitutional problem before us, and examine it in detail. The first issue is whether the property ceded by the United States in the Panama Canal Treaty is "territory or other property belonging to the United States" within the meaning of article IV, section 3, clause 2 of the Constitution. The answer, of course, is "yes." The State Department, the Attorney General, the Foreign Relations Committee, and the Federal courts all agree that it is United States territory. In the recent case of *United States* v. *Husband R (Roach)* 453 F. 2d 1054 (5 Cir. 1971); cert. den. 406 U.S. 935 (1972), the Fifth Circuit Court of Appeals asserted that, "The Canal Zone is an unincorporated territory of the United States."

Earlier, in the case of *Wilson* v. *Shaw,* 204 U.S. 24 (1907), the Supreme Court also observed that the United States owns the Canal Zone. "It is hypercritical," declared the Court in that case, "to contend that the title of the United States is imperfect, and that the territory described does not belong to this Nation, because of the omissions of some of the technical terms used in ordinary conveyances of real estate."

These decisions of the Federal courts are, of course, entirely consistent with the terms of the 1903 treaty between the United States and Panama. Article 2 of that treaty "grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said Canal." Article 3 "grants to the United States all the rights, power, and authority within the zone mentioned and described in article 2 of this agreement * * * which the United States would possess and exercise by the Republic of Panama of any such sovereign rights, power, or authority."

In sum, the Canal Zone is an unincorporated territory of the United States, to which the United States has full and complete title. The terms "use, occupation, and control," "in perpetuity," mean, of course, ownership. Our Federal courts have confirmed this, past Congresses have confirmed this, past Presidents have confirmed this and even the Panamanians have confirmed it. As a matter of law, then, the Canal Zone is a U.S. territory. The fact that it has not been incorporated by Congress is a matter of no consequence, since the question is whether the territory belongs to the United States. Article IV of the Constitution does not state that Congress shall have the power to dispose of only that territory

which has been incorporated, but any and all territory that belongs to the United States.

Likewise, the question of whether the United States has sovereignty over the Canal Zone is beside the point. It is an interesting academic question, but it has no bearing on the constitutional issue at hand, for the obvious reason that Congress territorial powers are in no way contingent upon or determined by, the theoretical question of sovereignty. Congress power over territories extends to any and all territories which, in the language of article IV, belong to the United States. The Constitution speaks only in terms of ownership and makes no mention of sovereignty.

This understanding of article IV is reaffirmed by the Foreign Relations Committee, which concludes in its report that—

> The Committee does not * * * believe that the issue of sovereignty—as a strictly legal matter—is relevant to the Canal debate." (p. 69).

IS THE POWER OF CONGRESS TO DISPOSE OF U.S. TERRITORY AND PROPERTY AN EXCLUSIVE POWER?

It is a well-established principle of our constitutional system that Congress has exclusive power over the disposition of territory and property belonging to the United States. By exclusive we mean that only Congress, that is the House of Representatives and the Senate, may exercise this power. There can be no cession of a U.S. Territory, on other words, unless Congress has authorized it.

This view was expressed as early as 1833 by Justice Story of the Supreme Court, one of the most distinguished jurists in the history of our country, who stated in his authoritative Commentaries on the Constitution, that—

> The power of Congress over the public territory is clearly exclusive and universal. (Vol. II, section 1328.)

In 1899, the Attorney General of the United States, John Griggs, reaffirmed this principle in a formal opinion. "The power to dispose permanently of the public lands and public property in Puerto Rico," he asserted, "rests in Congress, and in the absence of any statute conferring such power, cannot be exercised by the executive department for the Government." (22 Op. Atty. Gen. 544, 545.) Attorney General Harlan Fiske Stone, who later became Chief Justice of the Supreme Court declared in 1924, that—

> Property once acquired by the government may not be sold, or title otherwise disposed of, except under the authority of Congress * * * This authority may be generally expressed or may be specifically granted to permit the disposition in whole or in part of of particular property rights. But until that power is given by Congress expressly or impliedly, the Executive is without power to act. (34 Op. Atty. Gen. 322–323).

Likewise, the Supreme Court of the United States and the lower Federal courts have repeatedly and consistently affirmed the exclusivity of Congress power to dispose of U.S. terrirory Reference to just a few of the decisions that have been handed down by the Supreme Court over the years will amply demonstrate this constitutional principle. Thus in *Wisconsin Central RR Co.* v. *Price,* 133 U.S. 496, 504 (1890), the court declared that article IV, section 3 clause 2 "implies an exclusion of all other authority over the

[public] property which could interfere with this right [of Congress] or obstruct its exercise."

In the case of *Sioux Tribe of Indians* v. *United States,* 316 U.S. 317, 326 (1942). the Supreme Court flatly asserted that—

> Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in the lands must be traced to congressional delegation of its authority.

Referring to the territorial clause of article IV, Justice Hugo Black stated for the Court in *United States* v. *California,* 332 U.S. 19, 27 (1947) that—

> The constitutional Power of Congress in this respect is without limitation. Thus neither the courts nor the executive agencies could proceed contrary to an act of Congress in this congressional area of national power.

See also *Gibson* v. *Chouteau,* 80 U.S. (13 Wall.) 92, 99 (1872), where the Supreme Court stated that this "power is subject to no limitations."

And, in *Utah Power & Light Co.* v. *United States,* 243 U.S. 389, 404 (1916), a unanimous Supreme Court attested that—

> The settled course of legislation, congressional and state, and repeated decisions of this court, have gone upon the theory that the power of Congress to dispose of United States territory is exclusive, and that only through its excercise—in other words, Congress exercise—in some form can rights in lands belonging to the United States be acquired.

Mr. President, the legal and constitutional precedents to which I refer have been firmly rooted in our political system since the earliest days of the Republic. Significantly, no representative of the State Department or the Department of Justice has cited a single case, or read from the text of a single constitutional treatise, any statement by any member of the Supreme Court or any other court that even remotely suggests that Congress power to dispose of U.S. territory is not an exclusive power. The reason is quite simple: There is no basis in American law for the assumption that Congress power is anything less that exclusive in this regard.

As I shall proceed to demonstrate, the State Department and the Foreign Relations Committee now apparently concede this point. This concession, as I shall also show, is a fatal defect in the administration's case for the proposition that the President may lawfully dispose of the Canal Zone by treaty alone.

Let me first direct the attention of the Senate to the testimony of Mr. Herbert Hansell, legal adviser to the State Department. When Mr. Hansell appeared before the Separation of Powers Subcommittee of the Judiciary Committee on August 29, 1977, he cited the treaty and territorial clauses of the Constitution, and argued that—

> Nothing in the language of the two clauses limits the treaty power with respect to disposition of property or makes the power of Congress with respect to disposition of property exclusive.

But when Hansell testified before the House Merchant Marine and Fisheries Committee on January 17, 1978, a number of months later, he offered an entirely different construction. On this occasion he argued that—

> Nothing in the language of these clauses limits the treaty power with respect to disposition of property, or makes the legislative power the exclusive method to effect such disposition.

Thus in the first instance, Hansell insisted that Congress power to dispose of property was not exclusive, and, in the second, that the legislative power to dispose of property is not the exclusive method.

From this it must be inferred that the State Department has substanitally—and quite cleverly, I might add—changed its position in order to comply with established precedents and the objections raised by witnesses appearing before the Separation of Powers Subcommittee on November 3, 1977, just a couple of months before the later statement of Mr. Hansell.

Mr. Hansell's statement before the House Committee in January is the most recent view expressed by the State Department on the question of Congress power to dispose of property, and nowhere in that statement does he deny the fact that this is an exclusive power. He merely asserts that there is nothing the language of article IV to indicate that Congress disposal power is the exclusive method for disposing of property. This of course, merely states the obvious, since it is clear that the Executive may also dispose of property, providing he has statutory authority. In any event, the point is that the State Department seems to have abandoned its original theory and no longer denies the exclusivity of Congress territorial powers:

> Whatever the validity of that position, it should be noted at the outset that the issue raised is not whether "concurrent jurisdiction" to dispose of government property resides in the President alone. An 1899 opinion of the Attorney General concluded that the power to dispose of certain governmental lands" cannot be exercised by the executive department of the government." 22 Op. Atty. Gen. 544, 545. The Committee fully concurs. The question, rather, is whether the concurrence of the House of Representatives, in addition to that of the Senate, is constitutionally required.
>
> While reasonable arguments probably can be made for the mandatory inclusion of the House, the Committee believes that the weight of authority supports the conclusion that the constitutional grants of the disposal power to the Congress does thereby exclude that subject from the treaty power.

The report of the Foreign Relations Committee reflects the revisions and corrections made by the State Department. On page 65 of the report, the committee quotes approvingly the 1899 opinion of Attorney General Griggs, and says that the committee "fully concurs"with the views expressed therein. It is curious to note, however, that the committee quotes only the second clause of the relevant passage in that opinion, and, by omitting the first half of the clause, creates the erroneous impression that the Attorney General did not address the issue of whether both Houses of Congress must approve a transfer of territory by the President.

A complete disclosure of the Attorney General's statement indicates that the committee report, like the testimony of the State Department, misrepresents the actual precedents. In that 1899 statement, the Attorney General said:

> The Power to dispose permanently of the public lands and public property in Puerto Rico rests in Congress, and in the absence of any statute conferring such power, cannot be excercised by the executive department for the government.

I ask my colleagues to compare this statement with the language of the report, wherein it is simply observed that—

An 1899 opinion of the Attorney General concluded that the power to dispose of certain governmental lands "cannot be exercised by the executive department of the government."

The report goes on to say that the Foreign Relations Committee "fully concurs" with the Attorney General's 1899 statement, but insists that there is still the question of "whether the concurrence of the House of Representatives, in addition to that of the Senate, is constitutionally required. How, Mr. President, can the question then be "whether the concurrence of the House of Representatives, as well as the Senate, is constitutionally required, when the Attorney General has already said that it is required, in the very same sentence which the Foreign Relations Committee quotes, part of which was left out?

It is not necessary to dwell on these omissions and misrepresentations of the precedents at length. Suffice it to say that neither the State Department nor the Foreign Relations Committee disavows the constitutionally binding principle that the disposal power of Congress is exclusive.

Nor, it should be added, does the Department of Justice. "I am aware of a number of decisions of the Supreme Court," said Attorney General Griffin Bell, when he testified before the Foreign Relations Committee on September 29, 1977, "holding that article IV, section 3, clause 2 of the Constitution is of an exclusive nature." But this was not an issue of any consequence, Bell then suggested, because:

The decisions declaring article IV, section 3, clause 2 to be exclusive related to the authority of the Executive and Judicial branches to dispose of the territory or property of the United States. None of them dealt with the question here involved, the power of the treaty making authority to make such a disposition.

All of the parties are agreed, then, that the power of Congress to dispose of American territory and property is exclusive. Neither the State Department, the Justice Department, nor the Foreign Relations Committee flatly denies this. Rather, they suggest that the treaty power creates an exception to the general rule, and renders concurrent what is already exclusive.

As we shall see, this claim is utterly without foundation, The President may, of course, dispose of property by treaty. The exclusivity of Congress power to dispose of such property is maintained, however, only if Congress consents to the disposition. Otherwise it is fatuous to say the the power is exclusive. Exclusive means exclusive jurisdiction, possessed to the exclusion of all the other branches, not just some. By conferring exclusive jurisdiction on Congress respecting the disposal of property, the Constitution necessarily deprives the executive of such jurisdiction. In effect, the Foreign Relations Committee is not simply arguing that the treaty power as such creates an exception, but that the President's power to make self-executing treaties creates an exception to Congress exclusive power. The question to be resolved, then, is whether the President of the United States may negate an exclusive power of Congress respecting the disposition of property by the self-executing treaty. To this issue we now turn, and we may ask that question.

MAY THE PRESIDENT DISPOSE OF PUBLIC LANDS OVER WHICH CONGRESS HAS EXCLUSIVE POWER BY A SELF-EXECUTIVE TREATY?

The constitution is silent regarding limitations on the President's treaty-making powers. Article II, section 2, clause 2 states only that—

> The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

The grant of power to the President is thus expressed in unlimited terms. The only express restriction on the exercise of this power in the language of the Constitution is the requirement that "two-thirds of the Senators present concur."

It would thus appear that the Constitution confers an unlimited power on the President to make any treaty he pleases, under any circumstances, and that such treaties automatically become the law of the land once the Senate agrees to ratification. Such an interpretation, however flies in the face of the Constitution, and is wholly inconsistent with the basic principles of limited government and separation of powers that rest at the foundation of our fundamental law. For this reason, it is universally acknowledged that there is an implied limitation on the President's treatymaking power, which emanates from the Constitution itself and restricts the scope and method of the treaty process.

As the Supreme Court stated in the well-known case of *Reid* v. *Covert,* 354 U.S. 1, 16–17, decided in 1957:

> No agreement with a foreign nation can confer power on the Congress, or on any other branch of government, which is free from the restraints of the Constitution * * * the prohibitions of the Constitution were designed to apply to all branches of the national government, and they cannot be nullified by the Executive or by the Executive and the Senate combined.

The President and the Senate, in other words, cannot use the treaty power to override a prohibition of the Constitution. I would assume that this also means that the President and Senate cannot use the treaty power to invade a sphere of power that is exclusively reserved to the Congress, since the Constitution prohibits either the President or the Senate or the two in concert from exercising a power that is under the exclusive jurisdiction of Congress.

Judicial declarations similar to those expressed in *Reid* against *Covert* can be traced back to the formative period of our Republic, indicating that our Federal courts have always adhered to the principle that the treaty power is limited by the Constitution. Thus in *Doe* v. *Braden,* 16 How. (57 U.S.) 635, 656 (1853), the Supreme Court asserted that—

> The treaty is * * * a law made by the proper authority, and the courts of justice have no right to annul or disregard any of its provisions, unless they violate the Constitution of the United States.

"It need hardly be said that a treaty cannot change the Constitution," said the Supreme Court in 1871, in the Cherokee Tobacco case, 11 Wall. (78 U.S.) 616, 620, "or be held valid if it be in violation of that instrument."

One of the best known statements on implied limitations on the treaty power is that of Mr. Justice Field, in *Geofroy* v. *Riggs,* 133 U.S. 258, 267 (1890), where the Court declared:

The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of government itself and of that of the states. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government, or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent.

Although the Constitution does not expressly impose prohibitions or prescribe limits on the President's treatymaking powers, it is nevertheless well established, then, that treaties are subject to the same constitutional limitations that apply to all exercises of Federal power.

One of the most fundamental limitations is the requirement of implementing legislation. Early in our history, the Supreme Court distinguished between those treaties which are self-executing and those which are non-self-executing. The former take effect without implementing legislation; the latter require implementing legislation of the Congress before they become the law of the land. In other words, certain obligations which the United States accepts under a treaty cannot be executed by the treaty itself.

In the case of *Foster* v. *Neilson,* 2 Pet. (27 U.S.) 253, 314, decided in 1829, Chief Justice John Marshall explained that it is the nature of the obligation undertaken by a treaty which determines whether implementing legislation is needed to make the treaty effective. "Our Constitution," said Marshall, "declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision."

But under what circumstances does a treaty not operate of itself, and require the aid of legislation? Here is Marshall's answer:

When the terms of the stipulation import a *contract—when either of the parties engages to perform a particular act,* the treaty addresses itself to the political, not the judicial department; and the *legislature* must execute the contract, before it can become a rule for the Court. (Emphasis supplied.)

To put it another way, a treaty requiring the United States to perform a particular act would not become the law of the land unless Congress executed the contract—that is, enacted legislation implementing the treaty.

Based on their analysis of the judicial precedents, legal scholars have supplied another guideline for determining whether a treaty is self-executing. One authority is Quincy Wright, whose study entitled "The Control of American Foreign Relations," is quoted at length by the Library of Congress in "the Constitution of the United States of America: Analysis and Interpretation." This is the authoritative, encyclopedic study of our Constitution which all Members of Congress rely upon extensively and have in their offices. In his work, Wright observes that the question of whether a treaty provision can be executed without legislative action "depends upon whether the obligation is imposed on private individuals or on public authorities. (Page 207.)

He further explains:

Treaty provisions which define the rights and obligations of *private* individuals and lay down general principles for the guidance of military, naval or administrative officials in relation thereto are usually considered *self-executing.* Thus treaty provisions assuring aliens equal civil rights with citizens, defining the limits of national jurisdiction, and prescribing rules of prize, war, and neutrality, have been so considered * * *.

On the other hand certain treaty obligations are addressed solely to *public* authorities, of which may be mentioned those requiring the payment of money, *the cession of territory,* the guarantee of territory, etc. (Emphasis supplied.)

According to these authorities, then, a treaty addressed solely to public authorities, requiring a cession of territory, would be regarded as a nonself-executing treaty that would not be effective in the absence of congressional authorization. Then we also have a third guideline, offered by the State Department itself. In a 1907 memorandum approved by the Secretary of State—and it is cited in our own authoritative analysis of the Constitution published by the Library of Congress—it is said that—

The limitation on the treaty power which necessitates legislative implementation may be found in the provisions of the Constitution which expressly confide in Congress or other branches of the Federal Government the exercise of certain delegated powers. (Quoted at page 489.)

The same thought was expressed in Congress in 1815, at the conslusion of debate on a convention with Great Britain involving a reciprocal reduction of duties. President Madison recommended to Congress such legislation as the convention might require for effectuation, and legislation was thereafter enacted. House conferees observed that they thought, and that in their opinion the Senate conferees agreed, that legislative implementation was necessary to carry into effect all treaties which contained "stipulations requiring appropriations, or which might bind the nation to lay taxes, to raise armies, to support navies, to grant subsidies, to create States, or to cede territory" (29 Annals of Congress 1019) (1816), as quoted (page 489). As early as 1816, therefore, Congress adopted the view that a treaty ceding territory is not self-executing and requires legislative implementation to be effective. The State Department memorandum of 1907, also regarded as authoritative by the Library of Congress, asserts that implementing legislation is necessary when a treaty employs a power expressly confided in Congress.

Thus we see, Mr. President, that at least three general principles of construction have evolved in our constitutional history for determining whether a treaty requires implementing legislation to be effective. If the terms of the treaty import a contract, and either party agrees to perform a particular act; if the obligation is imposed on public authorities; and if the agreement embraces a power expressly confided in Congress, then the treaty is not self-executing and cannot become effective as the law of the land until Congress enacts implementing legislation.

Judged by these established principles of law, Mr. President, it is clear that a treaty ceding our territory and public property in the Panama Canal Zone to the Government of Panama is not self-executing. Does the Panama Canal Treaty contain provisions requiring either party to perform a particular act? To be sure, the treaty contains not one but numerous provisions whereby the United States agrees to perform a particular act, that involving the transfer of the zone being most significant.

Does the treaty impose obligations on public authorities? Again, the answer is in the affirmative, for this is a treaty which is addressed directly to public authorities.

Does the treaty concern a power expressly confided in Congress? Article IV, section 3, clause 2 supplies the answer. It stipulates that—

> Congress shall have power to dispose of * * * the territory or other property belonging to the United States.

What is more, Congress power to dispose of territory is not only express but also exclusive.

Have prior agreements with Panama involving the transfer of property conformed to these principles? The Treaty of Mutual Understanding between the United States and Panama in 1955 bears directly on the issue. Article V of that treaty states in clear and precise language that the cession of certain property in the zone is dependent upon action by Congress. In fact, the phrase "subject to the enactment of authorizing legislation" appears three times in article V of the 1955 treaty with Panama. Article V states that:

> The United States of America agrees that, subject to the enactment of legislation by the Congress, there shall be conveyed to the Republic of Panama free of cost all the right, title and interest held by the United States * * * to certain lands and improvements * * * The lands and improvements referred to in the preceding sentence and the determinations by the United States of America respecting the same, subject to the enactment of legislation by Congress, are designated and set forth in Item 2 of the Memorandum of Understanding * * * The United States also agrees that, subject to the enactment of legislation by the Congress, there shall be conveyed to the Republic of Panama free of cost all its right, titie and interest to the land and improvements in the areas known as PAITILLA POINT * * *

In 1942, when the President made an Executive agreement promising to return certain property and installations to Panama, the transfer was based upon, and subject to, congressional approval (agreement of May 18, 1942, 59 Stat. 1289, Part 2: "When the authority of Congress—shall have been obtained"). During the course of Senate debate, Senator Tom Connally, chairman of the Senate Foreign Relations Committee, asserted that—

> Under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. The Constitution itself confers on Congress specific authority to transfer territory or lands belonging to the United States * * * The House of Representatives has a right to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise (88 Con. Record 9267).

In its report on the transfer, the House Committee on Foreign Affairs reaffirmed the principle that a cession of public land belonging to the United States requires congressional approval. "As disposition of property of the United States," said the committee, requires "an exercise of the legislative power, independently of the treatymaking power."

(H. Rept. No. 78–271, page 6.)

Congressional approval was also sought and obtained in 1932, when the United States decided to erect a new legation building on land within the Canal Zone. Because it is improper to build a legation on territory under American jurisdiction, a bill was drafted by the State Department to authorize the Secretary of State to modify the boundary line between Panama and the Canal Zone so as to cede the land back to Panama and allow for the construction of the legation on "Panamanian territory" instead of American. This legislation was subsequently introduced and passed by Congress (72 Congressional Record 4657).

Prior practice in Panama, it may thus be seen reaffirms and strengthens the principle that a treaty ceding public lands to a foreign government is not self-executing. In all previous agreements with Panama, it would seem that all cessions of property belonging to the United States have been based on Congressional approval. It seems reasonable to me, I might add, that if all previous transfers of real estate to Panama have occurred under the authority of Congress, the transfer of the entire zone should proceed on the same basis; otherwise, we are left with the dubious proposition that prior enactments of Congress authorizing the property cessions were gratuitous exercises of legislative fantasy which the President was free to ignore; or we are left with the peculiar proposition that as the amount of property increases, the power of Congress decreases. I am not aware that any Congress or previous President has ever entertained either proposition as a valid interpretation of the Constitution.

The legal precedents and established practices all point to the conclusion that the treaty now under consideration cannot by any stretch of the imagination be regarded as self-executing. Against the tremendous weight of the precedents that I have cited, what evidence does the Foreign Relations Committee offer to show that this new treaty is self-executing and does not require implementing legislation to effect the transfer of the land and improvements in the Canal Zone to the Republic of Panama? What evidence does the Foreign Relations Committee offer to exempt this treaty disposing of property from the established rule of law?

The answer, Mr. President, is nothing. Nothing. The Foreign Relations Committee report completely ignores the precedents concerning the differences between self-executing treaties and non-self-executing treaties.

The committee's report makes no mention of the rules that have traditionally been followed by Congress, by our courts, and by past Presidents—rules that must be consulted in order to determine the character of this treaty. The report simply assumes, without discussion, without even acknowledging the existence of these precedents, that this is a self-executing treaty.

I ask my colleagues: How much trust should the Senate place in a committee report which seeks to expand the powers of the President beyond the limits to which they have been confined since this country was founded, and says not a word, not one word, about any of these binding precedents indicating that this treaty cannot possibly be construed as a self-executing treaty? If the Senate is to embark upon a bold new course, conferring more power on the Chief Executive, then the Members are entitled to know, I believe, the reasons for this sudden departure from the established norm. What are these reasons? Where are the precedents to support this radical transformation of the treaty process? I suggest, Mr. President, that the Senate can place no trust in a committee report which so conveniently ignores these precedents and misrepresents others.

On these grounds alone, for lack of any evidence that the transfer of property contemplated in these agreements can be effected by a self-executing treaty, the committee's argument against the need for implementing legislation should be rejected out of hand.

For the basic question is whether this treaty is self-executing. If it is not, there is no point in belaboring the issue of whether legislative approval is necessary.

Such considerations have not, however, deterred the Foreign Relations Committee. Fearlessly disregarding the precedents used to define the nature of this treaty, the committee leaps to secondary matters and comes up with the conclusion that—

> The Constitutional text, the intent of the Framers, opinions of the Supreme Court, and historical precedent all suggest that the Panama Canal treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation. (Page 69).

As we shall see, this conclusion is doubly wrong. In the first place, it is based upon a fatally defective and wholly false assumption that this treaty is self-executing. In the second place, it is based on precedents which, when examined, fail to support the committee's position.

(Mr. Cannon assumed the chair.)

Mr. HATCH. Mr. President, let us talk about the constitutional test.

CONSTITUTIONAL TEST

We first encounter in the committee's argument that the constitutional test and the location of the disposal-of-property—or territorial—clause of the Constitution support the conclusion of the committee. But every sentence of the opening paragraph of the report, it would seem, is either false, misleading, or irrelevant. Let me enumerate:

> First, the constitutional text gives no reason to assume that the power to dispose of property may be exercised only by statute, and not by treaty. The disposal-of-property clause is drafted in the same way as the provision conferring enumerated powers upon the Congress (article I, section 8): both way that Congress "shall have power. * * *" Where two substantive similar provisions of the Constitution are in their jurisdictional terms worded identically, and where one of those provisions has been construed as conferring concurrent power, it is not unreasonable to construe the other provision also as conferring concurrent power. It has long been established that article I, section 8 of the Constitution confers concurrent power—that the enumerated powers conferred upon the Congress therein may be exercised both by statute and by treaty. To hold that the enumerated powers are by implication excluded from the treaty power would be to hold that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are invalid. The Constitution on its face presents no reason for regarding the disposal power and different, jurisdictionally, from those powers.

The first sentence states that—

> * * * the constitutional text gives no reason to assume that the power to dispose of property may be exercised only by statue, and not by treaty (P. 65.)

This assertion is obviously irrelevant, inasmuch as it is freely admitted that the President has the power to dispose of property by treaty. The question is not an "either or proposition," but whether he may dispose of it by self-executing treaty.

The second and third sentences state that—

> The disposal-of-property clause is drafted in the same way as the provision conferring enumerated powers upon Congress (article I, section 8): both say that Congress "shall have power * * *" where two substantively similar provisions of the Constitution are in their jurisdictional terms worded identically, and where one of those provisions has been construed as conferring concurrent power, it is not unreasonable to construe the other provision also as conferring concurrent power. (P. 65.)

This statement is false and misleading. According to the committee's reasoning, the President is free to exercise any power of Congress through a self-executing treaty where it is declared in the Constitution that "Congress shall have power," and "where two substantively similar provisions of the Constitution are in their jurisdictional terms worded identically." Article I of the Constitution states that Congress shall have power to perform a number of functions—to lay and collect taxes, to borrow money, to establish a uniform rule of naturalization, to declare war, and to provide and maintain a Navy, to mention only a few. Article III states that "Congress shall have power to declare the punishment of treason," and we may presume that the President may also by treaty circumvent the House of Representatives regarding this power of Congress as well. All of the "Congress shall have power" powers, suggests the committee, may be eclipsed by the President of the United States through a self-executing treaty. Carried to its logical conclusion, this theory offered by the committee would whittle down the powers of Congress to the point of extinction; for it elevates the power of the President to make self-executing treaties to a higher station than the legislative power itself, which is contrary to the Constitution:

> It is true that certain powers cannot constitutionally be exercised by treaty. Enactment of a statute would be required, for example, to appropriate money from the Treasury, or to impose taxes, or to declare war. But exclusive statutory jurisdiction exists in those cases for reasons peculiar to the specific powers in question. A treaty may not impose taxes because the constitutional requirement that all bills raising revenue originate in the House of Representatives (article I, section 7, clause 1) seems clearly to have been intended to include the House in the revenue-raising process. A treaty may not appropriate funds from the Treasury because the language of the appropriations clause, like that of the revenue clause and unlike that of the disposal-of-property clause, does appear to be exclusive: it provides that "no money shall be drawn from the Treasury, but in consequence of appropriations mady by law" (article I, section 9, clause 7). A treaty may not declare war because the unique legislative history of the declaration-of-war clause (article I, section 8, clause 11) clearly indicates that the power was intended to reside pointly in the House of Representatives and the Senate. (See p. 74 of this report.) No such rationale applies to the disposal-of-property clause.

Moreover, by its own admission in the following paragraph, page 66, the Foreign Relations Committee concedes that this theory admits to numerous exceptions. Thus, a treaty cannot appropriate money, says the committee, impose taxes, or declare war. Why can a treaty not appropriate funds? Because, opines the committee:

> The language of the appropriations clause * * * unlike that of the disposal-of-property clause, does appear to be exclusive. (Page 66.)

Since the Supreme court has repeatedly asserted that Congress power to dispose of public lands is also an exclusive power, irrespective of the specific language of the clause, the theory presented by the committee collapses under the weight of judicial precedent. What appears to be true to the committee is false under the established law. To be sure, the committee concedes the whole argument by inferring that the President cannot exercise an exclusive power of Congress under a self-executing treaty.

With respect to the matter of Congress power to declare war, the committee arbitrarily abandons the argument based on language, and asserts that this is an exclusive power "because the unique legislative history of the declaration-of-war clause clearly indicates

that the power was intended to reside jointly in the House of Representatives and the Senate." Thus we now learn that the language by which the powers of Congress are expressed in the Constitution are not determinative after all regarding the question of exclusiveness, and that other factors such as "legislative history" must be considered. But if the legislative history must be taken into account, surely the decisions of the Supreme Court and constitutional history must also be given weight. The committee cannot have it both ways, invoking legislative history only when it is convenient to do so. In any case, the legislative history of the terrirorial clause of the Constitution, as we have already observed, clearly indicates that Congress has traditionally rejected the view that the President may dispose of public lands by a self-executing treaty.

These matters aside, it should be borne in mind that the committee cites no decisions of the Supreme Court to support its curious interpretation of the Constitution, the reason being there is no basis for it in American law.

Returning to the committee's report, we next greet the assertion that—

> It has long been established that Article 1, section 8 of the Constitution confers concurrent power—that the enumerated powers conferred upon the Congress therein may be exercised by both statute and treaty.

One again, the committee misses the point. The question is whether he may exercise all of these powers by a self-executing treaty.

How many self-executing treaties has the President made, bypassing the House of Representatives, regarding such article 1, section 8 powers as the power of Congress to establish an uniform rule of naturalization? To provide and maintain a Navy? To coin money? To raise such questions is to reveal the absurdity of the committee's theory.

One of the so-called "long established" examples specifically mentioned by the committee are the "hundreds of self-executing treaties dealing with—postal services" (page 66). But what is the basis for this claim? Volume I of the U.S. Government publication entitled "Treaties and Other International Acts of the United States," edited by Hunter Miller, states that—

> Arrangements with foreign post offices were authorized by statute as early as 1792 (1 Statutes-at-Large 239) and are made under statutory authority now (act of June 8, 1872, 17 Statutes-at-Large 304).

Indeed, observes Miller:

> Postal conventions are not, and, with a very few exception, never have been submitted to the Senate as treaties. The character of postal conventions makes them inapproriate for inclusion in a general collection of treaties and international acts. To a large extent they are business arrangements between offices of transport rather than agreements between governments in the ordinary sense. (Page 7.)

So much, then, for the "hundreds" of self-executing postal service "treaties" relied upon by the committee. In any event, we are not dealing with the postal or any other article I power of Congress in the first place, but with the power of Congress to dispose of public lands under article IV of the Constitution:

> Finally, it seems relevant that the disposal-of-property clause appears in article IV of the Constitution, the article dealing with federal-state and inter-state rela-

tions. While by no means conclusive, this placement does suggest an intent to set out a power of the federal government as against the power of the states, rather than a power of the Congress as against the joint power of the Senate and the President.

This brings us finally to the issue that the committee has raised in connection with the location of Congress territorial powers. "It seems relevant," concludes the committee, "that the disposal-of-property clause appears in article IV of the Constitution, the article dealing with Federal-State and interstate relations. While by no means conclusive, this placement does suggest an intent to set out a power of the Federal Government as against the power of the States, rather than a power of the Congress as against the joint power of the Senate and the President." (Page 66.)

What significance should we attach to the location of Congress power to dispose of U.S. territory, in light of the fact the Supreme Court has never deemed its location as bearing on the issue of exclusiveness, and has, in fact, consistently ruled that this is an exclusive power of Congress? The answer, of course, is none. The Supreme Court has never even suggested that the power is exclusive in relation to the States and is not exclusive in relation to the President. It is simply exclusive, and the Court has never qualified that position.

What is clear is that the location of the territorial power is unrelated to the scope of the power itself. The powers of Congress are not confined to article I, but are scattered throughout the Constitution. Article II, which deals principally with the Executive power, also confers numerous powers on Congress—to determine the time of choosing the electors to the electoral college, to provide by law of the case of removal, death, resignation, or inability of the President. Article II also gives one branch of the legislature, the Senate, the power to advise and consent on treaties and the appointment of Ambassadors, judges, and other officers of the United States. Article III, which deals principally with the powers of the Judiciary, also specifies that Congress shall establish inferior courts, regulate the appelate jurisdiction of the Supreme Court, direct the place where criminal trials shall be held when the crime has not been committed within any State, and declare the punishment for treason. In addition to the numerated powers of Congress under article IV, the Constitution also provides under article V that Congress shall have the power to propose amendments or call a constitutional convention.

None of these powers is located in article I, where we find most of the delegated powers of Congress. May we therefore assume that the President is free to make self-executing treaties and bypass the House of Representatives in the exercise of these poweres? May the President make a self-executing treaty with a foreign power providing for his successor in the case of his removal from office? Exactly where in the Constitution are the exclusive powers of Congress located? Where do we look to find those that are allegedly "concurrent"? What the committee seems to overlook, Mr. President, is the plain and simple fact that the purpose of distributing the legislative powers throughout the Constitution is not to block out those which are exclusive and those "concurrent," but primar-

ily to provide for a system of checks and balances under the separation of powers.

In sum, neither the text of the Constitution nor the location of the legislative power to dispose of property supports the committee's newfangled theory that the Chief Executive may transfer the Canal Zone by a self-executing treaty. Indeed, the committee has not even been able to cite a single dicision of any Federal court which would lend respectability to the notion that the text of the Constitution and the location of the disposal-of-property clause authorize the President and the Senate to override this express power of Congress. For these reasons, the committee's theory must be rejected as hopelessly absurd.

WHAT WAS THE INTENT OF THE FRAMERS?

The second pillar of the Foreign Relations Committee report on Congress territorial powers concerns the original intent of the framers of our Constitution. This pillar, like the first, collapses under the weight of close scrutiny; and once again we are dismayed to learn that every sentence of the report on this aspect of the issue is either false, misleading or irrelevant:

> From all available records it appears that the Framers evidenced no intent to preclude the United States from disposing of governmental property by treaty. They rejected all proposals to limit the treaty power. A review of the discussion of the disposal-of-property clause indicates that the Framers' concern was that the Federal government have primacy over the states in resolving disputes among the states over certain western lands suggesting, again, an intent to delineate federal power versus that of the states. A number of statements, indicating that territory and other property could be transferred by treaty, were made by the Framers during the debate on the treaty power after article IV was adoped.

The opening sentence of the report reads as follows:

> From all available records it appears that the Framers evidenced no intent to preclude the United States from disposing of governmental property by treaty.

This statement is, of course, irrelevant, as we have seem twice before in this report, since the question is not whether the United States may dispose of public lands by treaty, but whether the President may do so by a self-executing treaty.

In the second sentence, the committee asserts that the Framers "rejected all proposals to limit the treaty power." This statement is false on its face, for the obvious reason that it creates the erroneous impression that the President's power to make treaties is by design absolute and unlimited. In addition, the treaty power is obviously limited by the requirement that the Senate must give its advice and consent to the ratification of a treaty, any treaty. Thus, although the treaty power itself is not limited by express terms, there is nevertheless an implied limitation on the exercise of the power stemming from the check of the Senate as well as the principle of limited government that is inherent in our Constitution.

The third sentence of the report states that,

> A review of the discussion of the disposal-of-property clause indicates that the Framers' concern was that the Federal government have primacy over the states in resolving disputes among the states over certain Western lands—suggesting, again, an intent to delineate Federal power versus that of the States.

This statement is misleading and false because it erroneously suggests that the Framers were not also concerned that Congress have a voice in the disposal of American territory and property by treaty.

Significantly, the committee report makes no mention of the argument based on the Framers' intent that was propounded by the Attorney General when he testified before the Foreign Relations Committee. In his prepared statement to the committee on September 29, 1977, Attorney General Bell made reference to four separate events that occurred during the course of debate on the framing and adoption of the Constitution. He thought it significant, for example, that George Mason of Virginia had observed "that the Senate by means of a treaty might alienate territory, etc. without legislative sanction." Mason's actual words, as reported in Farrand, were that:

> He was extremely earnest to take this [appropriation] power from the Senate, who he said could already sell the whole County by means of Treaties. (Farrand, II 297).

From this, Bell deduced that Mason's remark indicated that the Framers were supportive of the idea that the President should have the power to dispose of property by a self-executing treaty.

In his testimony before the House Committee on Merchant Marine and Fisheries on January 18 of this year, Raoul Berger correctly observed that Attorney General Bell's reliance on Mason's remark was based on an erroneous understanding of time sequence. Mason made his remark on August 15, 1787. The property clause was not even debated for 15 days, until August 30, 1787. As Berger notes,

> Mason spoke before the Article IV progenitor was even proposed and referred to the Committee on Detail, (2 Farrand 321, 324), And of course before the resultant 'disposition' provision was debated, (id 466). Manifestly his earlier remark hardly expressed the view that the treaty power overrode the as yet unborn "power to dispose."

Bell also relied on remarks made at the Convention by delegates Gerry, Williamson, and Spaight, an amendment proposed by the Virginia ratifying convention, and on a letter written by Williamson to James Madison a year after the framers had completed their work, as further proof that the history of the Convention supports "the proposition that a treaty disposing of the territory and Property belonging to the United States can be self-executing." But it is not necessary to analyze these statements and events here. In the first place, Raoul Berger has already shown that they do not provide evidence to support the Attorney General's assertion. In the second place, the Foreign Relations Committee makes no reference to them—and wisely so, I might add. Unlike the Attorney General, the Foreign Relations Committee has enjoyed the benefit of Berger's careful dissection of the debates and prudently avoids challenging them.

This brings us back, then, to the position which the Foreign Relations Committee has now retreated—to the argument of the third sentence where it is claimed simply that:

> A review of the discussion of the disposal-of-property clause indicates that the Framers' concern was that the Federal Government have primacy over the States in resolving disputes among the States over certain Western lands—suggesting again, an intent to delineate Federal power versus that of the States.

Since the Foreign Relations Committee offers no evidence even for this revised and emasculated version of the administration's original argument based on intent, I leave it to the Senators themselves to judge the merits of this unsupported claim. In my judgment, the Records of the Convention fail to show that the framers were anxious to allow the cession of American territory by the President, acting alone or with the concurrence of the Senate, without the approval of Congress. The Foreign Relations Committee fails to offer any evidence indicating that the framers thought otherwise.

Finally, in the fourth and last sentence of the report, the committee concludes that:

A number of statements, indicating that territory and other property could be transferred by treaty, were made by the Framers during the debate on the treaty power after article IV was adopted.

Aside from the fact this statement is unsupported, it is wholly irrelevant since the question, once again, is not whether the President has the power to dispose of public lands by treaty, but whether he may do so by a self-executing treaty.

In sum, the Senate Foreign Relations Committee Report fails to show that the framers of the Constitution favored the idea that the President should have the power to dispose of territory and property by a self-executing treaty. The committee offers no evidence to support this assertion and it fails to challenge any of the evidence to the contrary that has been offered. What is more, the committee report twice misrepresents the constitutional issue that is under consideration in the brief paragraph on this subject of the framers' intent. For these reasons, the Senate should reject the committee's argument that constitutional history lends any strength to the President's position.

JUDICIAL AUTHORITIES

We come now to the third pillar of the committee's report suggesting, in the words of the committee, that—

The Supreme Court appears to have favored a construction of the Constitution which would permit the disposal of property by a self-executing treaty. (p. 66).

The cases as we shall see, fail to lend any credibility to this interpretation of the judicial precedents.

The committee cities seven Supreme Court decisions evidencing the right of the President to transfer territory without the consent of Congress. Let us examine them in detail:

The Supreme Court appears to have favored a construction of the Constitution which would permit the disposal of property by self-executing treaty. It is well settled, as the Attorney General noted during the Committee's hearings, that the treaty power extends "to all proper subjects of negotiation between our government and the governments of other nations", although it does not "extend so far as to authorize what the Constitution forbids." *Geofroy* v. *Riggs,* 133 U.S. 258, 266–267 (1890); *Asakura* v. *Seattle,* 265 U.S. 332, 341 (1924). The transfer of property from one nation to another clearly constitutes a proper subject of negotiation; the question is whether the Constitution forbids such transfer by treaty.

Says the committee:

It is well settled as the Attorney General noted during the Committee's hearings, that the treaty power "extends to all proper subjects of negotiation between our

government and the government of other nations," although it does not "extend so far as to authorize what the Constitution forbids." (p. 66–67).

It therefore follows, avers the committee, that:

The transfer of property from one nation to another clearly constitutes a proper subject of negotiation; the question is whether the Constitution forbids such transfer by treaty.

The cases cited are *Geofroy* v. *Riggs,* 133 U.S. 258, 266–267 (1890) and *Asakura* v. *Seattle,* 265 U.S. 332, 341 (1924).

In other words the committee fully agrees, contrary to its earlier statement that the framers "rejected all proposals to limit the treaty power" (p. 66), that the scope of the treaty power is indeed limited by the Constitution. The committee also agrees with the undisputed fact that the President has the authority to make treaties with foreign nations ceding public lands.

But once again the committee misstates the constitutional issue that we are considering. The question is not "whether the Constitution forbids such transfer by treaty," but whether it forbids such transfer by a self-executing treaty that circumvents the Congress.

So much, then, for the first paragraph of the committee's report on the judical precedents. All that the committee has demonstrated is that it apparently does not understand the constitutional issue before us, and is able to belabor obvious points of law that prove what everybody knows in the first place. In short, the first paragraph is false, misleading, and irrelevant:

A number of cases suggest that it does not. The Court had no problem with several treaties transferring United States property to various Indian Tribes. (Prior to the Indian Appropriation Act of 1871, Indian tribes were recognized as independent nations with whom the United States could contract by treaty, and the Court has held that the "power to make treaties with the Indian tribes is * * * coextensive with that to make treaties with foreign nations." *United States* v. *43 Gallons of Whiskey,* 93 U.S. 188 (1876).

In the second paragraph, the committee report opens with another irrelevant statement, and asserts that "A number of cases suggest" that the Constitution "does not" forbid the transfer of property by treaty. Significantly, the committee scrupulously avoids all mention of those cases which indicate that the Constitution forbids cessions of territory by a self-executing treaty.

Conspicuously missing from the report, for example, is the frequently mentioned case of *Sioux Tribe of Indians* v. *United States,* 316 U.S. 317 U.S. 317, 326 (1942), where the Supreme Court flatly stated that—

Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive power to convey any interest in the lands must be traced to Congressional delegation of its authority.

Undaunted by such cases as Sioux Tribe, which clearly demonstrate the very opposite point of law favored by the committee, the report plods forward, noting that—

The Court had no problem with several treaties trasferring United States property to various Indian tribes.

Citing the case of *U.S.* v. *43 Gallons of Whiskey,* 93 U.S. 188 (1876), the committee observes that prior to the year 1871, when Congress passed the Indian Appropriation Act, "Indian tribes were recognized as independent nations with whom the United States could contract by treaty"; and, it is further noted, "the Court has

held that 'the power to make treaties with the Indian tribes is * * * co-extensive with that to make treaties with foreign nations.' "

One wonders whether the committee has even read the case of *U.S.* v. *43 Gallons of Whiskey.* In the first place, the statement quoted in the report does not appear on page 188 of the decision, but on page 197. In the second place, the case actually involves an 1863 treaty between the United States and the Chippewa Indians whereby the Indians—not the United States—ceded territory to the United States.

As the court correctly observes in that case—

> The acquisition [not the cession] of territory has been the moving cause of all Indian treaties * * * and will continue to be so until Indian reservations are confined to very narrow interests. (93 US 188, 196–197).

Added to this is the fact that the treaty in question, which actually involved accession of territory by the Indians to the United States in Minnesota, and is thus a treaty for acquiring territory rather than a territorial cession, incorporated an act of Congress concerning the introduction and sale of liquor in Indian territory. The act was passed by Congress on June 30, 1834, (amended March 15, 1864), and applied to all Indian territory. As the Court noted—

> The act defines what shall be deemed Indian country, directs the manner in which trade and intercourse with the Indians shall be carried on, and forbids anyone, under certain penalties, to give or sell liquor to an Indian in charge of an agent, or to introduce it into the Indian country. (93 U. S. 194).

Obviously, treaties with Indian tribes differ from treaties with foreign nations in a number of respects. As seen in the 43 Gallons of Whiskey case, for example, Congress continued to regulate commerce with Indian tribes and within Indian territory after the treaty went into effect. The peculiar status of Indian tribes was defined by Chief Justice Marshall in 1831 in the case of *Cherokee Nation* v. *Georgia,* 5 Peters 17, as that of "domestic dependent nations." The recognized authority, Samuel Crandall, notes in his study on "Treaties, Their Making and Enforcement," that:

> From the first, our negotiations with Indian tribes have been quite separate from those with foreign states. (p. 93).

There is some doubt, therefore, whether treaties with Indian tribes are even applicable to the constitutional issue at hand, which involves a treaty with a foreign government. The Indian Appropriations Act of 1871, cited by the committee, fully shows, in fact, that the power of the President to negotiate treaties with the Indian tribes was based on the consent of Congress; for in that act, Congress declared that after March 3, 1871:

> No Indian nation or tribe within the territory of the United States should be acknowledged or recognized as an independent nation, tribe or power with whom the United States might contract by treaty. (Crandall, p. 94).

In effect, Congress nullified the power of the President to make treaties with Indian tribes. It would seem to follow, therefore, if Congress has the power to prohibit the President form making treaties with Indian tribes, that the President never enjoyed the power of making a self-executing treaty with Indian tribes in the first place, as such power would be inconsistent with the act of 1871.

In any event, these considerations need not detain us here, for the crucial point, as I earlier noted in the 43 Gallons case, is that "the acquisition of territory has been the moving cause of all Indian treaties" (93 US 188, 196–187). The underlying purpose of these treaties was the acquisition and purchase of Indian lands, so they could be resold to white settlers and converted to individual titles. The State Department, the Attorney-General, and now the Foreign Relations Committee, all rely heavily on these Indian treaties to support the theory that the President may dispose of property by self-executing treaty. But if these Indian treaties involve the acquisition of territory rather than the cession of public lands, I fail to see how they even apply to the question we are considering.

In *Holden* v. *Joy,* 17 Wall. (84 U.S.) 211 (1872), for example, the Court heard a challenge to a treaty with the Cherokee nation which transferred to it land belonging to the United States. The Court said:

> * * * it is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political *Id.* at 247.

Moving along to the next sentence of the report, we learn, according to the committee, that in the case of *Holden* v. *Joy,* 17 Wallace (84 U.S.) 211 (1872):

> The Court heard a challenge to a treaty with the Cherokee nation which transferred to it land belonging to the United States.

The committee then cites the following passage from that decision:

> It is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political.

Do these remarks support the proposition that the President may make a self-executing treaty ceding territory and property to a foreign government? First, it is agreed by all parties who testified before Congress, including the Attorney General of the United States, that the passage in question is mere dictum—that is, an opinion of a judge which does not embody the determination of the court, and was made without argument or full consideration of the point (Bouvier's Law Dictionary, I. 863). As the Supreme Court stated in *Carroll* v. *Carroll,* 16 Howard 287 (1853), the Court "has never held itself bound by any part of an opinion which was not needful to the ascertainment of the question between the parties."

Second, the case of Holden against Joy actually conflicts with the theory offered by the Foreign Relations Committee. The facts of the case are as follows: Prior to the year 1817, the Cherokee Indians resided east of the Mississippi, largely in Georgia. By treaties of 1817 and 1819, the tribe was divided into two bodies, one of which remained in Georgia, the other on the Arkansas and White Rivers. Anxious to move the entire tribe west of the Mississippi,

the United States made treaties with the western Cherokees in 1828 and 1833, by which the United States agreed to "possess" them, as well as the eastern Cherokees, of 7 million acres of land west of the Arkansas River. In 1830, in the period between the two treaties, Congress passed a law entitled "An act to provide for an exchange of lands with the Indians residing in any of the States or territories, and for their removal west of the Mississippi River."

The first and second sections of the act authorized the President to exchange certain lands west of the Mississippi with any tribe residing in Georgia, or any other State or territory. The third section of the act stated that:

> Such lands shall revert to the United States if the Indians become extinct or abandon them.

The purpose of the treaties and the act of Congress, obviously, was not to cede territory but to bring about an exchange by inducing the Indians, as the Court put it:

> To surrender their lands and possessions to the United States, and emigrate and settle in the territory provided for them. (17 Wallace 237).

But the treaties, though formally accepted, were not successful, and in 1835, while the act of 1830 was still in force, the United States entered into a third treaty with the Cherokees, for the purpose, once again, of reuniting the eastern and western tribes.

The third treaty confirmed the two earlier agreements. The treaty stipulated that, in exchange for $5 million, the Cherokees would cede all of their lands east of the Mississippi to the United States. But the Cherokees were dissatisfied with the terms of the two earlier treaties, because they did not contain a sufficient quantity of land, so the new treaty of 1835 provided that the sum of $5 million would be reduced by $500,000 in exchange for 800,000 acres of more land known as the Cherokee neutral lands. Congress subsequently appropriated these funds.

In 1866, the United States and the Cherokee Nation entered into a fourth treaty. Under article 17 of that treaty, the Cherokees ceded back to the United States the neutral lands, which the Cherokees had purchased under the treaty of 1835, for an agreed sum of money. A supplemental treaty, modifying conflicting contracts made by the Secretary of Interior and the American Emigrant Company for the sale of the neutral lands, was concluded in 1868. Acts of Congress were subsequently passed recognizing the treaty ceding back the lands to the United States, and the supplemental treaty as valid, and making appropriations to carry these agreements into effect. The Supreme Court was subsequently called upon to resolve conflicts in land titles resulting from these treaties and statutes.

From this brief review of the facts in the case of Holden against Joy, it is abundantly clear that these treaties did not involve a cession of U.S. territory, but an exchange and purchase of Indian lands. It is equally certain that all of these exchanges and agreements were based on the consent of Congress, and that none of the treaties were self-executing. Moreover, Holden against Joy involves treaties with Indian tribes and is inapplicable to the constitutional question of treaties ceding public lands to a foreign state. Accordingly, Holden against Joy is not a precedent supporting the posi-

tion of the Foreign Relations Committee, but a precedent which is directly contrary to the committee's position.

In *Jones* v. *Meehan,* 175 U.S. 1 (1899), the Court said that "[t]he title to the strip of land in controversy" had been "granted by the United States to the elder chief Moose Dung by the treaty itself. * * *" *Id.* at 32. The Court also stated as follows:

It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States. *Id. at* 10.

In the third paragraph of the report, the Foreign Relations Committee turns to the case of *Jones* v. *Meehan,* 175 U.S. 1 (1899) for help. In that case, observes the Committee, the court said that:

"[t]he title to the strip of land in controversy" had been "granted by the United States to the elder Chief Moose Dung by the treaty itself."

Continuing, the committee also deems relevant the court's statement that—

It is well-settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the executive authority of the United States.

It is certainly appropriate that the Foreign Relations Committee relies upon a case in which Chief Moose Dung is a central figure, and I would even agree that Chief Moose Dung is probably a lingering omnipresence in the full Report. But it is no less true that the case of Jones against Meehan is quite irrelevant. In fact, this case does not even involve a cession of public lands to a foreign government, but an acquisition of Indian lands resulting from a treaty between the United States and the Chippewas Indians in 1863.

Under the terms of the treaty, the Chippewas ceded a large tract of land in Minnesota to the United States for an agreed sum of money. Part of the land ceded was reserved for use by chiefs of the tribe, including Chief Moose Dung. Article 9 of the treaty stipulated that:

There shall be set apart from the tract hereby ceded [by the Chippewas] a reservation of 640 acres near the mouth of the Thief River for the chief Moose Dung.

The chief's eldest son claimed title to all 640 acres, and the court was called upon to determine whether the chief's property descended to all of his children or to his eldest son only.

[Mr. Nunn assumed the chair.]

Mr. HATCH. The court's ruling in the case was based essentially on an opinion of Attorney General Roger Taney regarding a similar treaty in 1832 between the United States and the Pottawatomie Indians. Taney had explained:

These reservations are excepted out of the grant made by the tribe (to the United States) and did not therefore pass with it; consequently, the title remains as it was before the treaty, that is to say lands reserved are still under the original Indian title. (*Jones v. Meehan,* 175, U.S. 1, 12 (1899)).

In other words, the land in question, meaning the 640 acres set aside for the chief, was never ceded by the Chippewas.

Thus it can be seen that the portion of the opinion quoted out of context by the Foreign Relations Committee, refers not to a treaty involving a cession of American territory, but to a treaty whereby

the property interests of an individual were protected under an acquisition and purchase of Indian lands by the United States. The task of assuring the chief that he would have good title to those 640 acres that were never ceded to the United States in the first place would obviously require no act of Congress because these 640 acres were neither acquired by the United States nor ceded to the United States. They simply remained in the hands of the chief under the orignial Indian title to the lands.

Citing a number of earlier cases on this point, the court concluded that:

> The clear result of this series of decisions is that when the United States, in a treaty with an Indian tribe, and as part of the consideration for the cession by the tribe of a tract of country to the United States, makes a reservation to a chief or other member of the tribe of a specified number of sections of land, whether already identified, or to be surveyed and located in future, the treaty itself converts the reserved sections into individual property, 175 U.S. 21.

Moreover, the purchase of the Chippewa lands under this treaty was carried out in accordance with statutes of Congress governing the acquistion of Indian lands. The passage from the opinion quoted by the Foreign Relations Committee follows immediately after the court's reference to one of those statutes:

> It may be worth pointing out that in a number of cases, occasionally cited for the purpose of showing that the disposal power is unlimited, the Court discussed the scope of the disposal power in the context of federal power versus states rights; no treaties were involved, *See, e.g., Alabama* v. *Texas,* 347 U.S. 272 (1954); *Wisconsin Central Railroad Company* v. *Price County,* 133 U.S. 496 (1890).

This brings us to the next paragraph of the Foreign Relations Committee report, which not surprisingly, is both misleading and irrelevant. Here is what the report states:

> It may be worth pointing out that in a number of cases, occasionally cited for the purpose of showing that the disposal power is unlimited, the Court discussed the scope of the disposal power in the context of federal power versus states rights; no treaties were involved. (p. 67).

In response to this acute observation by the committee, it may also be worth pointing out that none of the so-called judicial precedents cited by the committee even involves the disposal of public lands or property, let alone such a disposal under a treaty. Geofroy against Riggs presented the question whether a citizen of France could take land in the District of Columbia from a citizen of the United States, in contravention of a local law but in accordance with a treaty for reciprocal rights of inheritance. Asakura against Seattle deals with a city ordinance restricting licenses to U.S. citizens in the operation of pawnshops. U.S. against 43 gallons of Whiskey and Jones against Meehan, aside from the fact they concern Indian treaties rather that treaties with foreign states, both deal with the acquisition and purchase of Indian lands and not with a cession of American territory and property.

The remaining precedent cited by the committee, Holden against Joy, did not involve a cession of public lands to a foreign government, but, as we have already seen, an exchange and purchase of Indian lands with the consent of Congress. The entire structure of the Foreign Relations Committee's argument from the standpoint of judicial precedent therefore hangs on the lonely dictum of Holden against Joy, a dictum which has no legal force and, when

read in the context of the decision, is contrary to the court's holding. In this regard, it may even be doubted whether the statement rises to the dignity of a dictum:

> While additional cases are cited on each side of the question, the Committee sees little merit in attempting to weigh dicta against dicta. The short of it is that the Court has never struck down a treaty for disposing of governmental property; that it has, over the years, had before it a number of treaties which did so; and that there is no reason to assume that *Holden* v. *Joy, supra,* and *Jones* v. *Meehan, supra,* do not represent the Court's thinking.

In the last paragraph of the report on the judicial precedents, we come to the committee's final conclusion: "While additional cases are cited on each side of the questions," says the report:

> The Committee sees little merit in attempting to weigh dicta against dicta. The short of it is that the Court has never struck down a treaty for disposing of governmental property. (p.67)

Thus in the final analysis the committee admits that its entire case concerning judical precedents rests on dicta. More precisely, it rests on a single dictum, and even that is questionable. What we are actually weighting, therefore, is not dicta against dicta, but a spurious dictum against 200 years of legislative and judicial history which demonstrates, time and time again, that the President does not have the power to dispose of American territory and property by self-executing treaty.

The reply to the committee's smug assertion that its reading of these precedents is sound because "the court has never struck down a treaty for disposing of governmental property"is fairly obvious: the court has never had occasion to do so because the President has never made a self-executing treaty ceding American territory and property to a foreign state. The committee might just as well argue that the President can make any treaty that he pleases because the Supreme Court has never declared a treaty unconstitutional. The audacity of the committee, it would seem, is exceeded only by its lack of understanding. The entire section of the committee's report on judicial precedents, like the previous sections on the constitutional text and the framers' intent, is clearly based on false, misleading, and irrelevant assertions that throw considerable doubt on the committee's bizarre interpretation of the Constitution.

Historical Precedent

As the Committee has noted in the past, it does not believe that a constitutionally questionable practice, by mere repetition, becomes more constitutional. S. Rept. 94-605, January 30, 1975 (94th Congress, 2nd Session) at 15. The Constitution is not amended by violation; express prohibitions and requirements such as those contained in the declaration-of-war clause, the treaty clause, and the disposal-of-property clause, are not expunged through non-observance. Nonetheless, historical precedent can be useful for corroborative purposes—not to show what the Constitution has become or what it should be, but rather as evidence that a given construction of that document is grounded on experience as well as logic. It is for that purpose that the Committee notes the following instances in which property belonging to the United States Government has, according to the Executive Branch, been transferred by treaty.

[Supplied by Department of State]

The following list includes treaties which are couched in self-executing terms and transfer territory or property belonging to the United States to other nations or (in

the case of Indian treaties to specific individuals without prior Congressional act authorizing such transfer.

The fourth and final pillar of the Foreign Relations Committee report concerns the issue of prior treaty practices. The committee contends that there are a number of earlier treaties with Indian tribes and foreign nations which "are couched in self-executing terms and transfer territory or property belonging to the United States to other nations or (in the case of Indian treaties) to specific individuals without prior congressional act authorizing such transfer." (p.68). This statement by the committee is, however, patently false. As a Congressional Research Service study shows, not one of the 11 treaties generously supplied by the State Department and cited authoritatively by the committee clearly stands as a precedent for a self-excuting treaty disposing of property.

1. An example of a treaty with an Indian tribe providing for the transfer to the tribe of title to lands belonging to the United States without prior Congressional authorization is the treaty with the Cherokee Nation of December 29, 1835.
2. An example of a treaty with an Indian tribe conveying land to an Indian individual without act of Congress is the treaty with the Chippewa Indians of October 2, 1863.

INDIAN TREATIES

The first two treaties are treaties with Indian tribes which have already been discussed in connection with Holden against Joy and Jones against Meehan. It is not necessary, therefore, to consider them in detail again, or elaborate upon the many unique features of Indian treaties which distinguish them from treaties with foreign states.

The first of these is the Cherokee Treaty of December 29, 1835. It is, as we have seen, a treaty for the purchase and exchange of land rather than disposal. What is more, it was not a self-executing treaty. Article III of the treaty provided that lands were exchanged "according to the provisions of the act of May 28, 1830." That act authorized the President to exchange public lands west of the Mississippi for certain Indian lands lying to the east.

In Holden against Joy 37 years after the treaty was signed, the Supreme Court ruled that the treaty could not have been negotiated under the act of 1830. "Doubtless the intent and purpose were the same," said the court, "but the treaty, though concluded to promote the same object as the act of Congress, adopts very different instrumentalities," 17 Wallace 211, 240, (1872). The court's ruling, notes the Congressional Research Service, "does not detract from the clear reliance placed by Andrew Jackson on the act for authority to conclude this particular treaty. The executive branch inserted reference to the act of 1830 in the treaty. Since President Jackson attempted to effect the treaty pursuant to congressional authorization, it does not appear that the ruling of Holden against Joy demonstrates any executive practice disposing of territory or property without act of Congress. Holden against Joy shows that Presidential reliance on legislative authorization was later ruled unfounded."

The second Indian treaty cited by the committee is the Chippewa Treaty of 1863, which we discussed earlier in connection with the case of Jones against Meehan and 640 acres of land belonging to an

Indian Chief named Moose Dung. As previously noted, this was not a treaty involving a cession of American territory, but a treaty whereby the property interests of an individual were protected under an acquisition and purchase of Indian lands by the United States. In addition, the treaty was made in accordance with statutes of Congress governing the acquisition of Indian lands. In its analysis of this treaty, the American Law Division of the Congressional Research Service concludes that the reservation in the treaty of 640 acres for chief Moose Dung, giving him title to part of the Indian lands, "was at most a clearing of title and . . . no disposition of territory or property was effected."

In sum, neither one of the Indian treaties relied upon by the Foreign Relations Committee involved a cession of American territory. Both involved purchases of Indian lands that were approved by Congress:

1. An example of a treaty with an Indian tribe providing for the transfer to the tribe of title to lands belonging to the United States without prior Congressional authorization is the treaty with the Cherokee Nation of December 29, 1835.
2. An example of a treaty with an Indian tribe conveying land to an Indian individual without act of Congress is the treaty with the Chippewa Indians of October 2, 1863.

B. *Treaties with Foreign Nations.*[1]

1. Treaty between the United States and Spain, February 22, 1819 (12 Bevans 528).
2. Treaty between the United States and Great Britain, August 9, 1842 (Webster-Ashburton Treaty) (12 Bevans 528).
3. Treaty between the United States and Great Britain, June 15, 1846 (Oregon Boundaries) (11 Bevans 95).
4. Treaty between the United States and the United Mexican States, February 1,1933 (Rectification of the Rio Grande in El Paso Juarez Valley) (9 Bevans 976).
5. Treaty between the United States and the United Mexican States, August 29, 1963 (Solution of the Chamizal Problem) (15 U.S.T. 21).
6. Treaty between the United States and the United Mexican States, November 23, 1970 (Maintenance of the Rio Grande and Colorado River as International Boundary) (23 U.S.T. 371).
7. Treaty between the United States and Honduras, November 22, 1971 (Swan Islands) (23 U.S.T. 2631).
8. Treaty between the United States and Japan, June 17, 1971 (Reversion of Ryukyu and Daito Islands) (23 U.S.T. 447).[2]
9. Treaty between the United States and Panama, January 25, 1955 (Treaty of Mutual Understanding and Cooperation), Article VI[3] and VII (6 U.S.T. 2283).

Treaties With Foreign Nations

I. THE SPANISH TREATY OF 1819

The first treaty with a foreign nation cited by the committee is the Spanish Treaty of 1819. But it is clear from an examination of the transaction that it fails to support the theory that the President may dispose of public lands by a self-executing treaty.

In the first place, the treaty with Spain was made with the consent of Congress. On March 3, 1819, Congress enacted legislation to execute the treaty (3 statutes-at-large 523). Similar legislation was later reenacted in 1821 (3 statutes-at-large 637).

In the second place, the Spanish treaty did not even involve a cession of American territory but at best the settlement of a boundary dispute.

In boundary dispute treaties, there is always the question whether the territory involved in the adjustment is actually American

territory. According to leading scholars, the settlement of a disputed boundary is not a cession of territory. Samuel Crandall states that:

> A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition. (Treaties, Their Making and Enforcement, p. 48.)

Another noted authority, W. Willoughby, explains that treaties settling boundary disputes "can scarcely be considered as instances of the alienation of portions of its own territory, for the fact that the treaties were assented to by the United States is in itself evidence that it was conceded that the claim that the areas in question belonged to the United States was unfounded." (The Constitutional Law of the United States, I, pp. 507–508).

In a letter to the Governor of Massachusetts in 1838, Mr. Justice Story of the Supreme Court observed, in connection with the northeastern boundary dispute between the British and the United States, that:

> In a case of contested boundary, there is no pretense to say that an ascertainment of the true boundary involves the question of cession. (Story, Life and Letters, II, 289).

Thus, the Spanish Treaty of 1819 can hardly be cited as a precedent for the exercise of executive power that is now claimed under this Panama Canal Treaty. It was made under the auspices of congressional approval and was not a cession of American territory.

II. AND III. THE TREATIES WITH GREAT BRITAIN OF 1842 AND 1846

The second and third treaties offered by the committee concerned conflicting land claims between the United States and Great Britain on the boundary between Maine and Canada and in the Oregon territory. No cession of territory or property occurred under either treaty.

In the Webster-Ashburton Treaty of 1842, both Britain and the United States made concessions on claims to some 12,000 square miles of land on the boundary between Maine and New Brunswick. In the treaty of 1846, where the United States claimed all the land extending to 54°40′ and the British laid claim to land down to the 42d parallel, a compromise was reached on a 49° boundary.

Both of these treaties obviously involve boundary disputes rather than cessions of U.S. territory, and thus fail to support the committee's assumption that the President may dispose of public lands by a self-executing treaty.

IV, V, AND VI. THE MEXICAN BOUNDARY TREATIES

Continuing to rely on the State Department, the Foreign Relations Committee also suggests that the Mexican treaties of 1933, 1963, and 1970, involving boundary adjustments necessitated by changes in the course of the Rio Grande River, are examples of self-executing treaties for the transfer of American property.

Upon closer examination, however, we find that not only did Congress appropriate the funds to acquire title to the lands conveyed, but that the land transferred under these treaties was not even Federal property. Article VII of the 1933 treaty stated that

the lands which would pass form one nation to the other "shall be acquired in full ownership by the Government in whose territory said lands are at the present time." Likewise, the 1963 Chamizal Treaty dealt with non-Federal lands, and Congress provided statutory authorization for the acquisition of lands to be transferred to Mexico under the American-Mexican Boundary Convention Act of 1964 (Public Law 88-300). With regard to the 1970 treaty, the first article of that treaty provided that:

> Once this treaty has come into force and the necessary legislation has been enacted for carrying it out.

Both Governments would determine the necessity for "the acquisition, in conformity with its laws, of the lands to be transferred to the other * * *" in 1972, Congress enacted the American-Mexican Boundary Treaty Act (Public Law 92-549), which authorized the acquisition of "all lands or interests in lands required for transfer to Mexico as provided in the treaty."

In short, these Mexican boundary treaties, as the Congressional Research Service of the Library of Congress correctly concludes "did not dispose of Federal property, and/or the disposal came about only pursuant to the aforementioned pieces of legislation."

Accordingly, "they do not appear to support the concurrent nature of the disposal power" as advocated by the administration.

VII. THE HONDURAS TREATY OF 1971

In 1971, the United States and Honduras entered into a treaty for the purpose of resolving conflicting claims over the Swan Islands in the Caribbean. The Foreign Relations Committee described these islands as "rock keys," with "no intrinsic value to the United States." The largest of the two islands, noted the committee, "is only 2 miles long and one-half mile wide. The only U.S. interest in these islands is the operation and maintenance of a meteorological observation and telecommunications facility and an air navigation beacon. The islands are populated by approximately six Americans who operate the facility and a dozen Honduran nationals and British subjects who work for the U.S. facilities or raise cattle."

The American claim to the islands was based on the Guano Act of 1856; the Honduran claim antedated the American claim by several centuries. The treaty recognized the sovereignty of Honduras over the islands, and the Honduran Government in turn recognized that the Unites States would continue to use the land and retain title to the property and improvements on the land necessary for the operation of the facility. All property not retained for the operation of the facility was transferred.

Whether this treaty constitutes a valid precedent for the transfer of the Panama Canal Zone and property by a self-executing treaty is open to doubt. First, it involves two minute islands of no significance to the United States. Even so, the United States retained title to much, if not most, of the property. Second, the treaty has all the characteristics of a boundary dispute in that both parties to the treaty laid claim to the islands. It may therefore be doubted whether this treaty constituted a cession of public lands clearly belonging to the United States. Third, Congress expressed little interest in the disposition of the Swan Islands. As Senator Mans-

field remarked when the agreements were submitted to the Senate for consideration:

> It is my understanding that these treaties were reported on unamimously by the Committee on Foreign Relations. I know of no opposition to any of them. [Cong. Record, 20041 (June 7, 1972)].

Congress silence, in other words, may have indicated tacit consent to the transfers of disputed parcels of insignificant property.

That is not the case here. We are not silent here. We are raising the issue because it involves billions of dollars in American property.

VIII. THE JAPANESE TREATY OF 1972

In 1972, the United States and Japan entered into an agreement concerning the Ryukyu Islands and the Daito Islands.

Under article 1 of the agreement, the United States relinquished in favor of Japan all rights and interests it enjoyed under article III of the 1951 Treaty of Peace with Japan. By that article, the United States had received the right to exercise "all and any powers of administration, legislation, and jurisdiction over the territory and inhabitants of these islands including their territorial waters." Did the transfer of these interests back to Japan under the 1972 treaty involve a cession of American territory within the meaning of article IV, section 3, clause 2 of the Constitution?

The answer is no. A House Armed Services Committee report on a bill dealing with economic development in the Ryukyus recognized that the Ryukyus were not U.S. territory and that American statutory law was generally inapplicable in the Ryukyu Islands. The committee stated that the United States possessed only de facto sovereignty, and that after the Peace Treaty of 1951, Japan possessed a residual sovereignty—meaning, said the committee:

> That the only right which Japan retained was the right to expect that the United States will not transfer the Ryukyus, including Okinawa, to any third party. (Report, p. 6).

In other words, there is reason to believe that the United States did not have territory to cede. In article 2 of the 1951 treaty, Japan renounced all right, title, and claim to various pieces of territory. But there was no similar renunciation as regards Ryukyu and Daito Islands discussed in article 3 of the peace treaty. By implication, therefore, the Japanese retained their "right, title and claim" to the Ryukyus.

Three Federal courts also reached the conclusion that the United States never received sovereignty over this territory. In *U.S.* v. *Ushi Shiroma,* 123 F. Supp. 145, 149 (1954), a Federal District Court quoted approvingly a letter written by the Legal Adviser of the State Department which stated that "sovereignty over the Ryukyu Islands remains in Japan * * *" See also *Burna* v. *U.S.,* 142 F. Supp. 623 (1956); affirmed 240 F. 2d 720 (4th Cir., 1957). As in boundary disputes, then, there is some question whether the territory transferred actually belonged to the United States.

It should be noted, however, that the 1972 agreement did involve the transfer of Federal property to the Japanese. But whether this conveyance was accomplished without the consent of Congress is open to doubt. As the American Law Division of the Library of

Congress has observed, "It can be argued that Congress assumed that the Executive acted pursuant to powers contained in the Foreign Assistance Act of 1961 or the Federal Surplus Property Act of 1949," or the Japan-United States Friendship Act of 1975, which "contains language * * * that may be argued to be congressional ratification of the executive action."

IX. PANAMA TREATY OF 1955

This brings us finally to the last treaty cited by the State Department and the Foreign Relations Committee, the 1955 treaty with Panama. This treaty provided for the transfer of real property to the Republic of Panama. By the terms of the treaty, the transfer of some property was to be based on the treaty alone, while the transfer of other property was dependent on congressional authorization. A representative of the State Department informed members of the Senate Foreign Relations Committee, however, the legislation would be needed to implement the transfer of all the territory mentioned in the treaty. Is that not interesting? (Hearings Before the Senate Foreign Relations Committee on the Panama Treaty, 84th Cong., 1st Sess., pp. 60-61).

Articles VI and VII of the treaty, alleged by the committee not to require implementing legislation, simply amended the boundary convention of 1914 between the United States and Panama. The transfers under these articles, in other words, were not cessions of the entire Canal Zone, but boundary adjustments.

Astutely ignored by the committee is any reference to article V of the treaty which, as we have previously noted, repeatedly uses the phrase "subject to the enactment of authorizing legislation by the Congress" in connection with a major property transfer from the United States to Panama.

In sum, the 1955 treaty with Panama strongly supports the established principle that the President may not dispose of U.S. territory and property without the consent of Congress.

Of the 11 treaties cited by the Foreign Relations Committee to show that prior treaty practice supports the President's right to dispose of public lands without the consent of Congress, two are Indian treaties involving the purchase and exchange of territory rather than a cession. Neither treaty was self-executing. Six are treaties to resolve boundary disputes rather than the disposal of U.S. territory, and most of these were unquestionably authorized by Congress. The Honduran treaty concerned disputed property of little or no consequence, and the Japanese treaty dealt with the transfer of captured territory which the United States admitted it did not own. This leaves the treaty with Panama in 1955, which specifically called for implementing legislation under article V, and recognized, according to the Assistant Secretary of State for Inter-American Affairs when he testified before the Senate Foreign Relations Committee, that implementing legislation would be required for the article VI and article VII boundary adjustments.

In light of these facts, the committee's insistence that these 11 treaties "are couched in self-executing terms and transfer territory or property belonging to the United States to other nations or * * * to specific individuals without prior congressional act author-

izing such transfer" must be regarded as another excursion by the committee into the world of fantasy.

CONCLUSION

Mr. President, this completes my analysis of the so-called precedents afforded by the Foreign Relations Committee. It is abundantly clear from this review of the committee's report that there is no foundation for the claim that the President has the right to transfer an American territory by a self-executing treaty. To be sure, the whole case for the committee's grotesque interpretation of the Constitution rests on a lonely dictum, extracted out of context from Holden against Joy—a decision which actually conflicts with the committee's peculiar theory—and on two treaties, one involving disputed islands in the Caribbean of no significance, the other captured islands in the Pacific. That, and nothing more, is all the committee has to offer.

The Committee finds that the constitutional text, the intent of the Framers, opinions of the Supreme Court, and historical precedent all suggest that the Panama Canal Treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation. This conclusion is in full accord with the opinion of the Attorney General that "[t]erritory or property belonging to the United States may be disposed of by action of the President and the Senate under the treaty clause."—Op. Atty. Gen.—(1977); *see* hearings, part 1, pp. 199–203.

And, there is considerable doubt whether these two treaties clearly stand for the proposition maintained by the committee. Both treaties did involve transfers of property, but whether these transfers were made without the approval of Congress is uncertain. The property transfers contained in the Honduran and Japanese treaties, if they demonstrate anything, show that transfers without the express consent of Congress are a rare exception in both law and diplomacy. If powers, said the Supreme Court, are "granted, they are not lost by being allowed to lie dormant any more than nonexistent powers can be prescripted by an unchallenged exercise." (*U.S.* v. *Morton Salt Co.,* 338 US 632, 647 (1950).) The failure of the House of Representatives to insist upon implementing legislation regarding the transfer of a small, trivial piece of real estate on two rock islands—tiny islands over which we did not have undisputed ownership—and the transfer of property captured from the Japanese, over which we did not have sovereign ownership, can hardly support the committee's bold assertion "that the constitutional text, the intent of the framers, opinions of the Supreme Court, and historical precedent all suggest that the Panama Canal Treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation." (P. 69).

As we have already observed, nearly all of the precedents cited by the committee to support this preposterous claim are actually in direct conflict with the very theory that the committee is attempting to read into the Constitution. Not one of the judicial precedents cited by the committee even involves a cession of American territory, let alone a cession under a self-executing treaty. The committee fails to cite a single decision of any Federal court which would even lend respectability to the notion that the text of the Constitution and the location of the disposal-of-property clause authorize

the President and Senate to override the express power of Congress. The committee offers no evidence to support its assertion that the Framers of the Constitution favored the idea that the President should be free to ignore the House of Representatives in disposing of American territory and property. Bearing in mind that treaty practices do not even enjoy the same stature in law as judicial precedents, most of the treaties cited by the committee are either clearly inapplicable or supportive of the principle that Congress must approve cesssions of territory and property belonging to the United States. This is not to mention the countless precedents ignored by the committee which indicate that a treaty ceding territory is not even self-executing in the first place.

Mr. President, we can understand and excuse an honest mistake or, for that matter, a major error in a committee report. In the rush of business, it is too much to expect each committee report on legislation under consideration to be accurate in every detail. But when I see a pattern of grievous errors permeating an entire report in such a way that every sentence and paragraph is either false, misleading, or irrelevant, my suspicions are aroused.

Mr. CHURCH. Mr. President, I suggest to the Senator that he would be better advised not to accuse the committee or its staff of dishonesty, as the next couple of paragraphs seem to suggest.

The Senator is entitled to his own opinion with respect to the constitutionality of this treaty. I, and other Senators supporting the treaty, believe the treaty constitutional and will present arguments to that effect. The Senate can then make its decision. But I think it goes beyond the propriety and the custom of the Senate for the Senator to make such a charge against the basic integrity of the committee or of its staff. I would ask him to show the judgment to withhold that charge.

Mr. HATCH. Mr. President, I appreciate the kind remarks of the distinguished Senator from Idaho.

All I am saying is my suspicions are very much aroused. I am delighted to follow the Senator's advice with regard to that. But I think many suspicions are going to be aroused as a result of what I consider to be serious problems with the five-page cursory analysis by the Committee on Foreign Relations of what happens to be one of the most important constitutional issues in our country's history. I would not suggest that any Senator would participate in anything which would contribute to a false, misleading, erroneous, or irrelevant series of statements. I do not personally believe that. I do not think that any Senator should be blamed for that. But we Senators many times rely upon the work of the staffs, and in this case there are so many things that are wrong with that report that I cannot help but raise them and raise them forcefully here.

I might say that throughout the debate on these treaties, the proponents have repeatedly echoed the wild and extravagant claims of the State Department, and have hid behind the assurances of the State Department without questioning their accuracy. Against there better judgment and military sense, certain members of the Joint Chiefs of Staff have been pursuaded to support these treaties. And why? Because the State Department assured them that this was the proper course to take. Time and again members of the Foreign Relations Committee—with the notable exception of

my colleague from Michigan (Senator Griffin) have stood on this floor and assured us that this fact or that fact is true because the State Department says its true. The committee report is, indeed, little more than a carbon copy of the phony theories paraded by the State Departmemt to support a dangerous and unprecedented exercise of Executive power.

Past experience would seem to suggest, Mr. President, that Senators ought to be on their guard when State Department representatives come to the Senate seeking more power for their chief. The two greatest tragedies in recent American history are the war in Vietnam and Watergate. And it is no secret that the State Department and the Justice Department, which are misrepresenting the Constitution in connection with the Panama Canal Treaty, played a key role in bringing them about.

Are memories so short that the Senate Foreign Relations Committee has already forgotten the so-called 125 incidents that were cited not so long ago by the State Department to support the President's encroachment on Congress war powers? In 1966, when American troops were being sent into Vietnam by the thousands, the legal adviser to the State Department proclaimed—and these are his exact words, Mr. President, that—

> Since the Constitution was adopted there have been 125 instances in which the President has ordered the armed forces to take action or maintain positions abroad without obtaining prior congressional authorization, starting with the "undeclared war" with France (1799–1800). (Office of the Legal Advisor, U.S. Department of State, "The Legality of the United States Participation in the Defense of Vietnam," reprinted in 75 Yale Law Journal, 1085, 1101).

Under careful examination by constitutional scholars, however, these 125 incidents or precedents offered by the State Department, proved to be feeble, indeed. The "vast majority" of such cases, said the distinguished constitutional authority, Edward S. Corwin—

> involved fights with pirates, landings of small naval contingents on barbarous or semi-barbarous coasts (to protect American citizens), the dispatch of small bodies of troops to chase bandits or cattle rustlers across the Mexican border." ("The President's Power," in D. Haight and L. Johnston, eds., *The President's Role and Power,* p. 361)

And almost all these minor episodes, added Henry Steele Commager, represented the "use of Presidential force against small, backward and distraught peoples." (Quoted in Raoul Berger, "Executive Privilege," p. 77). "The incidents," concluded Raoul Berger, in his classic study on executive privilege, were—

> far from "precedents" for sending our troops into battle, engaging upward of 500,000 men. At best, the "125 incidents" constitute bootstraps precedents which add up to a claim that the President may alter the constitutional distribution of powers by his own practices and reallocate to himself powers exclusively confided in Congress, (p. 88).

The Foreign Relations Committee ultimately came to the view that the Nation had been misled. "Congress," acknowleged the committee in 1972—just 6 years ago—"bears a heavy responsibility for its passive acquiescence in the unwarranted expansion of Presidential power." (S. Rept. No. 606. 92d Cong., 2d sess., p. 18, 1972.)

In like measure did the Justice Department labor to expand the powers of the President through the misrepresentation of so-called precedents. In 1957, as Senators will recall, Deputy Attorney General William P. Rogers assembled a mountain of precedents in a

memorandum to the Senate justifying the right of the President "to withhold requested information from Congress." (Memorandums of the Attorney General, Senate Judiciary Committee, 85th Cong. 2d sess. (1958) p. vii). The Rogers memo subsequently became a bible for the executive branch, and its so-called precedents were repeated to Congress in 1971 by Mr. Rogers, who was then Secretary of State. By 1973, President Nixon had "invoked executive privilege some eight or more times, including his much-criticized refusal to reveal the taped White House conversations with his aides." (Berger, p. 253). All of this was done in the name of "established precedent" which, under the scrutiny of Raoul Berger and the Federal courts, came crashing down with the fall and resignation of the President.

Mr. President, the precedents cited by the Foreign Relations Committee in connection with the Panama Canal Treaty have no greater merit than the precedents that were cited earlier by the State Department and the Attorney General to justify the President's encroachment on Congress war powers or the false claims of executive privilege. The Government of the United States is now contemplating the transfer of one of the world's most important, vital waterways to a tiny country in Central America that is controlled by an unfriendly dictatorship, the outcome of which is very uncertain in terms of our security and national interests. Such a momentous decision cannot and should not be made without the consent of Congress and the American people. Our Constitution provides for congressional participation, as Henry Steele Commager once declared, "in the great decisions that spell life and death to the Nation." (Berger, p. 344).

The American people know this and the Members of the House of Representatives know it. At this very moment there is pending in the House of Representatives a resolution, House Concurrent Resolution No. 345, supported by 235 Democrat and Republican Congressmen—more than a majority—which declares that the House must be given a voice in the decision to surrender this marvel of American genius and engineering to this petty tyrant named Torrijos.

If the Senators ignore this resolution, and continue to insist that they have the sole right and prerogative to make this momentous decision, on their own, and to do what 100 men think is in our best interest, without seeking a national consensus, then I fear that the U.S. Senate is courting another disaster. "If there is one lesson we have learned from this involvement in Vietnam," Secretary of State Rogers told the Senate in 1971, "it is that we need congressional support and we need public support." (Fulbright hearings, p. 511, as quoted in Berger, p. 345). And I say to the Members of the Senate we need congressional support and public support for the transfer of this great canal. We have already had enough Vietnams, and enough Watergates.

Mr. President, I urge the adoption of this amendment.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Metzenbaum). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, a recent editorial in the Winston-Salem Journal is right on target concerning the Torrijos drug connection.

In response to statements that the U.S. Senate, in its consideration of the Panama Canal treaties, is not dealing—

> With General Torrijos * * * we are dealing with the Republic of Panama, and I know of no charge against it—sentaments expressed in this Chamber after the closed session of the Senate—the Journal editorialist wisely points out that the Republic of Panama is Torrijos, and has been since the general took power in 1969 and instituted a semi-dictatorial regime.

Mr. President, the editorial of the Winston-Salem Journal is right on target.

There can be no doubt in the mind of any reasonable person that the conduct of the dictator of Panama is a legitimate subject of consideration in the Senate's deliberations on the Panama Canal treaties.

Unfortunately, the public was unable to share in the Senate's deliberations on the drug charges. I opposed the closed session of the Senate. The public's business should be conducted in public as much as reasonably possible. The serious allegations against General Torrijos and members of his family and government deserved a full public airing. The people have a right to know, and were denied that right. Little wonder that the Congress continues to be held in low esteem by the public in all major opinion surveys.

But, be that as it may, again, the Winston-Salem Journal was right on target with its editorial. The Journal editorialist wrote:

> By sticking to secret sessions, the Senate also managed to keep the American people from making an informed judgment on Torrijos' alleged narcotics dealings. That would be understandable if the Senators were shown nothing but trash. The public record, however, tends to undercut that possibility.

The Journal then proceeds to list a wealth of information in the existing public record corroborating allegations of drug dealings at the highest levels of the Panamanian Government.

This is the same Government, Mr. President, that we are asked to trust with the security and welfare of one of the most important waterways in the world. Should not the American people have the full facts about that Government and its top officials?

The Journal dealt only with the public record:

> One can only speculate what the private record contains. But this much is clear: Given the public record alone, the American people deserve more than the curt dismissals of the significance of the two days of closed-door Senate sessions.

The Journal continues, right on target once more.

Mr. President, this is a valuable and instructive editorial. I wonder how many other newspapers, whose duty it is to get at the truth, share the same concerns expressed by the Journal. My guess would be that the number is large. Unfortunately, that number does not seem to include either the Washington Post or the New York Times, whose editorial policy seems to have unduly influenced the judgment of its news writers.

More important than the newspaper's right to know is the people's right to know. This the Journal fully understands. The Journal says:

> Perhaps nothing not already known appeared during the sessions. Perhaps the accusations against Torrijos, even if they could be proved, should not affect the passage of the Panama Canal treaties, but the American public has the right to know as much as possible about those accusations. * * * And the American public has the right to decide what weight to put on those accusations in determining whether to approve or disapprove the canal treaties.

Mr. President, I comment this editorial to my colleagues. Soundly reasoned and properly qualified, it raises serious questions about the propriety of keeping the public uninformed about the serious allegations raised against General Torrijos, members of his family, and his government.

I recall that when allegations of impropriety and possible illegal conduct were raised against high officials of our own Government, including, eventually, our own President, the Senate spent thousands of hours and who knows how much money to get to the bottom of the allegations. Do we not deserve to do at least the same—on a proper scale—for the Torrijos government to whom it is proposed that we give away one of our great national assets?

Mr. President, so that my colleagues may have the benefit of this excellent editorial, I ask unanimous consent that it be printed in the Record at the conclusion of my remarks.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

[From the Winston-Salem Journal, Feb. 24, 1978]

THE PUBLIC RECORD

The Senate has completed two days of closed-door sessions dealing with the possible involvement of Panamanian strongman Omar Torrijos in the international drug trade. Whatever was discussed in secret did not seem to impress many senators or change any votes in the battle to ratify the Panama Canal treaties. "There is no evidence," said Majority Leader Robert Byrd, "that would stand up in any United States court of law linking Gen. Torrijos to any illegal narcotics operation of any kind." Said Minority Leader Howard Baker, "We are not dealing with Gen. Torrijos. * * * We are dealing with the Republic of Panama, and I know of no charges against it."

But the Republic of Panama is Torrijos, and has been since the general took power in 1969 and instituted a semi-dictatorial regime. And the Panama Canal treaties are opposed by many Americans partly because of Torrojos and his form of government. The Senate met behind closed doors to prevent the compromising of classified documents. But by sticking to secret sessions, the Senate also managed to keep the American people from making an informed judgment on Torrijos' alleged narcotics involvement. That would be understandable, if the senators were shown nothing but trash. The public record, however, tends to undercut that possibility. Consider what is known outside the Senate's chambers:

According to a 1973 draft report of a House subcommittee, "Panama has become the conduit through which passes enormous quantities of dope—an estimated one-year period—used by U.S. addicts. This means that at one point in time, roughly 20,000 American drug addicts were getting their daily supply by this route."

According to the same House report, the international transit chief at Tocumen Airport in Panama, Joaquin Him Gonzales, was arrested in the Canal Zone by U.S. narcotics agents on Feb. 6, 1971. Gonzales was brought to the United States and tried on charges of conspiring to ship herion worth more than $1 million to Dallas. Said the House report: "Gonzales was allegedly a Torrijos protege and this relationship was made clear when the Panamanian government mobilized all its resources * * * for the offender to be returned to Panama."

The House report also mentioned "the arrest of Manuel Rojas Sucre, the nephew of Panama's Vice President Arturo Sucre, at Kennedy International Airport on Dec.

3, 1972, with cocaine, liquid hashish, and a diplomatic passport (his mother is Panama's counsel general in Montreal). * * *"

A 1972 Senate subcommittee report noted "the seizure of 180 pounds of heroin on July 8, 1971, when Rafael A. Richard, Jr., son of the Panamanian ambassador to Taiwan, was arrested at JFK Airport in New York." Richard subsequently drew a prison sentence of three and a half years.

According to a CBS News report aired last year, Drug Enforcement Agency files describe Col. Manuel Noriega, head of the Panamanian national guard, as being a bag man for Torrijos and "allegedly in charge of setting up bank accounts and laundering narcotics money."

In 1971, Torrijos brother, Moises, then Panamanian ambassador to Argentina, was secretly indicted by a federal grand jury for his alleged involvement in the attempted smuggling of 154 pounds of herion into the United States through Kennedy Airport.

A Senate Intelligence Committee report, issued just the other day, said that "some sources have provided intelligence which we view as reliable and which we believe suggests that Gen. Torrijos knew about narcotics trafficking by government officials and did not take sufficient action to stop his brother's activities."

That is the public record. One can only speculate what the private record shown to the Senate contains. But this much is clear: Given the public record alone, the American people deserve more than curt dismissals of the significance of two days of closed-door Senate sessions. Perhaps nothing not already known appeared during the sessions. Perhaps the accusations against Torrijos (even if they could be proved, should not affect the passage of the Panama Canal treaties. But the American public has the right to know as much as possible about those accusations, consonant with the requirements of confidentiality. And what weight to put on those accusations in determining whether to approve or disapprove the canal treaties.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. HELMS. Yes, gladly.

Mr. SCHMITT. Will the Senator yield just for a question? I know the Senator spent a good deal of time in his home State during this last recess, as did, I presume, the Senator from Utah and other Senators.

I noticed in the last day or two another Harris poll that suggests that the country is evenly split now on the question of the Panama Canal Treaties.

Did the Senator notice any diminution in the opinions of his constituents during this last recess?

Mr. HELMS. Quite to the contrary, I would say to the distinguished Senator from New Mexico. The intensity of the opposition to the treaties was more pronounced than ever, and I was sad to note that the degree of public confidence in the Senate has been further diminished as a result of the approval of the Neutrality Treaty. Great concern was expressed everywhere I went.

I went into 10 or 12 counties in my State, and it seemed unanimous that the people simply do not want the remaining treaty to be approved. My message to them was I hope that the people of other States were communicating to their Senators their sentiments about the treaties during the Easter recess.

But to answer the Sentor's question, I have seen no reduction in the opposition to the treaties. Quite to the contrary, I think it is more intense. Only 3 weeks ago the prestigious Opinion Research Corp. of Princeton, N.J., took a nationwide poll and found 72 percent opposed to giving up ownership and control of the canal.

Mr. SCHMITT. Well, of course, I can only state over the last 10 days for the State of New Mexico. I think I can in fact state, because my travels were quite extensive, particularly throughout the northwestern and northeastern portions of the State and Albuquerque, which is a major population center of the State, that I

frankly could see absolutely no change in the very strong personally expressed opposition to the transfer of the Panama Canal under the conditions of the treaties.

Everyone has a different idea about how we might get out of the mess that we now have gotten ourselves into, but nevertheless there is a great deal of discomfort and disenchantment with this particular mode of change.

That, of course, corresponds with our mail. I think it wise for Senators to realize that a great deal of our mail on any issue is negative. The people who write letters to us tend to write letters because they are opposed to something; and unfortunately there are a lot of things to be opposed to these days. I think most Americans basically are positive in their outlook on things, but when they are positive and feeling good about something, they tend not to let us know about it.

In the case of the Panama treaties, however, I think that at least in New Mexico it is clear that the personally expressed opposition to the treaties roughly coincides with the written expressed opposition to the treaties. Now, I am talking about personal letters, not necessarily the form letters and form cards that come in, but the personal letters that people send.

I think that before the Senate accepts at face value the indications of another Harris poll which suggests an equalization of opposition and those in favor of the treaties, Senators at least should assess their own constituencies and see if that is in fact what they see at home.

I certainly did not see that in New Mexico. I see very little change, other than a great deal of disappointment that the Senate did ratify the Neutrality Treaty and a great deal of hope that either in the process of debate on the Panama Canal Treaty or in the process of debate on implementing legislation, this decision, will, one way or another, be reversed.

I commend the Senator for his activities, and thank him for answering my question.

Mr. HELMS. I thank the Senator from New Mexico. I might state that many people in North Carolina expressed surprise at the way these debates have been covered by the major news media. Sometimes we sit in the Senate, and there may be an assumption by some Senators that all wisdom resides here, when as a matter of plain fact it does not. But the instinctive reaction of the people of my State, notwithstanding the one-sided news coverge, has been very interesting.

North Carolinians are concerned about a number of things, not merely the giveaway of the canal nor the defense aspect, but the economic aspects of it. North Carolinians are aware that a great deal of the agricultural products which North Carolina exports go through the canal. Then there are the shipments of oil, the Alaskan oil; they understood about that. So I was struck by the obvious fact that the people of my State have been able to gain correct impressions, despite the fact that the major media of my State, indeed of the Nation, are almost unanimously in favor of the treaties.

I have talked with the people of North Carolina, and I suspect that, like the people of New Mexico, they are hard to fool. And that speaks well for them.

Mr. SCHMITT. They certainly seem to be hard to fool, at least in this Senator's judgment.

One issue that has been more and more talked about in New Mexico, and I am not exactly sure why, because it has not been talked about much on the floor of the Senate, is whether the transportation mechanism of the Panama Canal across the isthmus is going to be obsolete at some time in the future.

It is hard for anyone who has grown up in our school systems, at least school systems with a course or two in geography, to understand how a passageway between oceans now separated by a continent or two can become obsolete. World commerce would seem to require an economical passageway across the backbone of those continents. I frankly have trouble explaining that to them, because I, for one, cannot see how anyone could claim that world commerce would prefer to go around the tip of South America or try to find a northwest passage, rather than have an economically viable, assured, nondiscriminatory route across Central America.

I think we are going to find, no matter what happens to these treaties, that in the very near future the issue will be joined again, because it is a fact of major importance to world commerce that there be access across the canal area, the Central American area, and that is not going to decrease, it is going to increase, because world commerce is on the increase. I believe in the future we are going to find much more inventive, much larger, much more economically viable techniques by which to cross that isthmus. I think it is only a matter of time, as I have said, before we discover that, not only here in the Senate but maybe in the hemisphere as a whole.

Mr. HELMS. I think the able Senator is unquestionably correct. This is another point that I am sure his citizens in New Mexico, as well as certainly mine in North Carolina, realize.

I might say to the Senator that last year, I think the date was June 30, if I remember correctly, I visited with President Carter. We spent about 40 minutes talking about the proposals to give away the Panama Canal. Of course, that is the way I characterized it; he characterized it somewhat differently.

But I went to the White House to offer to the President an alternative proposed by a number of us in the Senate who oppose the treaty. I delivered to the President a letter signed by four former Chiefs of Naval Operations, one of whom is a former Chairman of the Joint Chiefs of Staff, in which the relinquishing of the ownership and control of the Panama Canal was described by those four distinguished Navy leaders as being perilous to the survival of the United States.

I was designated by my colleagues to inform the President that if he would abandon the idea of the giving away of the Panama Canal, a number of us in the Senate would support him wholeheartedly in a major program to modernize the locks of the Panama Canal, take a new look at compensation and other aspects of the present relationship that may or may not be inequitable.

The President evidenced a great deal of interest in the proposal. But later he talked with Mr. Bunker and Mr. Linowitz, and that was the end of that.

But I yet believe, I would say to the distinguished Senator from New Mexico, that if the President had followed that advice, we would not only have avoided this confrontation in the Senate which has been an embarrassment to some of the Senators who were pressured into voting for the Neutrality Treaty. We would now be well on our way to a very acceptable relationship with the people of Panama, I emphasize the words "people of Panama," because these treaties do not propose to turn over this canal to the people of Panama.

The proponents of these treaties propose to turn it over to the Torrijos regime.

I thank the Senator for his comments. We will just proceed with our discussions and hope that, as Senator Ervin often said, the light of wisdom will flow down from the heavens. Perhaps two or three Senators will change their votes and we can put an end to this debate—and then go back to the drawing board and see what is fair and equitable to the people of the United States and to the people of Panama.

Mr. SCHMITT. If the light of that wisdom is the wisdom of the people, then I think the light is already before us.

Even if one would assume that half the people of the country now favored passage of these treaties, one would have to look at the way the question was phrased in a survey such as the Harris survey. But even if they do, that is still a very large number of people who feel we are doing the wrong thing. Any time we get into a situation where a larger number of people in this country, even a large majority, feel that we are making the wrong move, then I think it is time for the Congress to take cognizance of that. We did not do that, to our detriment, in recent history. To again not do that is something that I think represents a very serious oversight on the part of the Congress. I hope, and, as a matter of fact, I will always be optimistic, that the Congress will rectify any mistakes it makes in that regard.

Mr. HELMS. I thank the able Senator. Let me say that I greatly admire his leadership in this matter. The people of New Mexico have every reason to be proud of him.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I commend the distinguished Senator from Utah for the fine presentation he has made today. He has developed a quality of leadership in this discussion which has been quite impressive to the people in my State. I heard many compliments about the Senator from Utah last week when I was traveling around North Carolina.

Mr. HATCH. I think the distinguished Senator from North Carolina for his kind comments. Likewise, I have heard fine comments from across the country concerning the fight the Senator from

North Carolina has been making. I personally have a high professional regard for the Senator from North Carolina as a Senator, and one who has made a fine contribution to this country.

Mr. HELMS. I appreciate the comments of the Senator from Utah.

Also, I might say that the junior Senator from Alabama (Mr. Allen) is very highly regarded by the people of North Carolina, and would be easily elected to the Senate from my State if he chose to run there. I hope he does not choose to run there this year, of course.

I again commend the distinguished Senator from New Mexico, with whom I have just had a most useful and most interesting discussion.

Mr. President, I think that it would be useful at this point to discuss in detail the nature of U.S. property rights in the Canal Zone. It seems to be fashionable in certain circles to deny that our rights in the Canal Zone constitute ownership. Some distinguished Members of this body, for example, have openly denied—even ridiculed—the notion that the property in the Canal Zone is held by the United States as a possession. The State Department has gone so far as to assert that the Republic of Panama retains "residual ownership" of the Canal Zone, a proposition that goes directly counter to Panama's renunication of certain claims in the 1903 treaty.

In fact, there is such a general confusion about the nature of our rights in the zone that terms such as "title," "property," "possession," "territory," and "sovereignty" have been used as though they were virtually interchangeable. Of course, they all have specific meanings, and it is important to distinguish among them. It is especially important during consideration of the powers of Congress under article IV, section 3 of the U.S. Constitution, that we have a clear idea of the distinctions. The Constitution says that—

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

If we are going to know what power Congress has in this regard, obviously we must know precisely what "territory or other property belonging to the United States" constitutes.

Let us look at some of these terms:

First. Property belonging to the United States obviously includes all forms of U.S. Government property, both movable property and real property. Movable property speaks for itself; there are examples of such movable U.S. Government property all around us. The Panama Canal Treaty, in article XIII, speaks only of the transfer of "real property, including nonremovable improvements thereon." By implication, therefore, movable property is not transferred by the treaty, except for certain tools and equipment relating to the ports of Balboa and Cristobal and which are specified in an inventory in annex B to the Agreement in Implementation of Article III of the Panama Canal Treaty. It appears, therefore, that the transfer of the movable property listed in annex B, as well as any other movable property, falls under the provisions of article IV, section 3 of the Constitution, and must be specifically authorized by the Congress. The President is not authorized to dispose of this proper-

ty by an executive agreement which does not come either before the Senate or the House.

Real property, on the other hand, is property to which the United States bears title. As I intended to go into more detail about the U.S. titles in the Canal Zone, I shall pass over that point now, except to indicate that the question of title is the one thing upon which the U.S. Supreme Court has pronounced definitively. There are those who maintain that the U.S. Supreme Court decisions can be ignored because they have no bearing in international law. Some have even referred to such decisions as unilateral decisions not accepted by Panama. But Panama, by the Treaty of 1903, is prohibited from the exercise of any sovereign rights, power, or authority in the zone, and that prohibition remains until the treaty is obrogated. The exercise of supreme judicial power is a power that only the United States can exercise in the zone.

Moreover, the issue at hand is not whether Panama has accepted the decisions of the U.S. Supreme Court, but whether the President, the Secretary of State, the treaty negotiators, and the Members of the U.S. Senate and House of Representatives have accepted those decisions. All such officers of the United States are sworn to uphold the U.S. Constitution—and that means the Constitution as interpreted by the Supreme Court. We are discussing an internal question, Mr. President, the question of the application of article IV, section 3 to the decisions of this body and of the House. Whether Panama accepts the interpretations of the U.S. Supreme Court is totally irrelevant; what is relevant is the responsibility of this body.

Second. A possession of the United States is property which the United States holds outside of the 50 States and the District of Columbia. The United States need not hold sovereignty over a "possession" for U.S. law to have effect within its boundaries. in the much-quoted Vermilya-Brown case, the U.S. Supreme Court ruled that the Fair Labor Standards Act applied to the construction of a U.S. military base in Bermuda, even though the United States did not have sovereignty. The Court ruled that the base was a U.S. "possession," drawing its analogy from the Canal Zone, which the Court also deemed a "possession." Although the Court's statements about the Canal Zone were mere dicta, and not a ruling, the dissent by Justice Jackson did not take issue with the 5 to 4 majority's description of the Canal Zone as a "possession." Instead, he argued that our authority in the Canal Zone went far beyond that in Bermuda. He said:

> The Isthmian Canal Convention ceded the Canal Zone to the United States * * * To such an extent, indeed are we sovereign in the Canal Zone that Panama has been granted special commercial rights only by express and formal concession, and this Court has reviewed the history of the acquisition and concluded that the title of the United States is complete and perfect.

Third. Territory of the United States is of two kinds: incorporated and unincorporated. The distinction does not help us very much because the Canal Zone appears to be the last unincorporated territory of the United States. The distinction is said to have been based upon the notion of whether or not Congress had decided to make the territory a permanent part of the United States. The lack of such a decision on the part of Congress does not imply that

such territory could not become a permanent part of the United States; it merely indicates that the decision to incorporate was never made. The Philippines, for example, was unincorporated territory of the United States. It was always our intention to give the Philippines independence.

The Canal Zone is unincorporated territory of the United States. This was the holding in the 1971 Fifth Circuit Court of Appeals case of United States against Husband R., a decision which was allowed to stand by the Supreme Court. The Court said:

> The Canal Zone is an unincorporated territory of the United States. Laws applicable in the Canal Zone are enacted by Congress—there is no local legislature.

The last sentence just quoted in the Court's opinion is a statement of the obvious. The U.S. Congress is the legislature for the Canal Zone. Its relationship to the Canal Zone is not the same as its relationship with the 50 States; whereas Federal law applies only to the Federal interest in the Nation as a whole, in a territory without a legislature there is no other interest except a Federal interest.

The Court's opinion said further:

> Congress has complete and plenary authority to legislate for an unincorporated territory such as the Canal Zone, pursuant to Article IV, Paragraph 3, Clause 2 of the Constitution, empowering it "to dispose of an make all needful Rules and Regulations respecting the territory or other Property belonging to the United States."

In short, Congress has continuously legislated for the Canal Zone under article IV, section 3 under its authority to "dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Just as a State legislature takes into consideration the local problems and conditions in making State laws, so too, Congress takes into consideration the special conditions relating to the Canal Zone.

Congress established the Canal Zone Code, for example, and set up the U.S. District Court at Balboa under article IV. Whereas most Federal courts are set up under article III, the Balboa court is an article IV court—sometimes called a territorial court. Federal laws apply to the Canal Zone, although often special exception is made to suit local conditions. For some purposes of law, the Canal Zone is treated as an integral part of the United States; for other purposes of law, it is not. The point is that it is up to Congress to make this decision. Congress has the authority and power to treat it either way, depending upon the purpose Congress has in mind.

It is highly erroneous to draw the conclusion that the Canal Zone is not territory of the United States just because Congress has placed it in a special category for certain purposes. The fact that Congress has the option of treating it one way or the other is proof that the Canal Zone is territory of the United States, for Congress can make any rules and regulations it chooses under article IV, section 3.

Thus, some have argued from the Supreme Court's decision in the case of Luckenbach Steamship Co. against United States that the Canal Zone is foreign territory. But what the Court decided in Luckenbach was that Congress had, for certain purposes, namely, the importation and control of merchandise, determined that the ports of the Canal Zone be treated as foreign ports. At issue was

whether the Luckenbach Steamship Co. should receive compensation for the transportation of mails at a domestic rate, or at the higher foreign rate. The dispute was an internal dispute between the Post Office, which contracted with Luckenbach at the higher rate, and the General Accounting Office, which would only allow payment at the lower rate. The issue was which agency was interpreting the laws of Congress correctly.

The Supreme Court pointed out that Congress treated the Canal Zone differently for different purposes, and that for the purposes of importation, Canal Zone ports should be treated as foreign ports. The Court did not question the right of Congress to treat it one way or the other; it only sought to answer the question of how the determination of Congress was to be applied. Of course, when one looks at the circumstances of the Canal Zone, it is clear that the decision of Congress was based upon commonsense. The ports of the Canal Zone are 3,000 miles from the United States, and it would be difficult to control importation and immigration without treating it as a foreign port. Moreover, from the point of view of the Post Office, mails to the Canal Zone were a unique case, and it would have been difficult to get proper service from private steamship lines unless the compensation was at the higher foreign rate.

The Luckenbach case, therefore, does not prove that the Canal Zone is not territory of the United States, but shows instead that Congress did treat the Canal Zone as a territory of the United States, acting under article IV, section 3.

A similar set of circumstances surrounds the issue of citizenship. Some of my distinguished colleagues have attempted to argue on this floor that the Canal Zone was not U.S. territory because those born there are not automatically U.S. citizens. This argument involved the false presumption that citizenship is an accident of geography at the time of birth. The plain fact is that citizenship is conferred through a complicated set of laws laid down by Congress, laws that frequently undergo change and revision. Even the terms citizen and national are not synonymous. In certain circumstances a person can be a national of the United States, owing allegiance to the United States, but not a citizen of the United States. Even our treatment of the citizenship of those born in the Canal Zone has varied from time to time depending upon our laws.

In 1907, the U.S. Attorney General ruled that citizens of Panama who were residents of the Canal Zone at the time of the treaty owed allegiance to the United States and were entitled to passports. The Attorney General said:

> In my opinion the sovereignty over the Canal Zone is not an open or doubtful question * * * The treaty gives the substance of sovereignty, and instead of containing a mere declaration transferring the sovereignty, descends to the particulars "all the rights, power, and authority" in the former sovereign.
>
> The rights so transferred are to be enjoyed * * * "in perpetuity" and no exception is made of any persons or things in the Zone.
>
> I am unable to perceive that this language is obscure or ambiguous or that we are warranted in resorting to any construction of it except by the first rule of construction—that plain and sensible words should be taken to mean what they say * * *
>
> According to international law, with which American practice in framing treaties and dealing with inhabitants of such territory has been consistent, it is well settled that in cases of acquisition of inhabited territory of the inhabitants, unless there is something in the treaty or act of cession providing otherwise.

At the present time, Mr. President, the Canal Zone is clearly not foreign territory for the purposes of determining citizenship. Congress has placed the Canal Zone in a special category, different from the category for those born in foreign countries. Today, inhabitants of the Canal Zone claim U.S. citizenship under a special statute dealing with the Canal Zone, 8 U.S.C. 1403, and receive certificates of citizenship under 8 U.S.C. 1452. Under the definitions of our law (8 U.S.C. 1101), "the term 'United States' as used in section 1452 of this title includes the Canal Zone."

The reason that Congress can treat citizenship in this way is that Congress has the power to make all needful rules and regulations for U.S. territory. In other words, we are talking about U.S. territory, article IV territory. And Congress not only makes needful rules and regulations for such territory; it also has the power to dispose of it. By Congress, Mr. President, is meant both the Senate and the House of Representatives.

Thus we see that the Canal Zone is property of the United States, a possession of the United States, and territory of the United States. Under all three categories, the Canal Zone falls within congressional authority of article IV, section 3. That is the only issue we have here at stake today. If the House of Representatives is to act, it must act under article IV, section 3. If the Canal Zone is either a property, a possession, or a territory of the United States, then the House of Representatives is obliged to act. But the Canal Zone is all of those—so the House of Representatives must act if our constitutional processes are to be preserved. Now let me turn to the issue of sovereignty.

Fourth. sovereignty is an issue totally separate and apart from the issue of whether the House of Representatives must act on the disposal of the Canal Zone. The Senator from North Carolina believes that sovereignty is a very important issue, essential to our ability to operate and defend the canal. Indeed, it is my judgment that the principal defect in the present treaties presented for ratification is that they give up the rights of the United States to exercise sovereign powers in the Canal Zone. It is, in fact, an irremediable defect in these treaties.

The problem is that there is no settled definition of sovereignty. Theorists have composed definitions that are satisfactory to theorists; but they are definitions that have never been tested. For, in the long run, sovereignty is an attribute of power. It is the supreme power or dominion over a defined territory. In other words, whoever has the power to prevent someone else from seizing power has sovereignty.

There have been attempts to divide the notion of sovereignty into de jure and de facto sovereignty. There is no question that we have de facto sovereignty over the Canal Zone. De facto means a situation where, as a practical matter, certain circumstances obtain. But as a practical matter, we do exercise all the rights, power, and authority of a sovereign power in the Canal Zone. The Treaty of 1903 gives us that authority. At the same time, it forbids Panama from exercising any attributes of sovereignty whatsoever. So if Panama does not and cannot exercise any sovereignty over the Canal Zone, whereas the United States can and does exercise all the rights of sovereignty, then the question is plain. Only the

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United States, as a practical matter, exercises sovereignty in the zone.

But is there such a thing as de jure sovereignty? Once again, it is plain that the sovereignty which the United States exercises in the zone is de jure. The United States exercises sovereignty pursuant to the concessions of the 1903 treaty. The 1903 treaty is a legal document, recognized by all nations under international law. So the sovereignty which we exercise in the Canal Zone is also de jure.

It is difficult to escape the fact that sovereignty is not an abstract right that exists apart from any practical situation. It is absolute power exercised over a specific territory. By that definition, we do have sovereignty in the Canal Zone. No one, not even Panama, has the right to challenge anything that we choose to do in the zone. Sovereignty is legitimate power in operation. It does not exist apart from the power to enforce it. A small nation has sovereignty as well as a large nation, but only so long as a strong nation is willing to back up the claims of the the smaller in the face of aggression.

Sovereignty is an abstraction developed in the 18th and 19th centuries to help rationalize the claims of power. It is a useful concept, but one that has never really been put to test in international legal forums. For, in the long run, the only enforcer of sovereignty is power. Sovereignty is supreme power; and, in the history of man, war has been the ultimate arbiter of sovereignty.

But did Panama retain any elements of sovereignty in the treaty of 1903? Does Panama have any residuum, any shade of title to claim supreme power? That is a question that has never been resolved. Some of my distinguished colleagues have said that we do not have sovereignty because Panama retains titular sovereignty; or that we are obliged to give the Canal Zone to Panama if we decide to give it up. Of course, that position depends on fallacious reasoning. It is a circular argument. The question to be decided is precisely the question of whether Panama retains any interest in the zone. If Panama does retain an interest, then we would be obliged to turn it over if we decide to give it up. Unfortunately, the treaty is silent on the matter.

As a matter of fact, the treaty of 1903 consistently treats the Canal Zone as a cession. The original draft spoke of a lease; but all references to the word "lease" were removed, and the word "grant" substituted in some form over 20 times. In Spanish, the equivalent word used is conceder, which has the same meaning as concede in English. What was involved were concessions of both land and sovereign rights, the latter described by Philippe Bunau-Varilla as "a grant of sovereignty en bloc."

It is that grant of sovereignty which enables the United States to defend the canal as we please, without interfering with Panama's sovereignty. The concept of a grant of sovereignty was a brilliant solution to the problem of conflicting jurisdictions. There is no way that two nations can exercise sovereignty in the same territory without one infringing on the other—either by a practical incursion of power, or by political and economic interference. At the beginning the 1903 treaty also imposed upon the United States the responsibility for the maintenance of Panama's independence from

third-nation attacks, and for the maintenance of internal order and sanitation.

This responsibility, of course, was an infringement on Panama's sovereignty and was bound to create frictions, even though it was a practical necessity in the beginning. So at Panama's request, the United States continuously withdrew from operating in Panama's territory, even though we had the obligation to do so by treaty. By 1955, the United States had withdrawn completely from Panama's affairs and from Panama's territory.

Thus, the Canal Zone is not an interference with Panama's sovereignty; it is a device whereby we can avoid interfering in Panama's territorial integrity or internal affairs. It is precisely the loss of this device in the treaties before the Senate today that creates a situation balanced upon a logical impossibility, a contradiction of predicates. That is why the sovereignty issue is important.

But it is not directly relevant to the issue of participation of the House of Representatives in article IV, section 3 authority. That depends upon the disposition of property—property which would still be property of the United States even if we should give up our right to exercise sovereign powers in the zone. The only relation of sovereignty to ownership is that sovereignty ultimately protects the owner from expropriations. Therefore, when the sovereign and the owner are identical, expropriation is impossible.

Nevertheless, sovereignty and ownership are two different things, and the Senate must not get them confused. Indeed, property, possession, and territory are three different concepts also, but they all come under the purview of article IV, section 3. All three of them can exist without the owner also having sovereignty. It is the question of ownership that is at stake in article IV, section 3, not sovereignty.

Let us turn, therefore, from the general concepts to the specific. Let us examine the rights of ownership which the United States enjoys in the Canal Zone. Since these rights spring from different sources, each must be examined in turn to understand the nature of those rights.

II. THE STATUS OF U.S. LANDS GRANTED BY PANAMA

It is commonly believed that most of the land in the Canal Zone was conveyed to the United States by the treaty of 1903. But, as I hope to point out to the distinguished Members of this body, the preponderance of the land—at least two-thirds—was not conveyed by treaty; it was purchased from private owners. The importance of this fact bears directly upon our discussion of the constitutional obligations of article IV, section 3, of the U.S. Constitution.

No matter what conclusion one comes to with regard to the lands obtained directly from the Republic of Panama by the United States, those lands are the smallest portion of the Canal Zone. Thus, it can be amply demonstrated that the vast proportion of the property consists of lands held by the United States in fee simple. In short, the vast proportion is indisputably property of the United States; only a small portion suffers from varying interpretations of title.

Mr. President, this Senator from North Carolina does not pretend to be a legal expert, but he has consulted legal experts who assure him that this remaining one-third of the area, consisting of areas that were formerly public lands of the Republic of Panama, was conveyed to the United States as a cession of land, a "grant" in the words of the 1903 treaty. According to these experts, the use of the word "grant," the exclusive rights of "occupation, use, and control," and the term of the grant "in perpetuity" all combine to create a total cession of property. And although the Senator from North Carolina has argued that property ownership and sovereignty are two distinct issues, the grant of property in this case is made even more secure by the prohibition on the exercise of sovereignty by Panama in perpetuity, which effectively guarantees our titles in perpetuity. Whatever the nature of cession, Panama does not have the power to contest that cession or to reverse it.

In any case, the extent of the holdings purchased in fee simple from private owners thoroughly demolishes the notion that the Canal Zone is "rented" or "leased." The $10 million in gold paid under article XIV of the 1903 treaty "as the price or compensation" can only be attributed to the cession of a minor portion of the lands involved. The "annual payment" of $250,000 in gold coin (now $519,000) is not characterized in the treaty. But we know from the history of the aborted Hay-Herran Treaty with Colombia, that the figure of $250,000 originated in the annual payment to Colombia for the railroad concession, and was not related to payments for land. However, in article XXII, Panama gave up any reversionary claims to the railroad concession or lands. Most likely the retention of the $250,000 annuity was intended as a gesture of good will. Even today, the remainder of the present $2.3 million annuity is paid from State Department appropriations as part of the cost of conducting international relations, and is not paid by the Panama Canal Company.

Plainly, the Canal Zone cannot be considered as rented or leased from the Republic of Panama because only a portion of the land came from Panama in the first place. For our present purposes, we need not debate further the status of the portion of the land acquired directly from the Republic of Panama. We can set aside those tracts as not being vital to the article IV, section 3 issue. For if we can show that if even some of the property is indisputably property of the United States, then the House of Representatives must be involved in what we do here. And I intend to show that most of the land was obtained from private owners in fee simple. Thus, even those who do not agree that the lands obtained from Panama are held by perfect title must perforce agree that the great majority of the lands are property of the United States, held in fee simple.

Mr. President, I must ask the Senate to bear with me while I discuss this matter in some detail. It is a matter of such overwhelming importance that the record must be clear.

III. THE SOURCES OF U.S. LAND RIGHTS

Mr. President, what are the general sources of U.S. rights in land in the Canal Zone?

Article II of the 1903 treaty "grants the United States in perpetuity the use, occupation and control of a zone of land and land under water" 10 miles wide across the Isthmus of Panama for canal purposes, and further grants to the United States any other lands in Panama "which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the canal."

Article III grants to the United States "all the rights, power and authority within the zone * * * which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

Article VI safeguards "the titles or rights of private land holders or owners of private property in the said zone" or other lands or waters granted to the United States under the treaty; it further provides that if there is conflict between private rights and those granted to the United States by the treaty, "the rights of the United States shall be superior" and provides for payment by the United States of all damages to owners of private lands or private property, as determined by a joint commission appointed by the Governments of the two countries.

In article VIII, the Republic of Panama grants to the United States all its rights in the New Panama Canal Company and the Panama Railroad Company, and authorizes the New Panama Canal Company to sell all its "rights, privileges, properties and concessions as well as the Panama Railroad" to the United States; but certain public lands included in the said concessions, but not located within the zone were, however, to revert to Panama.

Two other articles add to the breadth and finality of the grants to the United States. In article XXII Panama expressly renounces "all right, claim, and title to participation in the earnings of the canal and railroad." In that 1906 treaty Panama further renounces, confirms, and grants to the United States, now and hereafter, "all of the rights and property formerly conceded to or made over to the new Panama Canal Company, together with all rights, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company."

The same article contains a very important paragraph:

> The aforesaid rights and property shall be and are free and released from any present or reversionary interest or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically assured under this treaty.

Article XXIV binds Panama even more firmly into the perpetuity of the cession:

> No change either in the Government of the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

Mr. President, these provisions of the 1903 treaty became effective on February 26, 1904, and by its terms the United States immediately acquired perpetual "use, occupation and control" of all vacant public lands in the Canal Zone. The remainder of the zone remained for the time being in private hands, although it was subject to expropriation by the United States if needed for canal purposes.

Part of the private holdings were lands the New Panama Canal Company and its subsidiary, the Panama Railroad Company, acquired by purchase from private interests or, in the case of the Railroad Company, cession from Colombia. The United States paid the New Panama Canal Company $40 million for all its rights and properties in Panama, including its controlling stock interest in the Panama Railroad Company, and took possession of the properties of both enterprises located in Panama on May 4, 1904. (In 1905 the United States bought up all the remaining shares of the Railroad Company's stock.) By this purchase, of course, the United States acquired some of the private lands within the zone.

The first annual report of the Governor of the Canal Zone, dated November 1, 1904, gave the area of the Canal Zone at "about 448 square miles," broken down by ownership as follows:

New Canal Company 52.11 sq. miles, Panama Railroad Company 68.12 sq. miles, private owners 139.23 sq. miles, United States (by treaty) 188.91 sq. miles, for a total of 448.37 sq. miles.

It was noted that the Panama Railroad Company also owned 12.87 square miles of land outside the Canal Zone. The Governor's report, interestingly enough, also reveals that from the earliest days lands of the French canal company, the railroad company, and public lands ceded by Panama were all considered "available for the location of the canal," and that some of the boundary lines of canal and lands were indefinite and the subject of controversy where such lands abutted in private property.

Between 1904 and the end of 1912, the United States acquired approximately 2,364 hectares of private land in the zone for construction and other canal purposes. During this period the excavation of the canal was virtually completed, massive fills were laid down to form Gatun Dam, and the waters of the Chagres River began to accumulate in Gatun Lake, and, in the process, to flood lands outside the zone which then, of necessity, had to be included within the zone. In May 1912, the United States requested and Panama agreed to give up about 70 square miles of land in the bed of Lake Gatun and up to the 100-foot line above sea level on its shores.

Also during this period, a provisional agreement was made with Panama as to the boundaries of the zone, which also defined the limits of Colon and Panama, put Cristobal and Balboa and their harbors in the zone. The center line of the canal was fixed, and, based thereon, surveys were made and the exact boundaries of the zone marked by monuments. Due to these accomplishments, and early efforts of the Isthmian Canal Commission at land manage-

ment, more accurate information as to the extent of U.S. land holdings in the zone was accumulated.

In October 1911, during hearings of a Senate committee on the bill which became the Panama Canal Act, the General Counsel of the Isthmian Canal Commission, Frank Feuille, gave a summary of U.S. land holdings in Canal Zone. These figures differed somewhat from the earlier accounting.

	Square miles
Acquired from New Canal Company	101.0
Panama railroad property	103.7
Recognized private holdings	82.7
United States by treaty	148.3
Total	435.7

It should be noted, of course, that the final boundaries had not yet been set, that construction was in progress, and that the very concept of the canal had changed from a sea-level canal to a lock canal, requiring more land than had originally been anticipated. Although the treaty granted "land and land under water," no distinction was made in the above accounting.

In 1912, the Panama Canal Act was passed, section 3 of which authorized the President "to declare by Executive order that all the land and land under water within the limits of the Canal Zone is necessary for the construction, maintenance, operation, sanitation, or protection of the Panama Canal, and to extinguish, by agreement when advisable, all claims and titles of adverse claimants and occupants." Such an order was duly issued: Executive Order 1225, December 5, 1912 and carried out by a joint commission, with two members appointed by the United States and to by Panama, appointed on March 1 1913, under authority of articles VI and XV of the 1903 treaty to settle all claims arising out of "depopulation" of the zone. The effect of this order and its implementation by the joint commission was to take all the remaining private holdings in the zone for the United States.

In later years, other tracts were obtained by eminent domain enlarging the zone, as additional lands were needed for canal purposes. These included land for Madden Dam and Madden Lake.

However, all expropriations ceased after the United States in article II of the general treaty of friendship and cooperation of 1936 renounced its expropriation authority. The same article provided for agreement between the two countries on any necessary land acquisitions. There have been minor adjustments, but no significant changes since that time.

In addition, is should be noted that some usable land was created by filling marshy areas and extending shore lines with materials excavated from the canal bed, a continuous process over the years. However, such operations make no difference as to land rights, as the sites were also acquired in the same manner as other tracts in the zone.

The 1976 annual report of the Panama Canal Company gives an analysis of the land and water areas of the Canal Zone, broken down according to use. The present use bears no relationship to the original acquisition rights. The disproportionately high use by the Army is misleading; probably less than a third of the land reserved for the Army is actually used, except for occasional training exer-

cises. The Army's role is mainly custodial, to prevent uses which would have a damaging environmental impact. The protection of the jungle canopy and vegetation on the mountains is essential to the operations of the canal, since adequate rainfall and the prevention of erosion are among the highest priorities. The jungle cover, for example, is believed to be responsible for the fact that the zone receives 20 percent more rainfall for lockage purposes in the dry season. In the 1964 annual report, the Army and Air Force usage figures were 107.62 square miles and 10.75 square miles, respectively; another category of remaining usable land—largely mountain or jungle—contained 187.56 square miles. The 1976 figures are as follows:

Area of the Canal Zone

	Square miles
Land area of the Canal Zone	372.32
Water area of the Canal Zone	[1] 274.97
Total area	647.29
LAND AREAS	
Air Force reservations and licenses	49.19
Army reservations and licenses	264.17
Federal Aviation Administration	0.66
Naval reservations and licenses	10.15
Total	324.17
Canal Zone townsites and areas outside of townsites in active use	16.59
Miscellaneous assigned land areas:	
Barro Colorado Island	5.71
Madden Forest Preserve	5.38
Agricultural leases and garden plots	0.83
Total	11.92
Swamps	15.14
Remaining usable land	4.50
Total land area of the Canal Zone	372.32

[1] Includes tidewaters within the 3 mile limits.

IV. THE NATURE OF TITLES CONVEYED FROM PRIVATE OWNERS

Mr. President, when we consider the acquisition of U.S. title to the lands in the Canal Zone, we must go back to 1850, when U.S. interests began construction of the Panama Railroad. At that time the great bulk of the land was vacant public land, with title resting in the sovereign, New Grenada, as the country was then called. Homesteading and other forms of land settlement, such as colonization of large tracts, were encouraged; over the years an appreciable amount of land was occupied and some form of title was acquired by the occupants. Those who complied fully with the land settlement laws were granted "dominion" of fee simple title in a comparatively short time.

Others who did not comply with such laws were nevertheless able to build up "custom-made" titles, or titles by prescription. Colombia law provided that title by prescription could be acquired

in either 10 or 30 years, the shorter term apparently being sufficient when adverse possession was accompanied by color of title and good faith. In still other cases the occupants of land could claim no more than squatters' rights.

When the Isthmian Canal Commission surveyed the land title situation in 1910, the same relative conditions prevailed. In testimony before the House Committee on Interstate and Foreign Commerce, the General Counsel for the Commission declared:

> The private titles in the Canal Zone, with a few exceptions—not over half a dozen exceptions—I am not including the French Canal Company, or the United States or the Panama Railroad Company, when I say private titles—the private titles, with about a half dozen exceptions, are custom-made titles. They are based upon long occupancy and transfer from one man to another by descent. Practically there are no grants from the government to these private holders that we have seen. If any grants were issued in any case, it has been so long ago that there is no record of them, but these holdings have been acquiesced in by everybody. The authorities have been paid taxes on these lands and in other ways they have recognized the titles by implication. The French Canal Company made large purchases from these people years ago, and so had the Panama Railroad Company, and so has the United States. The joint commissions we have had in here have recognized these titles in one way or another. The treaty protects landowners and landholders, and the joint commissions have held that if the people were not landowners they were at least landholders, because there had been a tacit recognition of their holdings by the community in general, and therefore, we should not distrub that status.

When one considers the remoteness and the primitiveness of the jungle and mountain terrain, it is not surprising that perfect records and exact standards of legal practice are not to be found. Yet it is clear—very clear—that the private titles were regarded as sound both by the Colombia and Panamanian Governments at the time of the 1903 treaty.

Mr. President, let us turn now to the rights in land acquired by the United States from the Panama Railroad Company.

The Railroad Company's 1850 concession provided in effect that the Company should have the use or "usufruct" of all lands on the continental part of the Isthmus of Panama required for railroad purposes. The usufruct of those lands then owned by the Republic of New Grenada passed to the Company by terms of the concession; but any privately owned lands needed by the railroad and which could not be obtained by purchase had to be expropriated for the Company by the government in accordance with law. The usufructuary grants were valid for the term of the concession, which was to run for 99 years from August 16, 1867.

The Company was, in addition, granted full title to 150,000 acres of vacant public land by the Colombian Government in 1866. Also, the Company purchased from private owners the fee title to substantial areas of land in the Isthmus of Panama which later became part of the Canal Zone.

Thus, clearly, the Panama Railroad Company obtained two kinds of significant rights in land: The usufruct of public lands terminable on the expiration of the concession on August 16, 1966, and fee titles, some by grant from Colombia, and some by purchase from private owners. With the Panamanian revolution, the treaty of 1903, and the purchase of the Panama Railroad Company by the United States, these two kinds of land rights merged into fee holdings. That process must now be traced.

As pointed out before, the only lands conveyed by the action of the treaty itself were the public lands of Panama. In article II, the property rights of private landowners and landholders were expressly reserved. This latter category embraced all the real property rights, including the usufructuary rights, under their respective concessions, of the Panama Railroad Company and the New Panama Canal Company, both of which, of course, were private entities.

At the time when the 1903 treaty came into force—the date being February 26, 1904—the United States had not yet acquired the concessions and other assets of the New Panama Canal Company. However, the treaty anticipated this event; in article VIII, Panama granted to the United States "all rights which it now has or may hereafter acquire to the property of the New Panama Canal Company and the Panama Railroad Company" and authorized the New Panama Canal Company, to "sell and transfer to the United States its rights, privileges, properties, and concessions," including the Panama Railroad Company.

It is important to understand that the Republic of Panama expressly renounced any claim it might have on these concessions; as originally consummated with Colombia, the rights were for a limited time and reversionary; under the 1903 treaty, they were perpetual, with no reversionary interest whatsoever. Thus the idea that Panama has some residual ownership, as claimed by the Department of State recently, is totally fallacious; in fact it is absurd.

The exact text of article XXII is important:

> The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions granted to or held by the above mentioned part and companies, and all right, title, and interest which it now has or may hereafter have, in and to the land, canal, works, property and rights held by the said companies under said concessions or otherwise, and the acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

Then it goes on, and this is important:

> The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute * * *.

So where do the proponents get off making a claim that we do not own this property?

The impact of a close reading of this article of the 1903 Treaty is startling when in the light of the negotiations and the treaties which are now before us. It shows clearly that Panama renounced any claim to future earnings of the canal, the very issue which is supposed to be one of the key issues leading to negotiation. But second, it shows that our title to the lands and concessions held by

the French Canal Company and the Panama Railroad is "absolute".

Thus, if our title is absolute, which obviously it is, there can be no doubt in anyone's mind that such holdings are "property of the United States," and must be disposed of only in accordance with article IV, section 3 of the U.S. Constitution.

These provisions vested in the United States all the reversionary rights of the Republic of Panama in and to lands held by Panama Railroad Company under its concession in the Canal Zone. Another way of looking at it is that the United States was substituted for Panama as the reversioner under the concessionary contracts held by the Railroad Company, and thus in effect became the proprietor of the lands concerned, effective February 26, 1904.

The United States purchased the assets of the New Panama Canal Company for $40 million on May 4, 1904. This included 68,888 of the 70,000 shares of the Panama Railroad Company stock; the remaining 1,112 shares were acquired by the United States in 1905. At this point, as far as the interests of the United States and Panama were concerned, there was a merger of the usufructuary and reversionary interests in the railroad concession land. Technically, however, the unsufructurary rights of the Railroad Company remained unchanged, for they were the property of the Company. The Company remained a New York corporation, and thus a legal entity capable of owning property, even though its stock was wholly owned by the United States and for many purposes it was to be considered an agency of the United States. In 1945, however, the Government Corporation Control Act was passed, which prohibited the continued existence, after June 30, 1948, of any wholly owned Government corporation created by or under the laws of any State.

Accordingly, the New York corporation was dissolved. In June 1948, title 2 of the Canal Zone Code was was amended, setting up a Federal corporation known as the Panama Railroad Company, and directing it to take over the assets of the New York company. Section 251 of the Canal Zone Code provided that—

> Effective upon the transfer of such assets and the assumption of such liabilities, there are hereby released and transferred to the corporation all the right, title, and interest, in and to such assets, which the United States now has or may hereafter acquire by virtue of the Convention of November 18, 1903, between the United States and the Republic of Panama; and specifically, there are hereby released to the corporation any and all reversionary rights of the United States in the lands of the corporation located in the cities of Panama and Colon, Republic of Panama.

As a result, after some 44 years there was a true merger of the usufructuary rights of the Railroad Company under its concession and the reversionary rights of the United States acquired by treaty from Panama. Although lands in the cities of Panama and Colon were mentioned specifically, the general language of transfer worked the same result as to the concessionary lands in the Canal Zone. Accordingly, as of July 1, 1948, the Panama Railroad Company became the proprietor of all lands in the zone, lands which it had formerly held as a usufructuary grant from the United States. In 1950, the Panama Canal Reorganization Act merged the Panama Canal Company and the Panama Railroad into one government corporation, combining their assets.

In 1943 and 1956, most of the railroad lands held in the cities of Panama and Colon were transferred to Panama, each passed under article IV, section 3. Within the zone, however, the Panama Railroad Company did not alienate any of the right of way land to which it acquired fee title in 1948, as I have already described. However, as a result of the 1906 act directing the construction of a lock canal, instead of a sea-level canal, it was necessary to relocate the right of way around the proposed Gatun Lake. About 80 percent of the line was relocated, with work completed in May 1912.

Most of the original right of way was abandoned and covered by the waters of Gatum Lake. Some of the abandoned right of way was owned in fee by the railroad, some was held only with usufructuary rights. The extent and description of the tracts abandoned is not known, as there was no practical need to distinguish between the rights of the Railroad and the reversionary rights of the United States. By the same token, no precise account can be given of the land upon which the new sections of the railroad were relocated.

The relocation of the line took place entirely within the Zone. In 1912, the proprietors of land within the Zone were the United States, the Panama Railroad Company, and various private persons and entities. The new right of way ran generally to the east of the old, on higher ground, and in the northern half of the zone clearly crossed land granted to the Railroad Company in fee under terms of the 1850 concession, as well as vacant land which had already been granted to the United States by the 1903 treaty. It is possible that the new tracks crossed land which the United States had already acquired in fee by purchase from the New Panama Canal Company or from local private owners. It is almost certain that the new tracks crossed lands in the zone which were still privately owned, making it necessary for the United States to acquire title to such lands by negotiated purchase under terms of articles VI and XV of the 1903 treaty. After 1912, when the Zone was "depopulated," all private ownership of land terminated.

It is also important to point out that when the United States took possession of the Railroad Company, it acquired substantial areas of the Zone held in fee, areas not necessarily used strictly for right of way. Some of these fee areas had been purchased from private owners through the medium of expropriation by the Colombian Government in accordance with the terms of the 1850 concession; for such tracts, the Company was obliged to pay "just indemnification" to the owners. But in 1866, Colombia also made a grant in fee of 150,000 acres, surveyed and plotted on what became known as the Harrison-Arosemena map. Six lots, comprising some 35,000 acres, were laid out along the railroad right of way, with the Company and the Colombian Government taking alternate lots, three apiece. The remainder of the grant to the Company, a single piece of land of about 115,000 acres lay to the east of and contiguous to the six lots.

The Canal Zone boundary lines were to be laid out with reference to the center line of the proposed canal, not with regard to the location of the railroad right of way or the land plotted on the Harrison-Arosemena map. As it happened, it appeared that about 100,000 acres of the Railroad Company's fee land would fall outside

the Canal Zone—an important point because the 1903 Treaty provided that lands outside the Canal Zone would revert to Panama.

However, with the determination in 1906 that a lock canal would be constructed, the provisional boundaries of the Zone had to be enlarged by some 70 square miles to encompass the flooding of Lake Gatun. Most of this additional area was included in the 100,000 acres of fee land that originally appeared to be slated for reversion to Panama. Thus much of the land under Lake Gatun was held in fee.

The final boundaries of the Canal Zone were not fixed until the signing of the 1914, Boundary Convention on September 2, about 2 weeks after the canal opened for operations. The exchange of ratifications took place on February 11, 1915, a date which is probably the best date for the fixing of the U.S. titles.

Thus, the 15,000-acre portion of the large tract which fell within the provisional zone, as well as that portion of the 100,000 acres that was incorporated in the Zone when it was enlarged to include Gatun Lake remained a fee holding of the Railroad Company, and thus of the United States, along with three—lots 1, 4, and 6—of the six lots plotted on the Harrison-Arosemena map, also held in fee. The remaining three lots—about 17,000 acres—were public lands of Panama granted in accordance with article II.

In summary, therefore, the land rights which came to the United States through the Panama Railroad Company may be described as follows:

(a) None of the usufructuary rights granted by Columbia for railroad purposes remain as usufructuary grants; the usufructuary rights passed to the United States in 1903 and were converted into fee holdings in 1948.

(b) In addition to these fee holdings, the Panama Canal Company is the owner in fee of thousands of acres of land and land under water in the Zone, acquired by the Panama Railroad Company through grant from Colombia, and by direct purchase, or possibly expropriation by Colombia on behalf of the Railroad Company.

Finally, Mr. President, the last group of land rights that must be examined are the rights acquired directly from the so-called New Panama Canal Company—so-called because it was the successor to the first French company, which had gone bankrupt. These rights were acquired by purchase included in the $40 million price both for the assets of the canal company and its subsidiary, the Railroad Company.

The rights of the canal company, of course, did not extend as far back as the rights of the railroad company. The primary sources of the rights in land of the New Panama Canal Company was the so-called Wyse concession of 1878.

Lucien Napoleon-Bonaparte Wyse was a lieutenant in the French navy associated with a company of French private citizens which, in 1876, began active exploration of the American isthmus to determine the best route for a canal. In the course of two visits to the isthmus, Wyse became convinced that the Panama route was the best.

He therefore went to Bogota and on behalf of his company negotiated a contract with the Colombian Government for construction of a canal across the isthmus and "between the Atlantic and Pacific Oceans." This agreement was signed by General Salgar, the

Foreign Minister of Colombia, and Wyse, and therefore is sometimes called the Salgar-Wyse contract.

As indicated earlier, the concession granted the exclusive privilege of constructing the proposed canal and of operating it for a period of 99 years from the day on which the canal "shall be—opened to the use of the public." Three years were allowed for surveys, 2 for organization of the company, and 12 for construction, with the possibility of an extension of 6 years. All public lands required were to be "ceded gratis," such lands to revert to Colombia at the termination of the concession. There was "also granted for the use of the canal a belt of land 200 meters wide on each side of its banks," subject to the right of owners of land "on its banks" to have free access to the canal, its parts, and any roads constructed for canal purposes. Provision was made for expropriation of private property required for the canal, with suitable indemnities.

In 1881, as French interest in an Istmian Canal mounted, the concession was purchased for 10 million francs by a new company called the Universal Interoceanic Canal Co., headed by Ferdinand de Lesseps. It was this concern, later called the "Old Panama Canal Company," which undertook the French effort to construct a canal across the Isthmus of Panama.

The canal route selected by the Old Company crossed the right-of-way of the Panama Railroad Company. This posed serious problems, because the railroad's concession gave it the right to bar use of its right-of-way for canal purposes. The canal company solved the dilemma by purchasing over 90 percent of the outstanding stock of the Railroad Company. In this way, the Old Company acquired effective ownership of the Railroad Company's rights in land.

As I have already pointed out, the usufruct granted to the Old Company for canal purposes covered all public lands required for the canal and necessary facilities—ports, wharves, warehouses, and so forth—and "a belt of land 200 meters wide on each side of its banks." The New Panama Canal Company succeeded to these rights. By the terms of articles VIII and XXII, as I have already discussed, the United States was substituted for Panama as the reversioner under the Salgar-Wyse concession. Incident to its purchase of the assets of the New Panama Canal Company on May 4, 1904, the United States acquired the usufructuary rights granted by the canal concession. Thus at this point, May 4, 1904, there was a merger of usufructuary and reversionary interests, and the United States acquired full ownership in fee of the "usufructuary" lands of the New Panama Canal Company; that is, the lands granted for canal purposes and the "belt of land 200 meters wide on each side of its banks."

These lands were never specifically located by the United States, since the need to do so was superseded by the terms of the 1903 treaty. Presumably much of it is covered by Gatun Lake. However, it again amounts to thousands of acres that the United States holds in fee simple, and the metes and bounds could be located by reference to old title records and surveys.

A provision similar to that in the railroad concession was included in the Salgar-Wyse contract for expropriation of privately owned lands by the Government on behalf of the canal company. Accord-

ing to Senate hearings held in 1911, the Old Company acquired a fee title to and a proprietary interest in the privately owned lands expropriated under this authority.

The records are not clear as to the extent to which the Old Company exercised this right, but it is clear that it was exercised. These titles in fee, of course, also devolved upon the United States.

In summary, the United States acquired from the New Panama Canal Company—excluding its subsidiary, the Panama Railroad Company—by terms of the 1903 treaty and purchase in accordance with the treaty, a substantial amount of land in fee in the Canal Zone. As I already pointed out, the first annual report of the Governor of the Canal Zone gave a figure of 52.11 square miles of "New Canal Company" land, whereas the figure in 1911 was given as 101.00 square miles of land from the French company. Both figures are exclusive of Railroad Company land. The discrepancy may result from a failure to include land under water. In any case, the Governor's figures were admittedly provisional, and were "computed by scale on the map"; they were not the results of a survey.

Nevertheless, the issue is not the exact amount of land held in fee, but the positively established fact that a large proportion, the majority proportion, indeed, of the Canal Zone was not included in the grant of public lands from Panama. Even those who may have doubts about the status of the lands convey from Panama should have no problem recognizing that most of the land in the Canal Zone is land held in fee simple, and is property of the United States.

V. OPINION OF THE U.S. SUPREME COURT ON U.S. TITLE IN THE ZONE

Mr. President, I have gone on at some length to explain in the Record the sources and nature of United States land titles in the Canal Zone; but I have not yet referred to the central, indeed, the only case wherein the U.S. Supreme Court deals specifically with the question of U.S. title in the zone. Even though this case is frequently cited, I think that it bears reexamination in the light of the exhaustive history that I have reviewed today. I refer of course to Wilson against Shaw.

Although this decision was handed down in 1907, it shows an astonishing grasp of the realities in the zone, and is amply sustained by the detailed facts I have already cited. Nor has it in any way been modified or reversed.

The question of title was central to the action in the case. The appellant, a citizen of Illinois, claiming that he was a taxpayer to the U.S. Government, sought to restrain the Secretary of the Treasury from using public money to pay for the purchase of land, borrowing money, or otherwise issuing bonds or making payments under the Spooner Act of 1902, the act that authorized the acquisition of the Canal Zone. He complained that the zone was not acquired from Colombia, as the act required, and that its boundaries were inexact; he further asserted that Congress has no authority under the commerce clause to operate commercial canals and railroads.

The Supreme Court, in an opinion by Justice Brewer, brushed all of these arguments aside. Among the points raised were:

(1) Panama has seceded from the Republic of Colombia and established a new republic which has been recognized by other nations. This new republic has by treaty granted to the United States rights territorial and otherwise.

(2) The title to what may be called the Isthmian or Canal Zone, which at the date of the act was in the Republic of Colombia, passed by an act of secession to the newly formed Republic of Panama. The latter was recognized as a nation by the President. A treaty with it, ceding the Canal Zone, was duly ratified.

Clearly, Mr. President, we see that the dicta of the Court recognized that the Canal Zone was "ceded" to the United States.

(3) Another contention, in support of which plaintiff has presented a voluminous argument, is that the United States has no power to engage in the work of digging this canal. His first proposition is that the Canal Zone is no part of the territory of the United States, and that, therefore, the Government is powerless to do anything of the kind therein.

Mr. President, in response to this argument, Justice Brewer quotes the well known articles II and III of the 1903 treaty.

(4) It is hypercritical to contend that the title of the United States is imperfect, and that that the territory described does not belong to this Nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate.

Mr. President, it is central to Mr. Justice Brewer's argument that our title, the U.S. title is perfect; in short, that the "territory described" does indeed "belong to this Nation."

(5) Further, it is said that the boundaries of the zone are not described in the treaty; but the description is sufficient for identification, and it has been practically identified by the concurrent action of the two nations alone interested in the matter. The fact that there may possibly be in the future some dispute as to the exact boundary on either side is immaterial. Such disputes not infrequently attend conveyances of real estate or cessions of territory. Alaska was ceded to us forty years ago, but the boundary between it and the English possessions east was not settled until within the last two or three years. Yet no one ever doubted the title of this republic to Alaska.

Mr. President, in this quotation, Justice Brewer once more makes it clear that the zone involved "conveyances of real estate or cessions of territory." That is exactly what I have been talking about, Mr. President. I have attempted to demonstrate that the Canal Zone does indeed consist of "conveyances of real estate" in fee simple, and "cessions of territory."

Furthermore, Mr. President, it is striking that the Supreme Court compares our acquisition of the zone to our acquisition of Alaska. Many proponents of the treaty have ridiculed the idea that the acquisition of the Canal Zone can be compared to our acquisition of Alaska; yet it is not the opponents of the treaty who first made that comparison. It was none other than the U.S. Supreme Court itself that made the comparison of the Canal Zone to Alaska.

(6) Again, plaintiff contends that the Government has no power to engage anywhere in the work of constructing a railroad or canal. The decisions of this court are adverse to this contention. In *California* v. *Pacific Railroad Company*, it was said: "* * * But since in consequence of the expansion of the country, the multiplication of its products and the invention of railroads and locomotion by steam, land transportation has so vastly increased, a sounder consideration of the subject has prevailed and led to the conclusion that Congress has plenary power over the whole subject. Of course, the authority of Congress over the Territories of the United States and its power to grant franchises exercisable therein, are, and ever have been, undoubted. But the wider power was very freely exercised, and much to the general satisfaction, in the creation of the vast system of railroads connecting the East with the Pacific, traversing States as well as Territories, and employing the agency of state as well as Federal corporations."

Mr. President, this quotation shows that Mr. Justice Brewer, in invoking the powers of the commerce clause, caused the Canal Zone to be considered within the power of Congress to act within territories of the United States. Indeed, Mr. President, the Justice draws that specific conclusion himself:

(7) These authorities recognize the power of Congress to construct interstate highways. A fortiori, Congress would have like power within the territories and outside of state lines, for there the legislative power of Congress is limited only by the provisions of the Constitution, and cannot conflict with the reserved power of the States.

Mr. President, that is the point; that is the very heart of the argument that the Senate confronts today. The Congress has always acted under article IV, section 3 of the Constitution with regard to the Canal Zone. The Congress has always considered the Canal Zone as U.S. property and territory. And the Supreme Court of the United States has clearly agreed. The evidence of history, the evidence of legal authority, and the evidence of constitutional theory all combined to argue that only Congress—Congress, Mr. President both Houses—must ask in the disposition of U.S. territory and property.

The Senate cannot escape its duty, Mr. President; whatever each of us may think about the merits of the treaty, there can be no dissent about our responsibility to allow the House of Representatives to act on the disposal of property. Our duty is clear, and we cannot escape it.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I do not propose to speak at any length on this subject, which has occupied the Senate for most of the afternoon. Tomorrow will be time enough to specifically rebut the various arguments made by the proponents of the pending amendment.

The purpose of that amendment, of course, is to require that the House of Representatives pass on any transfer of property by the United States to the Government of Panama, as contemplated by the present treaty. However, to set the general guidelines for tomorrow's debate, I want to make it clear at the outset that no one favoring the treaties, to my knowledge, denies that the United States has title to property in the Panama Canal Zone.

I listened with some curiosity to the extended brief presented by the distinguished Senator from North Carolina concerning the origins of the United States legal title to property in the Canal Zone. He took an hour and a half pressing an open door. Of course, the United States acquired legal title to property lying within the boundaries of the Canal Zone.

Originally, the effort to develop a pathway between the seas was undertaken by private enterprise. An American company first constructed a railroad across the isthmus; later, as Senators know, a French company attempted to construct the first canal across the Isthmus. When the Government of the United States decided to take up that enterprise in 1902 and 1903, we had to acquire the

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legal titles and rights of the various private enterprises that had endeavored to build the canal. This was done partly through acquiring such rights as the French companies still possessed. Although the original company had gone bankrupt, its holdings were in the hands of a trustee in bankruptcy. As I recall, the U.S. Government paid $40 million to the French trustee to acquire its holdings, including the machinery, the construction works, the sheds, the wharves, and all the other facilities associated with the French work.

It also was necessary for the United States to acquire the rights of the company then operating the Panama railroad along with other private holdings, and the use of unoccupied land which was owned by the Panamanian Government.

So, from all these sources, the United States obtained legal title to lands within the Canal Zone. In fact, we actually initiated there an experiment in socialism. We acquired and extinguished the rights of the various private enterprises in the zone and established governmental ownership in their place. Since that time, life within the zone, including the businesses that have been permitted to operate there, has been under the ownership, direction, and control of the Government of the United States.

So it has been an experiment in pure socialism, if you will, and I would be the last to deny that the U.S. Government possesses legal title to land within the Canal Zone and the improvements thereon. It need not consume an hour and a half of the Senate's time to establish a point that I did not believe to be contested in this debate.

With respect to the matter of sovereignty, other questions are involved, but I never have laid great stress upon them. It is true that under the 1903 treaty, the United States acquired all the attributes of sovereignty in the Canal Zone. Sovereignty of course, is distinct from ownership, and defined as jurisdictional powers exercised by a government over land, however owned. In the Canal Zone, we had a case of land owned by the Government of the United States, acquired from various private companies. While under the terms of the 1903 treaty we did not expressly obtain from Panama sovereign power over the zone, and we never have formally claimed sovereign power over the zone, still, we did obtain all the normal attributes of sovereignty. The 1903 treaty contains the phrase "as if sovereign."

So, Mr. President, for all intents and purposes, the United States, in addition to possessing the title to land and improvements within the Canal Zone, has exercised there, as a practical matter, all the powers normally reserved to a sovereign government.

These are all the facts of life with which we are dealing. Far from denying them, we affirm them. It is the exercise of this de facto sovereign authority within the Canal Zone that created the friction between the United States and Panama lying at the base of the resentment Panamanians have felt toward us. The zone bisects their country and any Panamanian who enters the zone is subject to American law, to American police, to American arrest, to trial by American courts, and to imprisonment in our own penitentiaries, including those located in the United States itself.

This is the principal reason why the people of Panama have grown increasingly upset at what they regard as an unfair transgression upon their national rights and national dignity.

It was this heated, passionate, nationalistic feeling of the Panamanians that led to the tragic riots in 1964 in which both Panamanians and Americans lost their lives. These were the riots that led the President of the United States, Lyndon Johnson, to conclude that a new arrangement between the United States and Panama respecting both the Canal Zone and the operation of the canal itself was needed. Three succeeding American Presidents, agreeing with President Johnson, pursued the negotiations leading to these treaties.

So let the debate tomorrow at least proceed from the premise that the U.S. Government acquired ownership of land and improvements within the Canal Zone and that, although it may never have formally acquired or claimed sovereignty over the zone, it possessed powers which in fact are normally exercised only by a sovereign government.

Those are the underlying facts which led to a recognition that a new arrangement between the United States and Panama was necessary if good relations between the two countries were to be preserved and the canal operated as a peaceful, neutral passageway between the seas.

The whole objective of these treaties is to bring about a fair arrangement, acceptable to both governments, that will permit the canal to function peacefully in a climate of friendship and cooperation, with the full understanding and support of both the Government and the people of Panama.

As I listened today to the speeches read by the Senators from Utah and North Carolina I thought to myself that this argument can never be settled by lawyers briefs citing the legal pedigrees on which we claim our right to govern the Panama Canal Zone. Legal briefs look backward. They are based upon the arrangements made in 1903 or later, and the acts of Congress that implemented those arrangements. They are based upon the prior claims of the private companies, both French and American, and the treaties that those companies held with previous governments, both Panamanian and Colombian; they relate to an entirely different era, to a world that existed 75 years ago when it was possible for a great power like the United States to simply acquire what it wanted from a small country and enforce its will because it had the physical power to do so.

The circumstances surrounding the 1903 treaty have been brought out in detail in the course of this debate and are a chapter in themselves of how different the world was in 1903. Then we could negotiate a treaty with a Frenchman in Washington and sign it even before the Panamanian delegation arrived here, and we could do it under circumstances that presented them with choice of either confirming the treaty upon their arrival or returning to their own country to face a firing squad, unless they were given American military protection. It is a story out of a different world, the world of the past. It is a story of a time in which a half-dozen metropolitan powers in Western Europe and North America controlled most of the globe. It was a world, it was a time, when the

people of Africa and Asia and much of Latin America were subjected to foreign colonial rule.

But that world of 1903 is not the world of 1978. No, Mr. President, we live in a better world now, a world in which the empires have all disappeared, and in their place there are 100 or more new independent governments.

The colonies that still remained in the world when the 1903 treaty was consummated are now independent governments. Africa has been retaken by the Africans; Asia has been recovered by the Asians. The Panama Canal Zone is virtually the only piece of foreign territory that the United States of America still holds against the wishes of the people of the country the territory is in.

I know there are those who look back nostalgically upon the days of the great white fleet and Teddy Roosevelt's big stick policy. I suppose there are many who wish that the world was still subject to the colonial control of half a dozen imperial powers carrying the white man's burden to Africa and to Asia, ruling by gunboats and the thin red line of troops glorified by the poems of Rudyard Kipling.

But that day is gone. It can never be recovered. The world has passed beyond that stage, and it is useless for us to discuss the validity of our legal pedigrees.

That is not the issue. The issue is whether the United States of America, the first government to be established by a colonial people rebelling against the assertion of authority by a foreign throne, is now going to adhere to its own principles as it undertakes to deal with a tiny Latin American republic.

The treaties before us are an affirmation of our own principles which, to my mind, Mr. President, is of much greater consequence than the color of title by which we lay claim to land and improvements within the Panama Canal Zone.

Now, earlier this afternoon the distinguished Senator from Utah (Mr. Hatch) read an 89-page address in which he questioned whether it is lawful to transfer title of American-owned property without the participation of the House of Representatives.

Tomorrow we shall respond to his arguments and show that the United States can dispose of property through the exercise of the treaty power. And we will cite the precedents and constitutional authorities which overwhelmingly support that position.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. CHURCH. I would be happy to yield to the very distinguished and able Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, with reference to the remarks that were made earlier in the day, I want to underscore the importance of the comments the able and distinguished Senator from Idaho has just made in terms of again turning the attention of this body, as we come back from the recess to consider now the Panama Canal Treaty, on what is really at stake for the United States with respect to these two treaties and how important it is, so far as our national interest is concerned, especially in view of a changing world.

Mr. President, just a few days ago on March 24 an article appeared in the Philadelphia Inquirer by our esteemed former colleague Hugh Scott. Former Senator Scott wrote an article analyz-

ing in detail the costs of the Panama Canal treaties and, more importantly, discussing the potentially far greater cost of not ratifying these treaties.

As we all know, Senator Scott served with distinction as a member of the Committee on Foreign Relations and as the minority leader of the Senate of the United States, as the leader of the Republican Party in this body.

In this article he writes with the valuable experience of a Member of the Senate and one who has had long involvement in the foreign policy of the United States. I urge my colleagues to examine his remarks. I ask unanimous consent, Mr. President, that Sentor Scott's article be printed at this point in the RECORD.

[There being no objection, the article was ordered to be printed in the RECORD as follows:]

THE COST OF REJECTING THE TREATY

I can well understand why many Americans wonder why the U.S. should have to pay money to give back the Panama Canal. Their concerns reflect some honest misunderstandings about the costs of treaty ratification. These are some candid, factual answers to the questions most often asked.

(Q) Why are we paying the Panamanians to take the canal off our hands?

(A) Actually, American taxpayers will not pay the Panamanians anything. The treaties provide for an annual payment to Panama until the year 2000, initially amounting to about $65–$75 million. But all of it is to be paid by the New Panama Canal Commission out of operting income. Not a cent is to come from American tax revenues.

Moreover, the purpose of the annuity is not to pay Panama for taking the canal back. It is payment for the right to operate a canal which intersects the nation of Panama—a right which will include the privilege of maintaining American military bases on Panamanian territory during the life of the first of the two treaties, the Panama Canal Treaty. Similar base rights elsewhere cost between two and four times as much.

(Q) What about the indirect costs of the treaties?

(A) There will be indirect costs principally related to the relocation and early retirement expenses of American personnel in the Canal Zone. In the aggregate they will require total appropriations of about $350 million and will be quickly offset by the elimination of defense costs in Panama after the year 2000.

(Q) Won't Americans have to pay more for goods which transit the canal because of higher tolls?

(A) All users will have to pay more in the future under any circumstances just to keep abreast of inflation. The best estimates are that under the new treaties tolls will have to be increased initially by no more than 30 percent. But the portion of this increase which will be paid by American consumers and exporters will be comparatively small, in part because less than 8 percent of U.S. foreign waterborne commerce uses the canal. A 30 percent toll hike would add just $3 to the price of a $3500 automobile from Japan, a fraction of a penny to the export price of a bushel of U.S. corn; just 0.15 cent per gallon of gas refined from North Slope crude oil.

(Q) Won't toll increases price the canal out of the market?

(A) Numerous studies suggest that tolls would be raised initially by as much as 75–100 percent before reaching the point of diminishing returns. The much lower increases initially required, will not dramatically affect canal use. There's no reason to expect that toll increases will jeopardize the canal's competitive position.

(Q) What about estimates that the U.S. is "giving away" property and assets worth $10 billion?

(A) Estimates of $10 billion are made on the basis of replacement value, not book value. That's like assessing at the 1978 price an ordinary automobile which was purchased in 1974 and which, since, has depreciated 50 percent. The book value of canal assets and property which will be transferred to Panama between treaty day and the year 2000 will be much less than $1 billion.

From the beginning Congress has demonstrated little interest in amortizing our investment in the canal. The canal has always been run as a service. The canal has always been run as a service to U.S. and world shiping. Its benefits to the U.S. in war and peace have been many times greater than our investment, and these

benefits will continue through the special considerations given U.S. shipping in war or emergency under the new treaties. Consequently, we are not seeking compensation for our investment through repayment from Panama.

These then, are the costs of ratification. But it is only against the consequences of non-ratification that they can be fairly measured. The Defense Department has hinted at the possible extent of those consequences.

By its estimates, the cost of securing the canal in an atmosphere clouded by growing opposition to the present treaty arrangement could be tens of thousands of additional troops in the Canal Zone.

What such a commitment would represent not only in tax dollars, but in terms of strained relations and cost of investment opportunities in Latin America, and in terms of risking a protracted entanglement in the isthmus is sobering to consider. Moreover, instability in the canal area could be a major deterrent to world traffic. What all this suggests is that the far greater cost could lie in rejecting the proposed treaties.

Mr. SARBANES. Mr. President, I want to quote the concluding remarks of Senator Scott in which he discusses the cost involved in turning over the canal to Panama pursuant to the terms of the Panama Canal Treaty, and points out how those costs are far less than the figures which have been thrown around this Chamber on the subject. But he then goes on to discuss the alternatives, to underscore the very point which the distinguished Senator from Idaho made so ably earlier this afternoon on the floor of the Senate.

He states the following:

These, then, are the costs of ratification. But it is only against the consequences of non-ratification that they can be fairly measured. The Defense Department has hinted at the possible extent of those consequences.

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It is time, as we resume debate with respect to these treaties, not to lose sight of what is at stake with respect to approving these treaties; in terms of our relationship with Panama, our relationship with all Latin America, and, indeed, our relationship with countries throughout the world.

Mr. President, a number of this Nation's most distingished business leaders and labor leaders have endorsed these treaties as the best means of insuring our use of the canal for commercial purposes and improving our relations with out vital trading partners in this hemisphere. These leaders and organizations know from practical experience that a disruption in our trade with the nations to the south could do severe damage to our economy. Not only is Latin America a principal market for the goods exported by the United States, but it is a primary source of a great many raw materials on which our economy is dependent.

Labor also recognizes the negative impact a rejection of the treaties could have on our economy and, thus, the employment picture. Labor's view is witnessed by the endorsement of the treaties by the AFL–CIO executive council and the United Auto Workers.

Mr. President, I ask unanimous consent that the following communications expressing support for the treaties be printed in the record at this point:

A letter to Chairman Sparkman from the Honorable Alexander B. Trowbridge, Vice Chairman, Allied Chemical Corporation and former Secretary of Commerce.

A letter from Mr. Harold W. McGraw, Jr., Chairman and President of McGraw-Hill, Inc.;

The statement of Mr. George Meany, President of the AFL–CIO submitted to the Foreign Relations Committee;

A letter from Mr. Jose Aceves, Executive Director of the Latin American Manufacturers Association of Washington, D.C.;

A letter from Mr. Timothy W. Stanley, President of the International Economic Policy Association;

A letter from Mr. James P. Grant, President of the Overseas Development Council;

A letter from Mr. Ricardo Zazueta; National Director of SER-Jobs for Progress, Inc.

[There being no objection, the letters were ordered to be printed in the RECORD, as follows:]

ALLIED CHEMICAL CORP.,
Morristown, N.J., October 19, 1977.

Senator JOHN J. SPARKMAN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR SPARKMAN: With the important clarifications announced by President Carter and General Torrijos on October 14th, there is really no valid basis remaining for objection to the ratification of the new treaties governing the future of the Panama Canal.

I urge you to support ratification when it comes to a vote. I do so with three perspectives in mind.

The first is personal. I lived in Panama from 1959 to 1961, and went through the 1959 riots which first exposed the raw nerve endings that brought forth greater animosity, destruction and death in 1964. The Panamanians understandably demand greater control over such a dominant physical and economic factor which divides their country geographically and psychologically. They will continue to seek such control, and if denied for too long only frustration and hatred will result—with creation of a totally vulnerable security position for the Canal and our interests there. No amount of military power, as we learned in Vietnam, can provide security if the surrounding political climate is hostile. The already great disparity of economic conditions for those living in the Zone, contrasted to most Panamanians, has lead to substantial hostility already. We cannot afford to stimulate that ill will, and to reject changes provided by the new Treaties would be to lock the animosity into permanent and violent forms.

The second perspective is from my prior service as Assistant Secretary and Secretary of Commerce from 1965 to 1968. You can see now, as I did when in Washington, the delicate and vital nature of our relations with other American states in this hemisphere. Clearly, ratification of the Treaties will be a singularly prominent test of our good faith in those relations, and rejection will burden us for decades to come with resulting distrust and prejudice of damaging proportions. We have all the security protection regarding defense of the Canal we need—the Joint Chiefs are deeply convinced of that—but we must fortify it with political security. The new Treaties deal with today's realities, and to view them from the perspective of what pertained in 1903 or 1941 or 1959 is simply to overlook the facts of today and tomorrow in which U.S.-Latin American relations must be structured.

My third perspective is from my daily responsiblities as Vice Chairman of Allied Chemical Corporation. Anyone engaged in economic activity must recognize the great importance of Latin America as a supplier of resources and as a market of growing importance. The Canal must remain viable operationally to expedite the movement of goods, both intra-Hemisphere and worldwide, and it can be permanently secure only if our respective governments and people have a mutually advantageous stake in its continued successful operation. Panama must get fair value for use of its territory, and be participants in the Canal's leadership, if it is to feel some responsibility for that success. To continue under old rules, and to reject

this important new framework for cooperation, will bring vulnerability and steady interruption to Canal operations.

In case none of my arguments are adequately persuasive, I am attaching a copy of an article by Vermont Royster, editor emeritus of the Wall Street Journal, which I hope you will find full of balanced common sense.

The actual vote probably won't be taken for several months, but when it somes, I hope very much that these points will persuake you to support ratification.

Sincerely yours,

ALEXANDRIA B. TROWBRIDGE,
Vice Chairman of the Board,
Allied Chemical Corp.

McGRAW-HILL, INC.,
New York, N.Y., November 15, 1977.

Hon. JOHN J. SPARKMAN,
U.S. Senate, Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR SPARKMAN: I am writing in connection with the ratification of the Panama Canal Treaty.

For many years McGraw-Hill has carried on extensive operations in Latin America. We have subsidiaries of our Book Company in Mexico, Panama, and Brazil, and the Mexican company has a substantial branch operation in Colombia. The Mexican and Brazilian companies do extensive publishing in Spanish and Portuguese as well as marketing books from the United States. Products of all these companies and or our U.S. Book Company are marketed in all countries of Latin America. In addition, Business Week and our more than 30 other professional and technical magazines have large circulation, advertising, and newsgathering operations in Latin America.

Our years of experience in publishing and communications in Latin America have impressed us with what a vitally important and emotional issue the Panama Canal presents not only to Panamanians but to all Latin Americans, who view it as the most meaningful test of U.S. attitudes toward their countries and toward the region as a whole. We believe it would be hard to overestimate the wave of bitterness and disillusion that would sweep over even our friends in Latin America if the Senate should fail to ratify the current treaty with Panama. Certainly it would make our operations in Latin America very difficult and might make some of them impossible. Other American businesses operating in the region would undoubtedly be similarly affected.

We hope these considerations, affecting all U.S. business relations with Latin America, will weigh heavily with you when you decide your vote on ratification of the Panama Treaty.

If there is any further information we can provide, we shall of course be pleased to do so.

Very truly yours,

HAROLD W. McGRAW, Jr.

PREPARED STATEMENT OF GEORGE MEANY, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, OCTOBER 11, 1977

Mr. Chairman, I appreciate this opportunity to appear before you to urge approval by the Senate of the Panama Canal treaties.

We of the AFL–CIO have a vital interest in these treaties both as citizens, concerned with the security and welfare of our country, and as trade unionists representing thousands of workers employed in the Canal Zone.

At its last meeting in August 29 and 30, the AFL–CIO Executive Council discussed the Panama Canal treaties at some length. Following this discussion and analyses of the summary terms of the treaties, the Council unanimously adopted the following statement:

"After thirteen years of on-again, off-again negotiations between the governments of the United States and Panama, two treaties have been agreed to which radically alter the Panama Canal Treaty of 1903.

"According to the Joint Chiefs of Staff, the Treaties of 1977 provide for continuing freedom of action of the United States to maintain neutrality of the Canal and further guarantee U.S. access and rights to use all land and water areas and installations necessary for the defense of the Canal through the year 2000.

"Job security and rights of workers in the Canal Zone, both U.S. and Panamanian, will be assured. Since 1949, the AFL has called for justice in the Canal Zone in arguing for equal pay for equal work, so that Panamanian citizens would not be exploited through a double standard of remuneration. Through the years, particularly during the long and arduous periods of negotiations groping toward a new treaty, the AFL–CIO has maintained a vigilant stance concerning workers' rights in the Canal Zone and the safekeeping of the elements of U.S. defense inherent in the Panama Canal Agreement.

"We are satisfied that the new treaties cover both considerations adequately. U.S. citizens now employed in the Canal Zone will be protected and remunerated as U.S. government employees and will be offered new benefits tailored to fit the new treaty characteristics, such as early retirement.

"After reviewing the summary of the new treaties, and based on the assumption that it is an accurate reflection of the final treaty language, which is not yet available, the AFL–CIO Executive Council views the two Panama Canal Treaties guaranteeing the permanent neutrality of the Canal and the operation and defense of the Canal through the year 2000, as instruments worthy of support by U.S. citizens and their elected representatives. These new instruments constitute a just and enduring basis for harmony in the Western Hemisphere, and we support their ratification by the Senate."

Mr. Chairman, our position is based on practical grounds, in the light of the circumstances of the modern world, and the conviction that we have more to gain today, in terms of the broad interests and ideals of the United States, than we have to lose, by approval of these treaties.

In the public debate of recent weeks over the wisdom of these treaties, some arguments have drawn attention to the dubious circumstances surrounding the original treaty of 1903. I do not propose to rehash that question, for it has no bearing on our position.

While historically interesting, revisionist aspersions on the role of this country in a by-gone era are scarcely relevant to the issues actually before you. Adverse judgments by this generation on the actions of another generation in another world, three-quarters of a century ago, may excite the moralism of some but they have little persuasive appeal to our members today. Nor are latter-day efforts to portray Theodore Roosevelt as some sort of an international brigand likely to rally broad public support behind these treaties.

In fact, the Panama Canal treaty was renegotiated twice, in 1936 and in 1955, with duly constituted Panamanian governments, with significant modifications in its terms and increases in annual compensation to Panama.

In no way should the treaties now before you be painted or regarded as acts of atonement for American "guilt", for we are guilty of nothing. On the contrary, the construction and operation of the Panama Canal by the United States was and is an extraordinary service to humanity and to all the maritime nations of the world. The American people have every right and reason to continue to regard this as a proud chapter in our history, as has been taught to school children for generations. And I, for one, deeply deplore and resent the campaign by Latin American demagogues, and by our own guilt-mongers, to condemn it as a locus of American "Imperialism" or "racism", as was put forward at the ILO last June.

But the time has now come to bring to the fore another aspect of American pride: our pride in the fact that we are not and do not want to become an old-time colonial power, clutching a sort of cloudy, semi-sovereignty over this strip of territory, for its own sake, like some faded banner of past glory.

Our real interest in this canal is simple and concrete and derives from its only real purpose and function. The function of the Panama Canal is to offer transit to the vessels of all nations (which can fit into its locks) from the Atlantic Ocean to the Pacific Ocean. That is all. Mr. Chairman, I accept as valid the assurances by the President of the United States, supported by the Secretaries of Defense and State and by the Joint Chiefs of Staff, that the terms of the treaties afford adequate guarantees that this function will continue to be performed without let or hindrance and that there is no serious risk, as a consequence of these treaties, that American vessels, commercial or military, will ever be deprived of full access to this vital passageway between the oceans. I have no reason, in the face of those solemn and expert assurances, to interpose any less-informed judgment to the contrary.

Beyond that, I believe that the continued assertion of sovereignty, for no definable further reason, over a narrow strip of land, inside and dividing the territory of another country, would not, in the modern world, be an asset, but could on the other hand, be a liability.

Mr. Chairman, speaking for the AFL–CIO, we therefore support and strongly urge the approval of the Panama Canal treaties.

LAMA,
Washington, D.C., November 28, 1977.

Hon. JOHN SPARKMAN,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: LAMA is a trade association of predominantly Hispanic–American membership which is concerned with improving opportunities for minority owned business in both domestic and international markets. Our board of directors has asked me to write to you to elicit your support for the Panama Canal Treaty.

We at LAMA were extremely encouraged by the negotiation of this treaty. While adequately protecting U.S. security interests the treaty provides a measure of national pride and autonomy to panamanians which they have been denied for many years. This treaty should encourage an attitude of cooperation and trust between the U.S. and Latin America which is unparalleled in recent years. We expect to see the treaty bear fruit both in a long term increase in international trade and stabilization of Latin American political affairs. We urge you to cast your vote in favor of ratification.

Very truly yours,

JOSE ACEVES,
Executive Director.

INTERNATIONAL ECONOMIC POLICY ASSOCIATION,
Washington, D.C., February 23, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: As you know, this Association is a nonprofit research group concerned with international economic issues of importance to this country. For over two decades we have made our analyses available to the legislative and executive branches. We do not, as a matter of practice, take formal policy positions on major issues.

I have however, been persuaded to offer my views on the Panama Canal Treaties because many of our Board Members are concerned that the public controversy and apprehensions in various quarters might lead to a failure to ratify them in the Senate. These business leaders and their staff experts on Latin America generally feel that such a failure could have serious repercussions. Recognizing that there are controversial aspects, I believe that the long run interests of the United States in the open access to and security of the Panaman Canal would be best served through the treaty process. I would therefore favor ratification with only those amendments (such as that by Senator Baker to provide security safeguards) which can be mutually agreed by the Panamanian and U.S. Governments.

Rejection, on the other hand, could frustrate these important U.S. interests; for the status quo will not be viable indefinitely and the security of the Canal, especially against irregular military operations, requires the cooperation of the government and people of Panama, a cooperation which could be jeopardized by a failure to ratify the treaties at this point.

Finally, there is the broader question of U.S. relations with the rest of the Hemisphere. Given the Canal's symbolic role in the region and the modern world's growing interdependence, final rejection of treaties which have been negotiated for years under several U.S. administrations could harm America's international credibility and the fabric of our political and economic relations throughout Latin America. I world therefore respectfully urge that the Senate ratify the treaties.

Sincerely,

TIMOTHY W. STANLEY,
President.

OVERSEAS DEVELOPMENT COUNCIL,
September 21, 1977.

Hon. JOHN SPARKMAN,
U.S. Senate, Washingon, D.C.

DEAR SENATOR SPARKMAN: In 1976 the Overseas Development Council undertook an analysis of the situation with respect to the Panama Canal and of the pros and cons of the various issues under negotiation. The results of the analysis were published in the enclosed ODC Communique. A principal conclusion was that the 1903 Treaty is an anachronism that needs to be replaced. The original treaty not only can no longer accomplish the purpose it was intended to serve but, on the contrary, threatens to jeopardize both the continual usefulness of the Canal and the intrinsic interest of the United States in its evolving relationship with the developing countries at a time when the continued well-being of the United States is increasingly dependent on their cooperation.

Concluding that the existing treaty is no longer adequate, of course, is not to say that any new treaty would be preferable.

With the signing on September 7 of the two new Panama Canal treaties, the public now has the details of the outcome of the negotiations. The results of the multi-year negotiations conducted under four Presidents are noted in the enclosed update of the earlier communique. Considering together the earlier analysis of the issues under negotiation and the recent outcome, the current ODC analysis indiates that the new treaties are far more to the interest of the United States than continuation of the existing treaty.

I hope you will find this enclosed summary analysis useful both to yourself and in communications you may have with your constituents.

Sincerely yours,

JAMES P. GRANT,
President.

SER-JOBS FOR PROGRESS, INC.,
Los Angeles, Calif., December 1, 1977.

Hon. JOHN SPARKMAN,
U.S. Senate, Washington, D.C.

ESTIMADO SENATOR SPARKMAN: National SER-Jobs for Progress, Inc., the largest employment and training organization serving Hispanic Americans, totally endorses the new Panaman Canal Treaties.

Once again, we urge you to affirm and ratify our President's leadership, and the United States' respect for all Latin Americans.

Sinceramente,

RICARDO ZAZUETA,
National Director.

Mr. SARBANES. Mr. President, I emphasize again to the Members of the Senate that we now have set a definite date of the 26th of April by which a final vote will be taken on the Panama Canal Treaty, the permanent Neutrality Treaty having already been approved by a vote of 68 to 32. I understand it is possible that the vote may come earlier than the 26th of April, but in any event that is the definitive outside date; and as we resume this debate, I wish to thank the Senator from Idaho for again placing what is at stake here in the proper perspective.

What is at stake is whether the United States, in the latter part of the 20th century, is going to adjust in such a way to the realities of the world that we can protect our strategic and economic interests and at the same time foster and develop the harmonious relations which are so important to us in this hemisphere of the world, and indeed throughout the world; and I join with the Senator from Idaho in stressing the importance of that consideration in our deliberations on this measure.

I thank the Senator for yielding.

Mr. CHURCH. I thank the Senator from Maryland very much.

Mr. ALLEN. Mr. President, will the Senator from Idaho yield?

Mr. CHURCH. I wonder if the Senator from Alabama will accommodate me——

Mr. ALLEN. I certainly will.

Mr. CHURCH. So that I may first complete my argument, and then I will be happy to yield. I have been waiting quite patiently through the afternoon.

Mr. ALLEN. Yes. I remind the Senator from Idaho that he said earlier he was not going to make a lengthy argument.

Mr. CHURCH. I am not going to make a lengthy argument. I hope the quality will not be determined by its length, but as soon as I have completed my remarks, I will be happy to yield.

Mr. ALLEN. I thank the distinguished Senator for his courtesy.

[Mr. Harry F. Byrd, Jr. assumed the chair.]

Mr. CHURCH. Mr. President, tomorrow we will show that it is well established under American law and constitutional practice that property belonging to the United States may be transferred by the treaty power of article II of the Constitution. This conclusion is supported by the language of the Constitution itself, by the interpretations placed upon it by the Founding Fathers, by judicial precedents, and by the long-time treaty practice of the United States. Modern authorities on the Constitution support this view overwhelmingly.

However, I previously mentioned two points made by the Senator from Utah (Mr. Hatch), that are really tangential to the principal thrust of the Scholars who support the pending amendment, but which I think need to be rebutted at this time.

Page 6 of Senator Hatch's remarks, and I am quoting from the text, reads as follows:

> Already we observe that a succession of Presidents have skirted the Constitution in order to get the treaties before the Senate. The Kissinger-Tack agreement of 1974, setting forth the general principles of agreement, was never submitted to the Senate for discussion and debate. Congress has never indicated that it favors any new agreements or treaties with Panama or asked the President to make a new treaty. Presidents have simply labored at their self-appointed task in total disregard of the wishes of Congress and the American people. At no stage of the proceedings, in fact, has the Senate participated in these negotiations, or been given an opportunity to give its advice and consent until after the treaty was signed. To be sure, the Executive has bypassed the Senate, just as it is now seeking to bypass the House.

Mr. President, in all fairness I suggest that this paragraph totally misconceives the role of the Senate with respect to treaties. Under the Constitution, a treaty cannot become effective unless it is consented to by the Senate.

It is true that the Senate also has the power to advise the President, but that power is normally exercised informally. In the case of the Panamanian treaties, the Senate Foreign Relations Committee was advised of the progress made in those negotiations, and we had an opportunity to comment and to give advice to the State Department on them.

So it is simply not accurate to say we had no word of these treaties or the negotiations until they were formally laid before the Senate.

Second, the notion that the Senate has been denied its prerogative because it did not participate in the negotiations makes one think that the Senator may not be familiar with the way our

Government works. The Senate has no authority to negotiate for the United States. The Constitution does not confer upon the Senate the right to participate in negotiations with foreign powers.

It is the sole and exclusive prerogative of the President to conduct negotiations with foreign nations. We simply cannot blot out 200 years of our history for purposes of scoring a debating point in connection with these treaties.

The process which has been followed in this case conforms with the practices of the past.

Certainly, the Senate did not participate in negotiations. It never does. The Constitution does not confer that authority upon the Senate. If it is necessary to quote from decisions of the Supreme Court on this question, I am happy to do so.

In the 1936 case of the *United States* v. *Curtis-Wright Corporation,* 29 U.S. 304, at page 319, the Court said:

"[H]e [the President] alone negotiates," the Supreme court has said. "Into the field of negotiation, the Senate cannot intrude; and Congress itself is powerless to invade it."

I am really surprised that it is necessary to recite Supreme Court decisions to underscore the fact that neither the Senate nor the House of Representatives, nor the two Houses combined, can negotiate for the United States with any foreign government. Under the separation of powers, which is the genius of our system, that particular authority is reserved to the President of the United States, and wisely so if this debate on these treaties is any example of what chaos there would be if the Constitution provided otherwise.

There is one other point made by the Senator from Utah which needs to be rebutted. On page 2 of his address, he charges:

In effect, then, the President is now claiming for himself a new power.

The Senator argues that since the President negotiated this treaty, he is not submitting the question of the conveyance of American-owned property to the House of Representatives as well as the Senate. Therefore he is arrogating to his office a new power not previously asserted.

As we will show tomorrow in a series of precedents dealing with previous treaties, such a charge is unsustainable. The President of the United States is not arrogating to himself a new power. He is criticized so often for so much let us at least spare him this criticism.

If he had undertaken to reach an agreement with Panama whereby American property would be transferred to the Panamanian Government, and had done so under an executive agreement, negotiated by the executive branch of the Government without reference to the Congress, then such a charge could be fairly laid upon him.

As Senators know, there are many hundreds of agreements—thousands, I should think—between the United States and foreign governments which do not take on the formality of a treaty. These executive agreements are never submitted to the Congress for its approval. This practice has grown up over the past couple of centuries for many reasons. It began with merely routine agreements of such a commonplace nature that it was thought unnecessary to consume the time of the Congress with their ratification. The Con-

gress aquiesced in that practice. For many years it occasioned no problem, because the transactions were of a nature that would have only clogged the calendars here on the Hill for no useful purpose.

However, I have been a critic of executive agreements because in later years they came to embrace matters of such consequence, including military bases abroad, that I believed they should have taken on the formality of a treaty and should have been submitted to the Senate for its approval. For many years prior to the time the distinguished Senator from Utah (Mr. Hatch) was elected to this body, I have sought to confine these executive agreements within their appropriate sphere, and often have insisted that matters of importance be brought to the Senate in treaty form so that the Constitution would not be circumvented by Presidents who wished to overreach their authority.

So I am well acquainted with this subject.

All I can say to the Senator from Utah is that this criticism is misapplied in this case. President Carter did not seek to transfer any property belonging to the United States to the Government of Panama through an executive agreement.

He chose properly to negotiate two treaties, and he brought them to the Senate for its consent. Far from attempting to arrogate to himself some new power, he was extremely conscious of his responsibility under the Constitution to present these new agreements in treaty form for the consent of the Senate. I think that much is due him, and I respect him for the scrupulous way he has respected the prerogatives of this body.

I conclude, Mr. President, by saying that we will not show a similar respect for the prerogatives of this body if we adopt the pending amendment, because we can only derogate the authority of the Senate to pass upon the treaties submitted to it by the President if we insist that this authority must now be shared with the House of Representatives. Tomorrow, we shall present to the Senate those many precedents that establish beyond any reasonable doubt that the property transfers contemplated in the treaty before us can be effectuated by action not of the President alone, but of the President in concert with the Senate, as the Constitution provides.

Now, Mr. President, I have concluded my statement and I am happy to yield to the Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from Idaho (Mr. Church) for yielding to me at this time.

I was very much interested and pleased, as a matter of fact, to hear him make the categorical statement here, on the floor of the Senate, that the United States does own the property in the Panama Canal Zone, and for him to state that no one of the proponents of the treaties, so far as he knows, takes a different view; that that is something that is conceded and that the opponents of the treaties have used up a lot of unnecessary time in proving that fact.

The fact is that the statement has been made here, on the floor, by proponents of the treaty that we do not own the property in the Panama Canal Zone. On one occasion, the distinguished Senator from Massachusetts (Mr. Kennedy) made that statement, that we

do not own the property, we rented it. I took him to task for having made that statement and pointed out that we bought the property, paid something over $4 million for it. The statement has been made by other Senators on the floor of the Senate.

I wonder if the distinguished Senator from Idaho listened to the fireside chat of President Carter, in which he was seeking to build and mold public opinion in favor of the treaties. I have before me a copy of his speech, in which he says this:

> Another question is, why should we give away the Panama Canal Zone? As many people say, we bought it, we paid for it, it is ours.

This is the President speaking.

> I must repeat a very important point. We do not own the Panama Canal Zone.

Said the President of the United States.

So, it is an interesting fact now that the distinguished Senator from Idaho makes the unequivocal statement that the United States does own the property in the Panama Canal Zone. Personally, I accept the view of the distinguished Senator from Idaho, and I commend him for his view. I am delighted to find an area where I do agree with the distinguished Senator in this regard.

Was the President of the United States incorrect when he made that statement? That is my question of the distinguished Senator from Idaho (Mr. Church).

Mr. CHURCH. I was waiting for the Senator's question; had, in fact, anticipated it.

Mr. ALLEN. Yes, and now you have it.

Mr. CHURCH. First, I want to say I take considerable consolation in the fact that the Senator from Alabama and I have found an area of agreement.

Mr. ALLEN. We agree on many things. I was merely teasing the distinguished Senator.

Mr. CHURCH. Of course we do.

I think the confusion on this matter arises from the fact that ownership does not equal sovereignty. Oftentimes in this debate, "ownership" has been used as a substitute word for "sovereignty."

Mr. ALLEN. Yes.

Mr. CHURCH. And, I might say, vice versa.

Mr. ALLEN. So the President was confused, then, is that it?

Mr. CHURCH. No, I think that the President's meaning was that the United States, as I previously mentioned, never formally claimed sovereignty over the Panama Canal Zone.

Mr. ALLEN. I am not talking about sovereignty. I did not use that word. I just asked about the ownership.

Mr. CHURCH. The Senator asked me whether the President was incorrect and I am trying to interpret the President's meaning.

As I said, we do not always use words precisely. This may not be a fault of the Senator from Alabama, but it is a common fault. Ownership and sovereignty have often been confused in the course of this debate.

I could have responded to the arguments made this afternooon by giving the Senate my own analysis of the state of the title held by the United States to differing parts of the Canal Zone. I think it would be useful for me to do so at this time, since so much has been made of the legal pedigree upon which our titles rest.

The United States owns property in the Canal Zone. The facilities used in connection with the operation and defense of the canal, as well as facilities used by other agencies of the United States in the zone, are property belonging to the United States. However, the exact status of the title to much of the land in the zone is cloudy. We believe we have good title to the land originally held by the Panama Railroad, comprising roughly one-third of the zone. About another one-third of the zone is land for which we paid damages to private owners in accordance with a procedure established in the 1903 treaty. We consider the remaining lands to be public lands of Panama over which we have use rights in perpetuity under the treaty.

It would, however, be practically impossible to determine from the available records the precise state of the title to any particular parcel of land in the zone.

In addition, Panama has disputed the assertion that we have title to any of these lands.

So I think that is the exact position of the U.S. Government with respect to the question of legal title to lands within the zone.

Mr. ALLEN. The Senator is saying now that we own some and we have a right in perpetuity to others and that the title is cloudy, which is at great variance with what he said just a moment ago, it would seem to the Senator from Alabama.

Mr. SARBANES. Will the Senator yield?

Mr. CHURCH. I will yield in just a monent.

I think that for purposes of the debate, the point I sought to stress earlier was that the question of title and the way that we derived it is not central to the issue.

Mr. ALLEN. I understand what the Senator is saying. I agree.

Mr. CHURCH. The issue before us, even if we assume that all of the land in the zone was indisputably owned by the United States——

Mr. ALLEN. That is what the Senator said a monent ago, that we did——

Mr. CHURCH. Even then, it seems to me to be irrelevant, because what we are seeking to do in this treaty is to recognize that the Panamanians have legitimate grievances. We are seeking to work out a new arrangement with them that will serve the interests of the United States between now and the end of the century, and then, in perpetuity, in retaining the use of this canal. This includes the direct management of the canal between now and the end of the century, and its assured peaceful and neutral use in the years beyond.

Mr. ALLEN. I thank the Senator.

Mr. CHURCH. I think that is the issue.

Mr. ALLEN. Yes.

Mr. CHURCH. Not whether we have claims to title to particular parcels of land and what the derivation of those claims might be.

Mr. ALLEN. The Senator now is shedding a lot of doubt on the ownership, having had the President's speech quoted to him, when just a moment ago he was of the very firm belief that we had title to all of the property in the Canal Zone.

Mr. President, I would not care to question the distinguished Senator any further and, if he is ready to yield the floor, I would like recognition.

Mr. CHURCH. Mr. President, I will yield the floor in just a moment.

Let me say that I was aware of the President's speech before the distinguished Senator from Alabama questioned me. I answered him in a way I thought to be accurate, namely, that the President referred in his speech to the fact the United States never formally claimed sovereignty over the Canal Zone.

Of course, as the Senator knows, even though we may have exercised all the rights of a colonial power, we never have formally claimed the sovereignty over the zone.

I think that is what the President referred to because, if we take that sentence within the context of the rest of his remarks, we cannot interpret it any other way.

Mr. SARBANES. Will the Senator yield?

Mr. CHURCH. Yes, I am happy to.

Mr. SARBANES. I think the last point the Senator from Idaho made is absolutely on point. In fairness to the President we ought to quote exactly what he said in the fireside chat on this point. The President was addressing himself to this assertion made by some opponents of the canal treaties that we bought it, we paid for it, it is ours. In other words, he was addressing this assertion that a lot of people are making which mixes up the whole question of title in terms of ownership and sovereignty and jurisdiction, and all of the bundle of rights that go together to define the control that we exercise over property.

I am going to quote the President from beginning to end on this point and then I want to comment. The President said the following in his fireside address on February 1 of this year:

> Another question is: Why should we give away the Panama Canal Zone? As many people say. "We bought it; we paid for it; it is ours."
>
> I must repeat a very important point. We do not own the Panama Canal Zone. We have never had sovereignty over it. We have only had the right to use it.
>
> The Canal Zone cannot be compared with United States territory. We bought Alaska from the Russians and no one has ever doubted that we own it. We bought the Louisiana Purchase Territories from France, and that is an integral part of the United States.
>
> From the beginning we have made an annual payment to Panama to use their land. You do not pay rent on your own land.

Mr. ALLEN. What is that? Would the Senator read that sentence over? I did not quite get it.

Mr. SARBANES. I will be happy to read the whole of it, if the Senator wants.

Mr. ALLEN. No, just the sentence.

Mr. SARBANES. I was trying to read it word for word. Does the Senator suggest I did not do so?

Mr. ALLEN. No. I just wondered if he would repeat that sentence.

Mr. SARBANES. (reading from the address):

> From the beginning we have made an annual payment to Panama to use their land. You do not pay rent on your own land.
>
> The Panama Canal has always been Panamanian territory. The U.S. Supreme Court and previous American Presidents have repeatedly acknowledged the sovereignty of Panama over the Canal Zone.

We have never needed to own the Panama Canal Zone, any more than we need to own a ten-mile-wide strip of land all the way through Canada to Alaska when we build an international gas pipeline.

The new treaties give us what we do need—not ownership of the Canal but the right to use it and to protect it. As the Chairman of the Joint Chiefs of Staff has said, "The strategic value of the Canal lies in its use."

Now, that is the end of the quotation from the President's address.

I think it is clear that the President is addressing the assertion that the Canal Zone is in some way on all fours with the purchase of Alaska or the Louisiana Purchase.

Now, that is clearly not the case. We did not assume in the Canal Zone all of the bundle of property rights that we assumed with the Louisiana Purchase or with the purchase of Alaska.

There is the important matter or reserved sovereignty to the Republic of Panama. There is the matter of continuing annual payments by the United States to the Republic of Panama, for the right to continue to use this land that divides the Republic of Panama and through which the canal passes, for the right to make use of the Canal Zone.

So I think what the President was addressing is that entire problem and in that light, I think the statement he has made is accurate.

The distinguished Senator from Idaho has discussed the legal question of ownership and pointed out that, while it is true that we made certain payments to private people who owned land in what became the Canal Zone, such land involved only a minority portion of the Canal Zone area. This land was in private hands, to whom we made private payments, and the 1903 treaty has an extensive provision for how we make those damage payments.

Much of the other land was public lands of the Republic of Panama and we have been making use of them ever since for the purpose of operating the canal.

We have, of course, been paying to Panama every year under the 1903 treaty a yearly payment which has been adjusted a couple of times over the course of the history of our relationship with the Republic of Panama.

On the very narrow question of ownership it must be recognized that the payments to private parties did not begin even to approximate the total land area over which the United States assumed control in the Canal Zone for the purpose of operating the canal.

I think that the President's comments, which I fully quoted in order to get them in the record so that one can have the benefit of a full perspective, ran to this broader question, whereby some people have asserted that the United States holds a position with respect to our rights in the Canal Zone which is equivalent to the rights we acquired in the Louisiana Purchase or when we bought Alaska from the Russians. I believe that is clearly not the case. We do not have that kind of property rights in the Canal Zone. We never have asserted it. The other areas were brought into the United States as an integral part of the country.

If foreigners have children in the area that formerly constituted the Louisiana Purchase or in Alaska, those children are American citizens. That is not the case in the Canal Zone. If Panamanians or

other foreigners have children in the Canal Zone, those children do not become American citizens by virtue of their birth in the zone.

Mr. ALLEN. The Senator is talking sovereignty now, rather than ownership.

Mr. CHURCH. The President was talking sovereignty, too. I agree fully with what the Senator from Maryland said. If the President's remarks are read within the context of the speech, it is clear he was making the point that whatever rights the United States has in the Canal Zone, they are not the equivalent of the rights we acquired in the Louisiana Purchase or the purchase of Alaska. They are not to be confused with rights we exercise over the Virgin Islands or Guam, which are territories of the States.

He was attempting to say, in his own words—and if one reads the paragraphs, it is clear what his meaning was—that the Panama Canal Zone is not an American territory. He is supported in every particular in that assertion.

Even the 1903 treaty, which we drafted ourselves and imposed upon Panama, does not make that claim for the United States. The practices to which the Senator from Maryland referred simply confirm the fact that the Panama Canal Zone is not American territory and never has been. Ownership of lands within the zone is quite a different matter.

I am the owner of a suburban house in the State of Maryland. Actually, I have finished paying the mortgage, so I do not even share that ownership any more with the savings and loan association. I tell my wife every night, "This year we own this property, after 20 years of mortgage payments." She thinks that means we should sell. I think it means we should keep the property. We have this continuing argument.

Mr. ALLEN. I agree with the Senator.

Mr. CHURCH. But I do not think either of us is operating under any illusion that our ownership of that property renders us immune from the sovereign authority of the State of Maryland or the sovereign authority of the United States.

If the State of Maryland decides to build a highway 16 lanes wide right through my residential district, my ownership of that property is going to be eradicated by the sovereign assertion of the authority of the State of Maryland, under its right of eminent domain.

Mr. SARBANES. As a Senator from Maryland, I assure the Senator that should the State seek to do that, I am prepared to lend my good offices to the Senator to aid in protecting his homestead.

Mr. CHURCH. I may need those services. But I am certain that if the Highway Department of the State of Maryland makes that decision, nothing can save my property from the bulldozer.

Furthermore, although I am the owner of that property, I do not suffer under the illusion that I do not have to pay real property taxes both to the State of Maryland and to Montgomery County; and if I failed to do that, I would find that my ownership soon would be subject to considerable peril, since it would not take long for the State to step in and seize the title.

So everybody knows the difference between the ownership of property and the exercise of sovereign power. Sovereign power is exercised by governments. Never, not from 1903 to the present day,

has the United States every formally claimed sovereignty over the Panama Canal Zone. Never have we said it was a territory of the United States, even though the treaty of 1903 gave us the prerogatives of managing the land as though we were sovereign.

This, of course, has been the nub of all the difficulty. It has caused the resentment that one would expect as times changed and as small countries everywhere in the world began to assert jurisdiction over their own territories.

So the time of reckoning has come to us, Mr. President. It comes to us in the form of these treaties. We have known since 1964 that the time of reckoning would come, that the United States could not preserve a colony in a world where colonies have disappeared, that in the end we would have to acknowledge to Panama what we claimed for ourselves from the days of Lexington and Concord—the right to our own independence and sovereign control over our own lands. We cannot live by the double standard indefinitely.

This treaty will set right what for so long has been wrong in the relationship between the most powerful nation of the world and one of the smallest and weakest nations. It will lay the basis for a cooperative management and operation of the canal which will greatly serve the interests of the United States and contribute immensely to the improvement of our relations not only with Panama but also with all the other countries of the Western Hemisphere.

Mr. SARBANES. Mr. President, will the Senator Yield?

Mr. CHURCH. I yield to the Senator from Maryland.

Mr. SARBANES. I want to come back to the point of ownership, because I think it is important.

Under the 1903 treaty, the United States paid a little more than $4 million—which I think was the figure the Senator from Alabama alluded to at an earlier point—to owners of private land in the area that became the Canal Zone. By paying that money to private owners, we did not then own that land in the same way that a nation owns lands when it buys it from another nation. If the Republic of France or if Great Britain were to come to the United States and pay private owners of land and buy the land, they would acquire the private rights of those owners, but they would not acquire rights over that land equivalent to what the United States holds as the country under whose jurisdiction and whose sovereignty that land is to be found.

So that fact that we paid more than $4 million to private holders for their interests does not give us a claim to the land that those private people had, with respect to the Republic of Panama, which establishes us as the nation that holds that land instead of the Republic of Panama.

With respect to the remainder of that land, much of it is public land of the Republic of Panama, for which we make payment and have made payment year in and year out. We never have contended that we hold the Canal Zone in a way equivalent to that in which we hold the Louisiana Purchase or Alaska. That is not the bundle of rights we acquired in the Canal Zone; and the President, in his speech, was speaking of the view that we own it in the same way. He talked about both ownership and sovereignty and went on to develop his argument from that point.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. SARBANES. No. The Senator, earlier today—and I must say to the Senator that it was much to my disappointment—at the outset of his extended text, which he read for some 2½ hours, made it very clear that he wanted no interruptions and no questions.

Mr. HATCH. If the Senator does it that way I am happy not to interrupt, but the Senator wishes to argue.

Mr. SARBANES. I simply wish to say to the Senator that then puts us in the position of having one assertion after another made with no opportunity at the time to comment.

Mr. ALLEN. Mr. President, I call for the regular order.

The PRESIDING OFFICER. Regular order is called for.

Mr. CHURCH. I assume by that that the Senator from Alabama——

The PRESIDING OFFICER. The Senator yielded for a question.

Mr. ALLEN. The Senator from Idaho has the floor.

Mr. CHURCH. The Senator from Alabama wishes to make the point that I have the floor.

Mr. ALLEN. And yielded only for a question, not a harangue.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. CHURCH. I yield.

Mr. SARBANES. Mr. President, will the Senator not agree that as to the President's statement, upon a full reading with respect to this issue, the President was clearly addressing questions of ownership and sovereignty taken together; he was really addressing the assertion that people have made which seeks to see in the Panama Canal Zone the equivalent of the Louisiana Purchase or the Alaska Purchase?

Mr. CHURCH. I agree fully, and I do not see how anyone could read the President's remarks and interpret them differently.

Mr. SARBANES. If the Senator will yield further, the President has been much put upon in this debate today. The Senator earlier pointed out in discussing the amendment that is pending that the President is in no way seeking to extend executive authority. It has been implied that that is the case.

But has not the President come to the Senate to seek the approval of the Senate; in fact he comes with a treaty requiring the extraordinary majority of a two-thirds vote in the Senate of the United States?

Mr. CHURCH. Yes. Earlier I described the trend toward the use of executive agreements in place of treaties where the subject matter was not purely routine in character but related to matters of great importance. I have been one of the most vocal critics in the Senate of this practice. I regard it as an abuse of the executive agreement and, at times, a means of circumventing the Senate, and I have said so on this floor on many occasions in the past.

But in this case the President has done none of that. He neither attempted to enter into an executive agreement, which he might or might not have submitted to Congress, nor did he use the device of an executive agreement in combination with a request for the consent of both Houses. That requires only a majority vote and has frequently been used to avoid the hurdle of the two-thirds vote required for the Senate to ratify a treaty. He did not take any of

those courses of action which previous Presidents have taken to avoid the difficulty of a two-thirds vote in the Senate.

He did it the hard way. He did it the honest way. He did it the way that totally complies not only with the express provisions of the Constitution but with a proper observance of its spirit. And I just do not think there is any basis on which he can be properly criticized on that score.

Mr. SARBANES. Mr. President, will the Senator yield further?

Mr. CHURCH. I yield.

Mr. SARBANES. We have received a letter signed by 15 leading constitutional authorities, distinguished deans of law schools and professors of constitutional law, a letter addressed to the Congress of the United States, which says the following:

We have been informed that the constitutional validity of the new Panama Canal Treaty has been questioned by several lawyers who have claimed that the United States may transfer its property only by legislation enacted by Congress and may not transfer its property by treaty.

We respectfully submit that such a claim is erroneous.

The Constitution unequivocally permits transfer by treaty of property belonging to the United States. The treaty power, and the power of Congress under Article IV, Section 3, Clause 2 of the Constitution, are concurrent powers, and either may be used to transfer property.

The treaty power extends to all proper subjects of negotiation with foreign nations; a transfer of United States property is such a subject, and accordingly may be effected by treaty.

Mr. President, I ask unanimous consent that this letter and the signatories to it, who encompass the deans and the professors of constitutional law of some of the Nation's outstanding law schools, be printed in the Record so the Senate may have the full benefit of the statement.

There being no objection, the letter was ordered to be printed in the record, as follows:

TO THE CONGRESS OF THE UNITED STATES:

We have been informed that the constitutional validity of the new Panama Canal Treaty has been questioned by several lawyers who have claimed that the United States may transfer its property only by legislation enacted by Congress and may not transfer its property by treaty.

We respectfully submit that such a claim is erroneous.

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The treaty power extends to all proper subjects of negotiation with foreign nations; a transfer of United States property is such a subject, and accordingly may be effected by treaty.

Respectfully,

The foregoing letter is signed by the following:

Carl A. Auerbach, Dean, University of Minnesota Law School.
Paul Brest, Visiting Professor of Law, Yale University Law School.
Paul A. Freund, Professor of Law, Harvard Law School.
Walter Gellhorn, Professor of Law, Columbia University Law School.
Louis Henkin, Professor of Law, Columbia University Law School.
Gerald Gunther, Professor of Law, Stanford University Law School.
Burke Marshall, Professor of Law, Yale University Law School.
Myres S. McDougal, Professor of Law (emeritus), Yale University Law School.
Paul Mishkin, Professor of Law, University of California (Berkeley) Law School.
Louis H. Pollack, Dean, University of Pennsylvania Law School.
Eugene V. Rostow, Professor of Law, Yale University Law School.
Joseph M. Sweeney, Dean, Tulane University Law School.
Lawrence H. Tribe, Professor of Law, Harvard University Law School.

William Van Alstyne, Professor of Law, Duke University Law School.
Harry H. Wellington, Dean, Yale University Law School.
(Institutional affiliation shown for purpose of identification only.)

Mr. CHURCH. Mr. President, to conclude my remarks, I quote from article II, section 2, clause 2 of the Constitution which reads:

The President shall have power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur.

From the outset this provision has been construed as conferring upon the Senate the exclusive authority to approve treaties.

The Committee on Foreign Relations outlined the contours of the treaty power thusly in a 1902 report:

The power of the President and the Senate is derived from the constitution. There is under our system no other source of treaty-making power. The Congress is without power to grant to the President or to the Senate any authority in respect of treaties, nor does the Congress possess any power to fetter or limit in any way the President or the Senate in the exercise of its constitutional function. It cannot enlarge or in anywise limit or attach conditions to the exercise of the treaty-making power.

Whether the treaty is one which is self-executing or one which requires legislation by the Congress to give it effect, it must first, in any event, be negotiated by the President and ratified by the Senate. Whether he will negotiate a treaty and when and what its terms shall be are matters committed by the Constitution entirely to the discretion of the President; and whether the Senate will advise and consent to it, with or without amendment, is a matter committed entirely to the discretion of the Senate.

It is that constitutional system that we seek to preserve. It has served this country well for 200 years, and I hope we do not undermine it by adopting the amendment proposed by the Senator from Utah.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama (Mr. Allen).

Mr. ALLEN. I thank the Chair.

A moment ago I sought recognition or I sought to get the distinguished Senator from Idaho to yield to me, and I was going to make a comment in a somewhat jocular vein, I suppose, when he said that each night he told his lovely wife Bethine that they had their house paid for there in Maryland. While I am sure Bethine would have been glad to have heard that the first time, I rather imagine on the second, third, fourth, and fifth times that the distinguished Senator from Idaho told her, that she would have become a little bit bored by that information. I would merely wish to call the distinguished Senator's attention to his statement when I sought to get him to yield a moment ago.

But I was somewhat surprised after the distinguished Senator from Idaho stated he was ready to yield the floor, and he yielded for a question, when I propounded that question about what the President said with respect to the United States not owning the property in the Panama Canal Zone, that the distinguished Senator from Idaho and the distinguished Senator from Maryland (Mr. Sarbanes) each climbed on their respective horses and galloped off in all four directions.

They were somewhat taken aback by having stated here on the floor, the distinguished Senator from Idaho having stated on the floor, that the matter of ownership of the property in the Canal Zone was conceded, that we do own the property in the Canal Zone, and that no person, the distinguished Senator from Idaho said,

proposing the agreement on these treaties takes any different view, that that is the view of everybody on the side of the proponents of the treaties, when I called attention to the statement of the distinguished Senator from Massachusetts (Mr. Kennedy) that we just rented the property, and I notice the President states that you do not pay rent on your own land. So then they started talking about sovereignty, the President was talking about sovereignty.

Well, I accept as correct that we do own the property in the Canal Zone. That would then only leave the question of whether we are going to follow the provisions of article IV, section 3, clause 2 of the Constitution that gives Congress the power to dispose of property of the United States. So that is the only question remaining. The distinguished Senator from Idaho (Mr. Church) has stated and conceded that we do own the property.

Then when I called attention to the fact that the President was saying we did not own the property, they then said, "Well, we own some of it and have some of it in perpetuity, and we do not have any sovereignty over any of it," they say.

Well, who says anything about sovereignty? Only they do by making reference to something in the President's speech. The question of sovereignty does not have a thing in the world to do with it. It is a question of ownership of property. That is the question.

No one I know of feels it is necessary that you have sovereignty over land, sovereignty on the part of the United States, to trigger the application of article IV, section 3, clause 2. It is ownership by the United States of property.

Now, the distinguished Senator from Idaho said quite some time ago he was not going to make his speech tonight, and I am not going to make my speech tonight, I will fake my speech tomorrow, but I do wish to comment on another statement the distinguished Senator made, and I believe he has the matter of negotiation of a treaty and the Senate's right or lack of right to negotiate a treaty confused with the Senate's undoubted right to advise and consent with respect to a treaty.

No one that I know of contends that Senators should sit down at a negotiating table with Mr. Linowitz and Mr. Bunker and negotiate the treaty or negotiate the amendments, if any, that the Senate adds to a treaty.

I will say this: I believe any two Senators have here would have negotiated a better treaty for the United States than Ambassador Bunker and pseudo-Ambassador Linowitz, 6-months Ambassador Linowitz, came up with. I believe they would have protected the interests of the American taxpayer better than Ambassador Bunker and interim Ambassador Linowitz, I will say charitably.

But that is not the point. The Senate does not negotiate the treaty; the Executive does that. That is conceded. But then the treaty is submitted to the U.S. Senate for its advice and consent or its nonassent, if it wishes to do that. It is not bound to consent. Advise, yes, but the advice might be to turn it down; that might be the advice. The advice might be nonassent or the advice might be to modify the treaty and offer amendments.

I will say that the distinguished Senator from Idaho has been absolutely consistent, absolutely consistent on the matter of the necessity to rubberstamp these treaties.

He has not left any doubt whatsoever of his position: "Don't change it at all."

Shall we say, "Well, what about the leadership amendments?" Well, I would not brag about the leadership amendments, I do not believe. All they did was to put into the treaties the language of the memorandum of agreement that had been reached between the President and the dictator, and they were just full of faults and loopholes, and yet no amendments were allowed to the leadership amendments. Except for those amendments, the leadership stonewalled against any other amendments, and would not agree to a single amendment. The distinguished Senator from Kansas (Mr. Dole) said they would not even agree to put the word "American" in there. And they would not. They said, "Oh, that would cause the defeat of the treaties."

Who knows what it would cause? I have stated here on the floor that in my judgment—and I guess I have as much right to have a judgment as the leadership has—in my judgment, Torrijos would accept any amendment that does not cut down on the $100 million a year that would be paid to his regime under these treaties. He has a one-man government, and who would we be to say that he did not comply with the Panamanian constitutional processes? If he said he did, how could we question it? Moreover, as the distinguished Senator from New York (Mr. Javits) has pointed out, a treaty cannot be attacked collaterally.

But getting back to the matter of the Senate not having the right to negotiate, there is not any right to negotiate, but the Senate has a right that is just as important and that is the right of advice and consent, or advice and nonassent.

If you take the position of the distinguished Senator from Idaho, that if you offer amendments you are negotiating, and we cannot negotiate, that would seem to indicate that an amendment would be out of order, because that would be negotiating.

Well, the Senate has a very elaborate procedure regarding treaties. I assume that we would not have a rule unless it had some purpose. Read rule XXXVII, telling that the treaty goes to the Committee of the Whole, when it shall be proceeded with by articles, and the amendments reported by the committee shall be first acted upon.

The Foreign Relations Committee did not come up with a single amendment, not one. There was not a single committee amendment. These treaties, both of them are letter perfect as far as committee amendments are concerned. Yes, they recommended the leadership amendments, but aside from that they were letter perfect.

But the rules of the Senate do contemplate possible amendments:

> The amendments reported by the committee shall be first acted upon, after which other amendments may be proposed; and when through with, the proceedings had as in Committee of the Whole shall be reported to the Senate, when the question shall be, if the treaty be amended, "Will the Senate concur in the amendments made in Committee of the Whole?"

That is not negotiating; that is following the rules of the Senate with respect to amendments to perfect the treaty, to make it a better treaty, to protect the interests of the taxpayers, to protect

our right to defend the canal. Those are the types of amendments that have been before the Senate, and have been turned down.

And the amendments may be taken separately, or in gross, if no Senator shall object; after which new amendments may be proposed.

We short circuited this by unanimous-consent agreement, saying we should stay in Committee of the Whole after we came out to the floor. That was perfectly all right, and it did save time.

The decisions thus made shall be reduced to the form of a resolution of ratification, with or without amendments.

I merely call attention to these portions of rule XXXVII to show that the rules contemplate that amendments may be offered; and if amendments may be offered amendments may be accepted. That is still not negotiating; but the distinguished Senator from Idaho seems to think that if we pass an amendment here, we are doing something we should not do, and that is negotiating. I believe he has the two processes confused, giving our advice and consent, or our advice and nonassent, to the President with respect to a treaty. This would be embodied in shaping and molding that treaty. That is not negotiating. We would not have any contact whatsoever with the Panamanian Government. If the treaty goes back to the negotiating table, no Member of the Senate would be there. The Senate would not be negotiating. It would unilaterally be giving its advice to the President. He is the man we advise; we do not advise Torrijos, we advise the President. Then the process would be that the Panamanian Government, by their constitutional processes, be it an additional plebiscite or be it acceptance by the dictator, would accept or reject these amendments.

If the amendments were rejected by the dictator, or rejected by the Panamanian people in a plebiscite, the treaty would be dead, and we would have to start over at the negotiating table. But the Senate will not negotiate; all the Senate does is give its advice and consent or nonassent to the President.

So I hope that Senators will not feel that the statement that the Senate shall not negotiate means that it cannot agree to amendments and send the treaty thus amended on to Panama. But apparently if we have an amendment under consideration, the argument is made that we cannot agree to such amendment, because the Senate cannot negotiate.

No one says that the Senate can negotiate. But it can certainly carry out its duty and responsibility to advise the President of the United States, and that advice will not be just in the form of saying, "Why, Mr. President, we believe the negotiators could have done a better job." That is not the way it is done.

It is done by perfecting the treaty by amendments. So the point I am making, Mr. President, is that I do not feel that the managers of the treaty, the leadership, should stonewall against amendments. My only concern is the amendment that we have before us.

It is my contention, and the contention of those of us who are trying to perfect this treaty, that action by the House, along with the Senate, in a legislative enactment by statute is necessary before property of the United States can be disposed of.

Inasmuch as we do have the amendment before us, it might be well to read this amendment. It is short. It is only eight lines long,

but it is an important amendment. I believe, Mr. President, that it will receive the highest vote yet that those of us who sought to strengthen these treaties have obtained on any of our amendments.

At the end of article I it adds the following new section:

5. It is expressly provided that this Treaty shall, in no event, enter into force until the Congress of the United States, in accordance with the provisions of Article IV, section 3, clause 2 of the Constitution of the United States of America, shall have disposed of, or shall have authorized the disposition of, the property belonging to the United States of America, or of any of its agencies in the Panama Canal Zone, as it existed on September 7, 1977.

That date was chosen because it is the date the treaties were signed by the President and the dictator.

This is a matter where the argument cannot be made that this amendment would kill the treaties. It cannot be made, properly and successfully. Even the distinguished Senator from Idaho could not make that argument. I will tell you why, Mr. President. If this amendment is agreed to, this step provided here would have to take place before the treaty would be sent to Panama. It is nothing that Panama is required to do. It places no burden upon Panama. This burden is placed on the managers of the treaty from our side of the negotiating table. This does not require any action whatsoever by Panama, not one single step is required.

There is really nothing in which they could find fault in the United States being required to take some action, not Panama. This does not require Panama to take any action at all. So the argument cannot properly be made, it seems to the Senator from Alabama, that this would require action which would be offensive to the Panamanian national dignity and, for that reason, dangerous to agree to. This merely says that the Congress must first authorize the disposition of this property before the treaty can go into force and effect. The Panamanian Government would be called upon to take no action whatsoever.

Mr. President, the Members of the House of Representatives, some 235, according to my understanding, have introduced and sponsored House Concurrent Resolution No. 347, saying:

It is the sense of the Congress of the United States that any right to, title to, or interest in a property of United States Government agencies in the Panama Canal Zone, or any real property and improvements thereon located in the zone, should not be conveyed, relinquished, or otherwise disposed of, to any foreign government without specific authorization for such conveyance, relinquishment, or other disposition by an act of Congress.

The House of Representatives takes the position, at least 235 Members of the House because it has that many sponsors, well over half of the Members of the House, that there must be an act of Congress to authorize the disposition of the property of the United States in the Panama Canal Zone.

Why would the leadership and the managers of the treaty here on the floor slap the House of Representatives? "No, we are not going to send it over to you."

Let me read something from the 1955 treaty to show how treaties with Panama have been handled before. Read article V of the 1955 treaty with Panama. I might say, in the 1955 treaty with Panama they did not have that Colombian firing squad that Mr. Church talks about so much, that these Panamanian Government people faced a Colombian firing squad if they did not go ahead and agree

to the 1903 treaty. All the firing squad members had passed onto their reward. This is 52 years later. If there were not sovereign states dealing at arm's length before in 1903, we certainly had them in 1955.

Let us see what article V says about the 1955 treaty providing for the disposition of certain property in Panama. The very first line:

> The United States of America agrees that, subject to the enactment of legislation by Congress, there shall be conveyed * * * the right, title and interest—

This is what they did in 1955. Why not do the same this time? All right.

On down in the middle of the article—

> and the determination by the United States of America respecting the same, subject to the enactment of legislation by the Congress—

Going down farther:

> The United States of America also agrees that, subject to the enactment of legislation by the Congress, there shall be conveyed to the Republic of Panama free of cost all its right, title and interest to the land and improvements in the area known as Paitilla Point * * * Subject to legislation enacted by the Congress.

What about the course of dealings? That is what was done in 1955 with Panama. The agreements they made to convey property to Panama were made conditioned on the approval of those conveyances by the Congress. No one contends that the Congress is anything other than the House of Representatives and the U.S. Senate. So if we are going to follow precedent, we certainly see that a statute is enacted, agreed to, of course, by both Houses of Congress and signed by the President, authorizing this transfer.

Mr. President, I should hate to be party to action by the U.S. Senate, slapping the composite face of the House of Representatives, the Members of the House of Representatives, 235 House Members, saying, "Have an act of Congress before this property is disposed of and given to Panama."

There should be comity between the Houses. We all recognize that. We respect their rights. They respect ours. We are not even allowed, under the custom prevailing here, to even refer to action by the other body. We cannot properly make reference to anything that takes place over in the House. So why should we say to the House of Representatives that this is a Senate show entirely, the House has no place in it? That is not conducive to comity between the two Houses.

Nor is it conducive to the free flow of legislation between the Houses. Many Senators who are going to vote against this amendment—vote to table it, I daresay—may, from time to time, have bills in which they are interested, that they would like the House to give a favorable vote to. But will they, after we stonewall again on this issue and say to the House that, even though Congress has the power to dispose of property of the United States, we feel that there is an alternate power over here that the Senate has that the House does not have—that we can dispose of this property by treaty, no matter how much it is, no matter how much of a giveaway it is, no matter how much the rights of the people are involved?

Here is a piece of property that has a replacement value—not counting the 500 square miles of land, the canal itself has a replacement value of some $10 billion. Well, if the Senate and the President can, by treaty, give away property of the United States, where can that power end? Suppose, as a good neighbor policy, it is decided that we took advantage of Mexico and took that property away from them after the Mexican War and we entered into a treaty with Mexico giving back a large portion of Texas. Would that take House action? Where does it end? There is no end in sight. If we can give this property away by the executive and the Senate, then there is no end to that power.

Now, Mr. President, I am encouraged by the fact that, in 1975, a resolution was offered in the Senate, with 37 cosponsors, in which it was stated that the Panama Canal should not be given to Panama, and in which it was stated that article IV, section 3, clause 2 of the Constitution controlled in this area. Let me read the recital of the resolution. It says there would be no recession—receding, that is—of the property in the Panama Canal Zone to Panama unless authorized by an act of Congress. That is what the resolution provided.

Mr. President, I found on that resolution the names of eight Senators who voted for the Neutrality Treaty. I hope they will not vote for the Panama Canal Treaty. Eight Senators who, in 1975, said we should not give the canal away and, if we did, it required House action as well. Eight Senators who took that position then, then voted for the Neutrality Treaty.

Mr. President, I mention that matter to the distinguished majority leader on the floor. I called his attention to the fact that, at one time, he was against these treaties. He said:

> Well, yes, but I had not seen the treaties then and, as soon as I read them and studied them, I thought they were in the best interests of the country and I agreed to support them.

What about the constitutional question, Mr. President? Your view on the advisability of giving the canal away is one thing, but what about the expressed view on the constitutional question as contained in that resolution? How could that change? If the Constitution required it at the time that resolution was offered by 37 Senators, eight of them treaty supporters—Neutrality Treaty supporters, that is—if the Constitution required action by the House, action by the entire Congress, in 1975, the Constitution has not changed. Why would it not require it in the year 1978?

It would require it, Mr. President. If, to comply with the Constitution, it took an act of Congress in 1975, as stated by these 37 Senators, 8 of whom supported the Neutrality Treaty, I would hope that they would support the view that they had in 1975 and support this amendment.

How could a Senator say, "I thought in 1975 that it required House action," and how could they say then in 1978 that it does not require House action?

I do not believe those eight Senators are going to be that inconsistent, Mr. President, and, if they are not, there is a good chance then that this amendment will be approved.

Now what does the administration fear? It would just take a majority vote there in the House, two-thirds over here. Why would they not be willing to submit it?

Mr. President, efforts have been made to bring lawsuits on this question. The Supreme Court said they are premature, or they involve action between Houses. But once the treaty has been approved by the Senate, the Resolution of Ratification agreed to by the Senate, notes exchanged between the heads of the two governments and the treaty becomes law, I do not feel that the Supreme Court then could say that the Court has no jurisdiction of that matter, or that it is premature, or that it is action between the Houses, and we are going to have this treaty or the transfer of the property tied up, in all possibility, for months and years to come.

Mr. President, it would seem to me to be the better part of wisdom to start with a statute, start with legislation looking to the enactment of a statute to follow article IV, section 3, clause 2, of the Constitution, which gives to the Congress the power to dispose of the property of the United States.

I was somewhat amused when the statement was made here on the floor by the distinguished Senator from Idaho (Mr. Church) that, "Oh, yes, we own the property there, nobody disputes that." Then when I pointed out that the President had said that we do not own the Canal Zone, they started talking about sovereignty this, that and the other, and he was talking sovereignty, that he was talking about comparing it with the Louisiana Purchase. That went on for quite a few minutes, seeking to harmonize their statement with the President's statement.

I must say that I am unconvinced, I am willing to accept, however, the statement of the distinguished Senator from Idaho (Mr. Church) that the United States does own this property, which we have been contending all along. I do not know just why they come forward with that admission or concession, but it is interesting.

I am glad that point can be laid aside, though we began to wonder just what the position was after the President's statement on TV had been cranked into the equation. At the same time, we will accept the original statement.

As the distinguished Senator from Idaho (Mr. Church) and I have both said, we will make our speeches on tomorrow. But we have had the opportunity to discuss portions of this point. The hour being late, I yield the floor, Mr. President.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Proxmire). The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. Allen). Without objection, it is so ordered.

(The following request occurred during Mr. Allen's remarks and is printed here by unanimous consent.)

A PANAMANIAN SUMMARY OF THE AGREEMENT OF PRINCIPLES CONCLUDED BETWEEN PANAMA AND THE UNITED STATES

Mr. GOLDWATER. Mr. President, throughout the treaties debate there seems to have risen some confusion regarding the benefits that might accrue to Gen. Omar Torrijos under documents presented to us for ratification. I wish to point out that there apparently is no such confusion in the Panamanian Government on this issue. And to illustrate my comment, I recently had translated a Panamanian Government document entitled "This Is the Beginning of the End of the Colonial Enclave." The document is a Panamanian summary of the agreement of principles concluded between Panama and the United States.

Because I feel this is important to all Members of the Senate during the debate, I ask that the translation of the Panamanian document be printed in the Record.

The translation follows:

CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C.

Translation (Spanish)

(Sen. Barry Goldwater)
This is the Beginning
of the End of the Colonial Enclave

OMAR

A summary of the agreement of principles concluded
between Panama and the United States

* * * to jointly study the feasibility of the canal in question and, possibly, negotiate for the purpose of arriving at an agreement on its construction under the conditions stipulated by the Republic of Panama and the U.S. at that time.

ECONOMIC ASPECTS

Panama shall receive the following amounts:

I. From the Operation of the Panama Canal:

(A) An average of $80 yearly for the period of 23 years (a total of $1.840 billion). The larger amount of these revenues shall be subject to an inflationary increase correctional clause to the extent that the yearly amount retain its purchase power as based on the year 1977.

The following is a breakdown of the above amount:

(i) Thirty (30) cents for each ton of cargo passed through the Panama Canal. Yearly average: $55 million.

(ii) The yearly amount of $20 million of which $10 shall be guaranteed yearly. The yearly payment of the other $10 million shall depend on the Canal's net revenues. Any differences that may occur in one year shall be paid in the following years.

(iii) Approximately $5 million of yearly revenues for various businesses and functions with the national government such as harbor, railway, sales of fuel and ship repair.

(B) Buildings and infrastructures amounting to $82 million to be returned to Panama.

II. From the economic cooperation for development:

Various economic and financial programs to the amount of $345 million and broken down as follows:

(i) Credits from the U.S. Eximbank for Panamanian projects to the amount of $200 million for the next 5 years.

(ii) Credits for the construction of guaranteed housing by AID amount to $75 million for the next 5 years.

(iii) Credits guaranteed by OPIC for COFINA amounting to $20 million.

(iv) Other credits and equipment to the amount of $50 million for the next 10 years.

The total of economic benefits deriving from structures payments and concessionary credits: $2.262 billion in 23 years.

The remainder of the structures (the Canal and all other installations) would be reverted to Panama free of charge on December 31, 1999.

III. Coverage of costs:

Payment for public services carried out by the National Government in connection with the Panama Canal operations: $10 million per year.

(Translated by Paul Vidal.)

[From the Congressional Record—Senate, Apr. 4, 1978]

THE PANAMA CANAL TREATY

The PRESIDING OFFICER. Under the order previously entered, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No.2. The time between now and 6 p.m. today will be equally divided and controlled by the Senator from Utah (Mr. Hatch) and the Senator from Idaho (Mr. Church) or their designees.

The clerk will report the treaty.

The legislative clerk read as follows:

Calendar No. 2. Executive N, 95th Congress, 1st session, the Panama Canal Treaty.

The PRESIDING OFFICER. Who yields time? Time will be equally charged against both sides.

Mr. HATCH. Mr President, I yield time to the distinguished Senator from Alabama who desires to speak first.

The PRESIDING OFFICER. Mr. Hatch yields such time as he may consume to the Senator from Alabama.

(Mr. Nelson assumed the chair.)

Mr. ALLEN. I thank the Chair and I thank the distinguished Senator from Utah for yielding to me.

Mr. President, today we have before us one of the most important amendments that has been offered either to this treaty or to the so-called Neutrality Treaty. It is an amendment that would assure that the constitutional processes of the United States will be followed as the treaty called for, in providing for the disposition of the property of the United States in the Canal Zone.

On yesterday, Mr. President, the distinguished Senator from Idaho (Mr. Church), the chief manager of the treaty, conceded—and it was a concession that was made for the first time in this Chamber by the proponents of these treaties—that the United States does actually own the property in the Canal Zone.

A statement had been made on the floor by a proponent of the treaties that the United States just rents that property, and the President of the United States himself in a fireside chat stated that we do not own the property in the Canal Zone. So I am pleased that those who seek to get the Senate to approve this treaty are now conceding that the United States, does, in fact, own the property in the Canal Zone.

Possibly they were prompted in making that concession by the fact that the Subcommittee on Separation of Powers of the Judiciary Committee did bring into a hearing of that subcommittee the actual records of the deeds themselves showing the transfer of title to this property by the various individual owners of the property.

I might call attention to part 4 of the hearings of the Subcommittee on Separation of Powers that lists some 3,500 actual transactions with Panamanians in which this property was purchased, the name of the seller and the amount paid for the property.

I might state, too, that at this hearing the gentleman who had served as secretary of a joint United States-Panamanian commission, set up for the purpose of purchasing in the name of the United States the property in the Canal Zone, reported that the

rule of thumb they followed in setting a price on this property was to first establish the value of the property and then pay twice that amount for the property.

So, Mr. President, the property belonging to the United States would then bring us under the provisions of article IV, section 3, clause 2 of the Constitution which says that Congress shall have the power to dispose of the property of the United States. Nowhere else in the Constitution is any power given to any branch of the Government to transfer property of the United States.

That being true, that being an exclusive grant of power, it would include all other grants unless they were specific in nature, and there are no such grants in the Constitution.

Mr. President, I am pleased that a time has been set for the final disposition of the question of whether or not the Senate shall give its advice and consent to the treaty before us. I am glad, Mr. President, that the Members of the Senate were able to take a recess of some days in length during which time I am sure most of the Senators took occasion to go back to their home States and consult with their constituents, the Senate having acted on one of these treaties, to find out from their constituents whether their actions in voting for or against the approval of the first treaty met with the approval of their constituents.

I am hopeful that, having gone back and consulted with their constituents, they have come back and will vote what I feel is the will, certainly, in my home State of Alabama, and the will of the people of the United States.

I might say, too, Mr. President, I have noticed in the press that efforts have been made, efforts have been initiated, in some States to circulate recall petitions against Senators. I deplore that activity. I deplore it because I feel it is not provided for in the Constitution. No matter what the State law might be on the subject, the U.S. Constitution would control.

There is no method under the Constitution of recalling a Senator. Even if that were not true, Mr. President, and a recall method was provided, I would certainly look with disfavor on any effort to have the passions of the moment control in a matter of this sort.

Senators are elected for 6 years. Their constituents have the right every 6 years to pass upon their records, and I see no reason for any effort of this sort. I think it is unfair to Senators, because I think Senators have a right to vote their convictions whether or not those convictions coincide with the feelings of the people in their home States.

And the people have the right, under the Constitution, every 6 years to recall Senators by the election process.

Then, too, Mr. President, I feel that any such effort is counterproductive, because if I had voted contrary to what I feel are the wishes of the people of Alabama, and had been threatened with defeat at the polls next time, or recall, my inclination would be to dig in with my position as expressed here on the Senate floor. I feel that this effort is counterproductive, and I would certainly emphasize that no Member of the Senate who has been seeking to improve these treaties by amendment, or, failing in that, to vote against them, no Senator who has been on that side of these

questions has given any indication of approval of such action back in the States of the Senators involved.

So I hope and I feel confident that Senators will realize that is a spontaneous action by the people of their States, and has no connection with any thought or action or belief of any Member of the U.S. Senate.

Mr. GRIFFIN. Mr. President, will the Senator yield for a brief comment?

Mr. ALLEN. Yes, I will yield to the Senator, but I am not going to make a practice of yielding, I might state. I yield.

Mr. GRIFFIN. I just want to associate myself with the remarks the Senator made relative to the possibility that some States may seek to recall Senators who have voted for ratification of the treaties. Being on the same side of the issue as the Senator from Alabama, I wish to indicate my agreement with the remarks he has made. I think that many may assume or think that they would be helping our cause by initiating such recall petitions, but I do not think that is the case. I share the view of the distinguished Senator from Alabama that it is more likely to be counterproductive.

Furthermore, as the Senator has pointed out, there is no provision in the Constitution for the recall of U.S. Senators, and surely this was by design and deliberate intent of the Founding Fathers, who established a legislative branch where one house would be subject to the control and vote of the people every 2 years, at frequent intervals, and deliberately designed another body where there would be longer terms to be served, and where Senators could feel that they would not be subject to such frequent votes of approval or disapproval by the people, with the purpose in mind of Senators taking the longer view, perhaps, or looking at the issues from a little different perspective.

Certainly, if the provision for the recall of Senators had been included, that probably would have been frustrated, or would certainly not be the same thing.

I certainly hope that some of our colleagues, having been home and had a chance to listen to and talk with their constituents, will come back with a different point of view when we get to the second treaty, and I share the hope of the Senator from Alabama that we may be able to prevail. But I did want to indicate that insofar as that particular matter of recall is concerned, certainly there are those on both sides of the political aisle here who share the view expressed by the Senator from Alabama.

Mr. ALLEN. I thank the Senator from Michigan (Mr. Griffin) for his very fine comments to emphasize the point that I have been seeking to make.

While I do not know of the status of any such efforts in any of the States, I would make a public plea that any such groups who are seeking to move in that direction cease and desist from such activities, because I do not believe that it is helping us who are seeking first to improve these treaties and second to defeat the treaties if we are unable to improve them.

I might state, Mr President, that the manner in which the treaties are drafted, the wording of the treaties, makes the vote on this treaty, the Panama Canal Treaty, much more important than the first vote. All the first vote decided was that if the United States

should give the Panama Canal away, starting in the year 2000 we should have certain defense rights as to the canal. It is a weak treaty from the standpoint of the United States. Many of us sought to improve it to give us added defense rights. For example, even though the first treaty, the Neutrality Treaty, or, to use another word for it, the Defense Treaty, the first treaty which has been approved gives us certain defense rights, they are weak defense rights, because under the Panama Canal Treaty and the Neutrality Treaty we have to have all of our troops out of Panama by the year 2000, and the Neutrality Treaty or the Defense Treaty gives us a right to defend the canal but deprives us of the means of defending the canal, because all of our troops will be out, and if we do seek to defend the canal, the defense would have to be by amphibious landing or actions involving paratroops. Those of us who tried to improve the treaty tried to have a provision that if the military presence of the United States was necessary for the proper defense of the canal come the year 2000, the President could so certify and we could continue to maintain troops in the Canal Zone for the defense of the canal. The leadership, in its wisdom, called on the Senate to reject our amendment, and reject it the Senate did.

But under the wording of the treaty, somebody among the negotiators seems to have slipped up; they provided that the Neutrality Treaty shall not go into effect unless the other treaty is agreed to. So the question has not been decided. The leadership thought that by putting the cart before the horse and talking about defense down in the year 2000, and getting that treaty approved, the momentum of that action by the Senate would carry forward, and this treaty would be agreed to in short order.

That is not the case. Momentum has stopped. We are going to see whether the administration and the leadership can prevail upon the Senate not only to defend the canal starting with the year 2000, which is all we have decided up to now, but whether they can get the Senate to agree to give the Panama Canal away; whether they can get the Senate to give the Panama Canal away without proceeding in accordance with the provisions of article IV, section 3, clause 2 of the Constitution requiring authorization by the entire Congress for the disposition of property of the United States.

Mr. President, it is interesting that the administration and the leadership seek to prevent having this matter considered by the house. I do not say the house is supposed to act upon this treaty; they are not. But this transaction involves giving away 500 square miles of territory and a canal, the replacement value of which is said to be in the neighborhood of $10 billion, and giving that away without complying with this section of the Constitution requiring action by the Congress.

The Panama Canal Treaty of 1955, most recent treaty with Panama, provided in three places in article V that where conveyance of property was being made to Panama, "The United States of America agreed that"—and this is the significant phrase—"subject to the enactment of legislation by the Congress, there shall be conveyed to the Republic of Panama free of cost all the right, title and interest held by the United States of America or its agencies in

and to certain lands and improvements in the territory under the jurisdiction of the Republic of Panama."

The phrase, "subject to enactment of legislation by the Congress," is used two more times in that article. They recognized that particualr point in 1955 and complied with it. Here we have an administration and a leadership that says it is not necessary to have legislation by Congress.

Mr. President, that is all this amendment does. It just says to the treaty proponents:

> All right, go ahead with your treaty, but before it goes into effect we have to comply with Article IV, Section 3, Clause 2 of the Constitution providing for action by Congress for the disposition of property of the United States.

That is all the amendment does. Before this treaty goes into effect compliance with the Constitution must be made regarding getting the authorization from Congress for the disposition of the property.

Why, Mr. President, would the administration not want to call Congress into the act? It takes a two-thirds vote here in the Senate to approve the treaty. It would take only a majority vote in the House. With Members of the House being in many cases closer to the people, up for election every 2 years, frequently going back and touching base with their constituents, are they afraid that the House is too close to the will of the people to risk submitting this matter to the House? One would suspect that that is the case.

Now, Mr. President, I am encouraged as to the outcome of this amendment. I might say that in this 6 or 7 weeks we have been debating these treaties the leadership has stonewalled against every amendment except two amendments called the leadership amendments based on a memorandum agreement between the President and Dictator Torrijos. As to all other amendments they have suggested that such an amendment would defeat the treaties.

I suggest that no Member of the Senate can state with any degree of certainty that any amendment would kill any treaty. Why should it? It merely goes back to Panama for acquiescence. If it is a substantial amendment, possibly a new plebiscite would be called. What is wrong with a plebiscite? What is wrong with a treaty being between the people of the United States and the people of Panama?

Mr. President, I have suggested that no matter how many amendments are added into these treaties they would be accepted by the Panamanian dictator. Do you know why, Mr. President? Just as soon as the treaties go into force, Mr. Torrijos will start collecting $100 million a year. The United States is going to be the guarantor for the Panama Canal Commission, set up by the Panama Canal Treaty, which takes over the property from the Panama Canal Company. We guarantee that at the end of 22 years we are going to convey the canal and all the property in the Canal Zone to Panama free from all debt, free from all loans.

We have what might be called a lien right now against the canal, the Treasury of the United States, the people of the United States, of a mere $319 million which is still owed on the canal from its original construction.

The dictator, in my judgment, will accept anything that will allow him to start collecting $100 million a year.

Mr. President the leadership approved only two amendments in 6 or 7 weeks. That is quite a record, is it not? They have not approved any amendment by those seeking to strengthen the treaties, this group of Senators 32 strong on the final vote on the Neutrality Treaty.

I was interested just the other day when one of the proponents of the treaties called the result of the first vote on the treaty. He said it would be 68 to 32. Well, that is certainly what the vote was, 68 to 32. That sounds like a landslide vote, but the trouble is that the Constitution provides that treaties must be approved by a two-thirds vote. So, instead of being a landslide vote the first treaty was approved with only 1 vote to spare, because if it had been 66 to 34, the treaty would have failed. Sixty-seven to thirty-three, it would have been approved; 68 to 32, it was approved. But had two Senators who voted for the treaty voted against, it would have been defeated last time.

So I do not feel that this is a foregone conclusion, that they are going to get 67 votes for this treaty; and if they fail to get the 67 votes for this treaty, it kills both treaties.

Mr. President, let us see what the question is. It has already been decided tentatively—it is just a tentative decision, awaiting the outcome of this vote, that is all. We have tentatively decided that if the Panama Canal Treaty giving the canal away is approved, then the Neutrality Treaty goes into effect. But if this treaty is not approved, both treaties fall.

Senators will recall, I am sure, that at least three Senators, two of them on the floor here, stated that they were not pleased with the provisions of the Panama Canal Treaty. One of the Senators who voted for the other treaty said that if he had had to vote that same day on the Panama Canal Treaty, he would vote against it. Another Senator who voted for the treaty said that if he did not get a certain amendment adopted, he would vote against the treaty. Another Senator, on this side of the aisle, stated that his voting for the first treaty did not necessarily mean that he was going to vote for the Panama Canal Treaty.

I do not mention the names of these Senators—not that I feel that it would be an embarrassment to them, but Senators know, and I would not want any added powers of persuasion used on these three particular Senators that I might single out.

I submit, Mr. President, that Senators like, if possible, to be consistent. I submit that there is little, if any, inconsistency in voting that, if the canal is given away, we will defend it in a certain fashion. That is all those 68 Senators have decided, that if the canal is given away, we will defend it in the manner provided by the Neutrality Treaty. What they have not decided is the basic and fundamental question provided by the treaty under consideration now. That is, shall we give the canal away and shall we, in the process, give or guarantee to Panama hundreds of millions of dollars just to take the canal. So, Mr. President, it would not be inconsistent for Senators, having voted to defend the canal starting in the year 2000, to say, yes, I am for defending the canal in the year 2000 if we give the canal away, but I am certainly not in favor of giving the canal away.

It is with that thought, Mr, President, that we continue in this debate because the basic and fundamental question has not yet been decided. It is going to be up to the Senate, in its wisdom, to decide whether or not we are going to give the canal away. But before that, we have to decide whether or not we are going to follow the Constitution and require, before the treaty goes into effect, that the Congress shall pass legislation authorizing the disposition of the property.

Now, Mr. President, the argument has been made as to pretty nearly every amendment that has been offered, oh, we cannot do that, we cannot do that, that will kill the treaty; Mr. Torrijos will not agree to this; we cannot risk having the treaty defeated; Mr. Torrijos will not allow Panama to take this action.

Well, now, we have before us an amendment that places no burden whatsovever on Panama. All it does is define what the treaty says already shall be done. That is to follow our constitutional processes in the matter of ratification of the treaty. The Constitution says that Congress shall have the power to dispose of the property of the United States. All this amendment does is say, yes, let us follow the Constitution; let us make this treaty conditioned, as the 1955 treaty with Panama did, that these provisions are made subject to the enactment of legislation by Congress. That is all it does.

I am glad we got this 1955 treaty talked about, because, for days and days, on the Senate floor, about all we could hear from the proponents of these treaties was about this Colombian firing squad. The distinguished Senator from Idaho, yesterday, dusted off that old story again, that if the Panamanian people had not agreed to the treaty of 1903, they were facing a Colombian firing squad. I thought we left that argument weeks ago, but it was dusted off again in the argument yesterday by the distinguished Senator from Idaho (Mr. Church).

Let us refer to the 1955 treaty, where property of the United States is given away, where it is conveyed. Oh, it is said, back in 1903, this was colonialism and we did not have two sovereign powers dealing at arm's length with each other, that these Panamanians were afraid that they were going to face a Colombian firing squad if they did not agree to this treaty. Well, I do not suppose there was any danger of a Colombian firing squad 52 years later, when the 1955 treaty was entered into by the United States and Panama. Surely, at that time, they were sovereign nations, dealing at arm's length with each other.

But the 1955 treaty provided that the conveyance of property was subject to approval by the Congress.

Has the Constitution become old hat now that we are in a modern age, different from the situation back in 1955? Should we follow the Constitution in 1955 and not follow it in 1975?

I say the Constitution is just as valid, just as much in force, just as much the instrument that governs our Nation now as it was back then.

That is all we are trying to do. That is all. It does not put any burden on Panama. It merely provides that we shall follow that section of the Constitution.

Mr. President, another reason why we should follow the Constitution, besides being a government under a written Constitution, is the matter that if this route is not followed, unquestionably the validity of this treaty, or the validity of the disposition of the property, to be more accurate, would be subject to litigation.

The Supreme Court has said in other efforts by people who are interested in seeing that the property of the United States is not given away. "Oh, this is premature, we cannot decide this question now, this is action between two bodies of Congress. We can't dispose of that, can't get into that."

Well, once the treaty is sought to be put into force and effect, it would be a fait accompli then. I certainly feel that these reasons why the Supreme Court did not pass on this question on its merits would cease to exist and we would get back to the matter of whether the Constitution has been followed.

I submit that it will not have been followed unless this property is disposed of under authorization of an act of Congress.

So why beat around the bush? Why say, "No, our policy is to accept no amendments, we're not going to accept this amendment." That is the leadership position.

On the other treaty, Mr. President, it was a real bad treaty, to hear some of the present proponents of the treaty: "Oh, it couldn't be agreed to at all, it would be defeated by the Senate."

Some of the leading proponents, the two leaders, wanted to consider it and could not make up their minds for weeks about it. But then they hit on this leadership amendment.

Did the leadership amendment show a lot of ingenuity, resourcefulness, wisdom?

Word for word, the memorandum that the President and the dictator entered into, and it was as full of loopholes and defects as we could imagine.

But they said:

> Oh, if the Senate will agree to these amendments, then it is going to be a fine treaty, a treaty we can support, and by the way, it is a treaty that should not be amended any more, just take the leadership amendments based on the memorandum between the President and the dictator and that makes this treaty so fine that it must not be amended any more.

Well, that cuts out a pretty good role for this leadership amendment. We have debated the deficiences of that amendment. I could point them out again and again. I am not going to take the time of the Senate in doing that.

That treaty, the first treaty that was considered—not the first treaty, because the first treaty would be the treaty giving the canal away, but the first treaty considered by the Senate—was saved by the leadership amendment, deficient as it was and as weak as it was in providing for the defense of the canal. But it was so great, so all-encompassing, that the leadership has taken the position that no more amendments should be offered.

I heard the distinguished majority leader (Mr. Robert C. Byrd) on the television program one Sunday a couple of weeks back and he said he had an open mind on amendments. I followed his voting pretty carefully here and I do not recall his favoring an amendment, other than the leadership amendments which had already been agreed to at the time he made that statement. I do not recall

the distinguished majority leader voting for a single amendment offered here on the floor of the Senate except for the two leadership amendments, which were deficient as I have pointed out many times on the floor of the Senate.

So I am hopeful that the distinguished majority leader's open mind is going to open wide enough to accept constructive and legitimate amendments, an amendment that has the effrontery to suggest that we follow the Constitution.

I hope that the Senate will open up its collective mind wide enough to allow us to suggest that we follow the Constitution on disposing of property of the United States in Panama.

But, Mr. President, I am encouraged on this matter on the outcome of this amendment. As I say, our high water mark on amendments has been 42 voting in favor of an amendment not approved by the leadership. As I have pointed out, there were two that were approved by the leadership.

I have to come back to the distinguished Senator from Idaho (Mr. Church) and his attitude, and, while I disagree with his attitude with respect to amendments, I completely agree with his candor. I commend him for it, because his attitude is one of, "Rubber stamp this treaty, we don't want any amendments to it."

Then he says the Senate is not supposed to negotiate treaties, that is for the executive branch.

That is true. The Senate is not supposed to negotiate treaties, Mr. President. But Members of the Senate have the duty imposed upon them to advise and consent with the President on the wording of that treaty.

That is not negotiation. That is still left in the hands of the executive department. But part of our constitutional duty is to advise the President as to whether this treaty is good, good for the country, whether it protects our interests or not. That advice, Mr. President, is not handed down in the form of a communication from the Senate:

DEAR MR. PRESIDENT. We think that you ought to renegotiate this treaty and do thus and so.

The advice of the Senate is given in the form of amendments shaping the treaty. That is the way the advice of the Senate is given.

(Mr. Ford assumed the chair.)

Mr. ALLEN. We have this elaborate procedure under rule XXXVII of the Senate. We go into the Committee of the Whole. That is what we are in now. That is the only time the Senate uses the Committee of the Whole. But under the Committee of the Whole procedure, we take up the various articles of the treaty one by one. We are still on article I, by the way. Then, if the committee has any amendments to article I, they offer them.

However, it is a strange thing, Mr. President: These two treaties went to the Foreign Relations Committee for study and for recommendation, and they had dozens of witnesses before the committee. They did not make a single amendment in committee—not one. What they did was to take the unsigned memorandum—by the way, the dictator has a different view of what that memorandum meant from the meaning we ascribe to it. He said that under this

memorandum, which became the leadership amendment, we do not have the right to intervene militarily for the protection of the canal. We just have the duty to do it when he calls on us to come down and defend the canal. That same construction, of necessity, carries over to the leadership amendment itself, because the leadership amendment is word for word what the memorandum provided.

What action did the Foreign Relations Committee take? It took his memorandum, and I believe the committee put it in the form of a new article, or possibly two new articles, and adopted it in that form, taking the memorandum word for word and incorporating it as one or two new articles.

The State Department said to the Foreign Relations Committee:

> We had better not do it that way. We had better not add a new article, because that will require a new plebiscite in Panama. You had better back up and lick the calf over again.

To use an old Southern expression, I say to the distinguished Presiding Officer, the Senator from Kentucky (Mr. Ford), who is familiar with that expression. They said, "Do the job over."

The Foreign Relations Committee did the job over. Panama represented to the State Department that we had better not do it that way; that we had better take the same language and add it as amendments to existing articles, and that way they can get by without a new plebiscite. What did the Foreign Relations Committee do? It got right in line with that suggestion.

Mr. President, this attitude of stonewalling against amendments is not acceptable to the Senator from Alabama. This attitude of saying, "Yes, here are these treaties before us; rubber stamp them," does not set too well with the Senator from Alabama. I feel that the Senate is abdicating its role, provided under the Constitution, of advising and consenting if it wishes, or nonassenting if it wishes, with respect to treaties that are submitted to it, when it does not take its duty seriously; when the leadership says—I will correct myself there—when the manager of the treaty and apparently the leadership take the position that no amendments must be agreed to.

The leadership saved the first treaty. Oh, they found these great defects in it with respect to defense, and they came up with this memorandum; and they said it cured these defects and cured them so well that no other amendment need be offered. They spoke pretty highly of this amendment.

I did not think much of it in many particulars. One that I pointed out was that it leaves us robbed of other means of defense of the canal, by allowing the provision to be in the treaties that we have to remove all our troops by the year 2000. How is that giving the best possible defense to the canal?

The dictator put in another provision, and I wonder whether I should take the time of the Senate to point it out. He got a little paragraph in the leadership amendment, or in the memorandum which became the leadership amendment. This provision said that in any defense of the canal, we should not interfere with the internal affairs of Panama, that we should not interfere with the territorial integrity of Panama. How in the world are you going to land troops there without having something to do with territorial

integrity? It also provided that we should not interfere with Panama's independence. Translated, that means, as the Senator from Alabama sees it: "Don't bother my dictatorial regime."

That little paragraph was put in the memorandum, and it was in the leadership amendment, this amendment to serve as the amendment that made all other amendments unnecessary, in the view of the leadership, apparently, because they did not allow any others to be adopted.

But I have digressed. I was pointing out that our highwater mark was 42 votes, and it came on an amendment by the Senator from Alabama having to do with this proposition: Under the Neutrality Treaty, Panama cannot permit any troops of a foreign nation to come into Panama, starting with the year 2000. But, strange to say, the treaty now before the Senate has no such provision. Even though the United States, for the next 22 years, is there to defend the canal, Panama now can bring in troops from foreign countries. What is the logic of that, Mr. President? In the year 2000, when Panama is going it alone, they cannot bring in foreign troops; but for the next 22 years, when we are there to defend the canal, they can bring in foreign troops.

What useful purpose would that be? We do not need anybody down there to help us defend the canal. It would just be a source of irritation and a source of confrontation if Panama brings Cubans or Russians into Panama.

And, Mr. President, I offered an amendment which would have prevented Panama during the next 22 years from inviting in foreign troops to Panama. That amendment was defeated at the behest of the manager of the treaty, backed by the leadership, but we received 42 votes on it.

I believe this amendment that we have before the Senate now that requires complying with the Constitution is going to beat those 42 votes.

As stated a moment ago, I am encouraged as to the outcome of this amendment, and one thing that gives me encouragement is the fact that back in 1975, March 4, 1975, in the Senate there was introduced Senate Resolution 97. I could read that resolution. It would take 15 minutes, I daresay, to read it. That resolution was sponsored by 37 Senators, enough to defeat any treaty.

I shall only read the resolved clause, and it gives all these "whereases": Whereas, The Hay-Pauncefote Treaty; whereas The Hay-Bunau-Varilla Treaty, this and that and the other, but getting down to the meat in the resolution:

> *Resolved,* That it is the sense of the Senate of the United States of America that—
> (1) The Government of the United States should maintain and protect its sovereign rights and jurisdiction over the canal and zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any of these sovereign rights, power, authority, jurisdiction, territory, or property that are indispensably necessary for the protection and security of the United States and the entire Western Hemisphere; and

I might state this is on page 5071 of the Senate portion of the Congressional Record of March 4, 1975.

So, this resolution sponsored by 37 Senators said we should not give the canal away. That is what the paragraph says.

Here is the portion of the resolution that has direct reference, and direct applicability to the amendment before the Senate at this

time. Let us see what it says. It carries forward the resolving clause. Resolved, and so forth.

there be no recession—

Meaning receding, of course—

there be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

So, in the body of the resolution, one of these whereases, let us read that having to do with this exact issue.

Whereas under article IV, section 3, clause 2 of the United States Constitution, the power to dispose of territory or other property of the United States is specifically vested in the Congress, which includes the House of Representatives;

So this resolution was introduced by 37 Senators. The Senator from Alabama was one of them and he sticks by what he said back then in 1975 as to the inadvisability of giving the canal away and the second portion that if we do give it away we must not give it away unless and until Congress, meaning the House and Senate, authorizes that disposition.

Mr. President, there being eight Members of the Senate who cosponsored that resolution, having these two points involved that we should not enter into a treaty giving the canal away, but if we do we should not give the canal away without complying with the provisions of the Constitution requiring authorization by Congress—those are the two points—but there are eight Members of the Senate at this time who were cosponsors of this resolution who voted for the first treaty.

I discussed on the floor in colloquy with the distinguished majority leader the matter of his former opposition to a canal treaty and then his coming to a position in support of a treaty, and the distinguished Senator stated very logically that he did not have the treaties before him the first time; having read the treaties, considered them, and weighed them, he now feels that the treaties are in the best interest of the United States and should be agreed to here in the Senate, and I accept that as being an accurate representation of the distinguished Senator's feelings.

It is certainly not inconsistent to a fault to change your mind on an issue. But, Mr. President, a constitutional point based on the same facts and construing the same section of the Constitution does not change in 2 years. It might be logical to change your position with respect to voting for a treaty now when under a prior administration of a different party you might be willing to join in a resolution saying that you would not support a treaty giving the canal away. But what justification, Mr. President, is there for saying in 1975 that the Constitution requires the submission of this question of disposition of property of the United States to the whole Congress and in 1978 saying that you do not have to? What possible justification would there be for a reversal of an opinion and an attitude on a constitutional question where there has been no change in the Constitution and no change in the facts? What justification is there for saying in 1975 it has to be submitted to the entire Congress and in 1978, oh, no, the Senate under its treaty-

making power can make the disposition of the property of the United States?

Mr. President, I ask unanimous consent that this resolution, Senate Resolution 97, which can probably be obtained from the document room but, if not, it appears on 5071 of the Senate portion of the Congressional Record under date of March 4, 1975, be printed in the Record; and I ask further unanimous consent that not only the body of the resolution be set forth in the Record but all the cosponsors appearing on this page be listed in the portion inserted in the Record.

There being no objection, the resolution was ordered to be printed in the Record, as follows:

S. Res. 97

Resolution urging retention of undiluted United States sovereignty over the Canal Zone

Whereas United States diplomatic representatives are presently engaged in negotiations with representatives of the de facto Revolutionary Government of Panama, under the declared purpose to surrender to Panama, now or on some future date, United States sovereign rights and treaty obligations, as defined below, to maintain, operate, protect, and otherwise govern the United States-owned canal and its protective frame of the Canal Zone, herein designated as the "canal" and the "zone", respectively, situated within the Isthmus of Panama; and

Whereas title to and ownership of the Canal Zone, under the right "in perpetuity" to exercise sovereign control thereof, were vested absolutely in the United States and recognized to have been so vested in certain solemnly ratified treaties by the United States with Great Britain, Panama, and Colombia, to wit:

(1) The Hay-Pauncefote Treaty of 1901 between the United States and Great Britain, under which the United States adopted the principles of the Convention of Constantinople of 1888 as the rules for operation, regulation, and management of the canal; and

(2) The Hay-Bunau-Varilla Treaty of 1903 between the Republic of Panama and the United States, by the terms of which the Republic of Panama granted full sovereign rights, power, and authority in perpetuity to the United States over the zone for the construction, maintenance, operation, sanitation, and protection of the canal to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority; and

(3) The Thomson-Urrutia Treaty of April 6, 1914, proclaimed March 30, 1922, between the Republic of Colombia and the United States, under which the Republic of Colombia recognized that the title to the canal and the Panama Railroad is vested "entirely and absolutely" in the United States, which treaty granted important rights in the use of the canal and railroad to Colombia; and

Whereas the United States, in addition to having so acquired title to and ownership of the Canal Zone by constitutional means, purchased all privately owned land and property in the zone making it the most costly United States territorial possession; and

Whereas the United States since 1904 has continuously occupied and exercised sovereign control over the zone, constructed the canal, and, since 1914, for a period of sixty years, operated the canal in a highly efficient manner without interruption, under the terms of the above-mentioned treaties thereby honoring their obligations, at reasonable toll rates to the ships of all nations without discrimination; and

Whereas the long history of friendly and cooperative relations between the United States and the Republic of Panama are prone to deterioration by the dilution of any United States sovereignty or jurisdiction in the canal zone; and

Whereas from 1904 through June 30, 1974, the United States made a total investment in the canal, including defense, at a cost to the taxpayers of the United States of over $6,880,370,000; and

Whereas the investment of the United States in the canal includes the sacrifices of many thousands of United States citizens who have worked to construct the canal and keep it operating smoothly and efficiently for the last sixty years; and

Whereas Panama has, under the terms of the 1903 treaty and the 1936 and 1955 revisions thereof, been adequately compensated for the rights it granted to the United States, in such significantly beneficial manner that said compensation and

correlated benefits have constituted a major portion of the economy of Panama giving it the highest per capita income in all of Central America; and

Whereas the canal is of vital and imparative importance to hemispheric defense and to the security of the United States and Panama; and

Whereas approximately 70 per centum of canal traffic either originates or terminates in United States ports, making the continued operation of the canal by the United States vital to its economy; and

Whereas the people of the United States, in various ways and means, have exhibited strong support for retention of full and undiluted jurisdiction over the canal and zone, and the Congress ought to insure the supremacy of the will of the people; and

Whereas the present negotiations under a February 7, 1974, statement of "principles of agreement" by United States Secretary of State Henry A. Kissinger and Panamanian Foreign Minister Juan A. Tack constitute a clear and present danger to the hemispheric security and the successful operation of the canal by the United States under its treaty obligations; and

Whereas the present treaty negotiations are being conducted by our diplomatic representatives under a cloak of unwarranted secrecy, thus withholding from our people and their representatives in Congress information vital to the security of the United States and it legitimate development; and

Whereas the United States House of Representatives, on February 2, 1960, adopted House Concurrent Resolution 459, Eighty-sixth Congress, reaffirming the sovereignty of the United States over the zone territory by the overwhelming vote of three hundred and eighty-two to twelve, thus demonstrating the firm determination of our people that the United States maintain its indispensable sovereignty, and jurisdiction over the canal and the zone; and

Whereas under article IV, section 3, clause 2 of the United States Constitution, the power to dispose of territory or other property of the United States is specifically vested in the Congress, which includes the House of Representatives; and

Whereas the Congress of the United States is invested with constitutional responsibilities to provide for the common defense and general welfare of the United States, to regulate commerce with foreign nations, to raise and support armies and provide and maintain a Navy, to make all needful rules and regulations respecting the territory of the United States, and to make all laws necessary and proper for carrying into execution these and other powers, all of which denote that it is the solemn duty of Congress to safeguard the canal and zone: Now, therefore, be it

Resolved, That it is the sense of the Senate of the United States of America that—

(1) the Government of the United States should maintain and protect its sovereign rights and jurisdiction over the canal and zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any of these sovereign rights, power, authority, jurisdiction, territory, or property that are indispensably necessary for the protection and security of the United States and the entire Western Hemisphere; and

(2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, or authority or property, tangible or intangible, except by treaty authorized by the Congress and duly ratified by the United States; and

(3) there be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

Mr. ALLEN. Mr. President, I have no fault to find with distinguished Senators who cosponsored this resolution taking a different view now, and I am not going to name the Senators. It might possibly embarrass them. I am sure the Senators know who they are, but I am hopeful that these eight Senators who voted for the first treaty will reconsider when this treaty comes up for a final vote, and go back to their original position because, as I say, there were eight Senators who said in 1975, "We won't approve of such a treaty," yet in 1978 they voted for it.

That is all right. Senators have a right to change their minds. I am sure I have changed my mind on issues here before the Senate from time to time. This, however, is not one of them.

But on the matter of the constitutional issue involved, how can there be a change? I am going to be interested in seeing just what

result there is of this issue because the issue has not changed, the Constitution has not changed. Why should there be a different opinion as to what the Constitution means?

Mr. President, it is not Senators alone who are interested in seeing the House of Representatives act on this matter. The House of Representatives, Mr. President, is somewhat jealous of its rights and prerogatives. The Members do not want to be deprived of any of their powers under the Constitution. It is not just the Members of the Senate who say, "Let us let the House in on this decision." I am not talking about the approval of the treaty, Mr. President, as such, and this amendment is not directed at that. It does not say that the House shall have an opportunity to pass on the treaty. that is not the point.

But insofar as the treaty seeks to make disposition of property of the United States, it has gone too far without express authorizations from Congress, going back to the way it was handled with Panama in 1955.

If that was the process back in 1955—and I call attention again to article V of the 1955 treaty—in three separate places where the treaty speaks of disposing of property it has this phrase, "subject to the enactment of legislation by the Congress."

So if our treaty negotiators back then knew that Congress was supposed to act on matters of disposition of U.S. property, why did not Mr. Bunker and Mr. Linowitz know that and write that into the provisions of the treaty as negotiated between the negotiators? Why were they less observant than the negotiators back in 1955? Why were they less vigilant in following the Constitution than the negotiators were when the 1955 treaty was entered into between Panama and the United States?

So, Mr. President——

Mr. Kennedy. Mr. President, will the Senator yield on that point for a question?

Mr. Allen. Yes.

Mr. Kennedy. Is it not also true that under the 1955 treaty there were two additional articles, article VI and article VII of the treaty, that were self-executing, and also provided for the transfer of property?

Mr. Allen. I believe the Senator will find those have to do with boundary matters and not express grants of property which require approval of Congress.

Mr. Kennedy. Well, the adjustments of the boundaries also included the disposition of property.

Mr. Allen. Yes, but there is a different rule, I will say to the distinguished Senator, recognizing boundary rights. Obviously, if you recognize a certain boundary to exist you are not giving property away because the boundary would define where the property of one nation stops and the other begins, so it is not a disposition of property.

Mr. Kennedy. Did the treaty not provide for the adjustment of the boundaries as well as the removal of property from Canal Company books, consistent with the new boundaries?

Mr. Allen. Well, removal of property the Senator is talking about—yes, that would be part of the recognition of the boundary, yes, that is correct.

Mr. KENNEDY. As I was listening to the Senator talk about the provisions—and my understanding is the same as that of the Senator from Alabama with regard to article V——

Mr. ALLEN. Yes.

Mr. KENNEDY (continuing). That article did establish under the agreement that there would be action taken by the Congress. But in the same treaty, articles, VI and VII also related to the transfer of property, and there was a transfer of property under those two self-executing provisions to Panama, without further action by Congress.

Mr. ALLEN. I believe the Senator will find those are boundary line disputes and, therefore, no property was really transferred from the United States.

I point out the fact that I merely read one of them. There are three separate instances here in article V where the dispositions are made subject to the enactment of legislation by the Congress.

But I must go on because my time is limited.

Not only the Senate, certain Members of the Senate, but the House of Representatives wants this matter submitted to it. Not necessarily, Mr. President, are they going to vote against the disposition of the property. I have little doubt, Mr. President, that the House of Representatives would in all likelihood, if called upon by the administration to approve this transfer of property, this disposition of property, it would do so.

I do not say that each one of the 235 Members of the House, well over a majority, who have cosponsored House Concurrent Resolution 347—and, Mr. President, I ask unanimous consent that a copy of House Concurrent Resolution 347 be printed in the Record at this point, along with a copy of the pending amendment to let them stand side by side.

There being no objection, the material was ordered to be printed in the Record, as follows:

PANAMA CANAL TREATY

At the end of Article I add the following new section:

5. It is expressly provided that this Treaty shall, in no event, enter into force until the Congress of the United States, in accordance with the provisions of Article IV, section 3, clause 2 of the Constitution of the United States of America, shall have disposed of, or shall have authorized the disposition of, the property belonging to the United States of America, or of any of its agencies in the Panama Canal Zone, as it existed on September 7, 1977.

H. CON. RES. 347

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress of the United States that any right to, title to, or interest in the property of the United States Government agencies in the Panama Canal Zone or any real property and improvements thereon located in the zone should not be conveyed, relinquished, or otherwise disposed of to any foreign government without specific authorization of such conveyance, relinquishment, of other disposition by an Act of Congress.

Mr. ALLEN. Two hundred and thirty-five Members of the House of Representatives are cosponsors of this House concurrent resolution. Now, a concurrent resolution is a more or less in-house action between the two bodies. If it had been a joint resolution, that would be something that would need the President's signature, but

House Concurrent Resolution 347 is an in-house resolution, the two Houses acting together on a particular question.

This concurrent resolution says:

> It is the sense of the Congress of the United States that any right to, title to, or interest in the property of the United States Government agencies in the Panama Canal Zone, or any real property or improvement thereon located in the zone, should not be conveyed, relinquished, or otherwise disposed of to any foreign government without specific authorization of such conveyance, relinquishment or other disposition by an Act of Congress.

So a majority of the Members of the House have asked for the right to participate in this decision. I daresay some of those 235 would be active supporters of such a bill. But I see the Members of the House being concerned about rights given them under the Constitution, of which they are about to be deprived by the Senate not allowing the House to act on this matter.

The House is quite jealous of certain things that have to originate there in the House of Representatives. Revenue measures have to originate there, even though on some minor bill having little effect on the revenue the Senate has a right to amend such a bill and tack a whole tax reform package on a minor bill having to do with the duty on a certain item of import or something of that sort. The Senate can put anything it wants to on such a bill; but the bill has to originate in the House of Representatives.

Then, too, Mr. President, even though there might be some little difference of opinion, by custom this situation has existed between the two bodies: The House takes the position that, since revenue measures have to originate in the House, therefore, appropriations bills have to originate in the House, even though there is nothing in the Constitution that says that. But since appropriations have a great bearing on what revenue we have to raise, I think it is not illogical that the House have that right.

Article IV, section 3, clause 2 of the Constitution gives the House the right to be a party to legislation disposing of property of the United States. Mr. President, I wish the distinguished Senator from Texas (Mr. Bentsen) were here. I remember several years ago, back around 1970, I believe, and then in 1963, there were treaties with Mexico by the United States. The Rio Grande River, you know, meanders along and is the border between the United States and Mexico, and frequently gets out of its banks. It does not have much bank; it is pretty well flat on the ground, and frequently it changes its course. Sometimes Mexican property ends up on the U.S. side of the river and sometimes U.S. property ends up on the Mexican side of the river.

In 1963 and 1970, the United States was conveying property of the United States; if I am not mistaken, If my recollection is correct, they entered into a treaty with Mexico to provide for giving this property, or giving control of the property—because the United States did not own it—giving control of the property to Mexico, and we followed it with a statute. We did that in 1970 and did it in 1963, even though the United States did not have fee simple title to the property, as it has to the Panamanian property, the Panama Canal Zone, which was conceded just on yesterday, not in answer to a question but by a unilateral assertion that the United States does the property in the Panama Canal Zone. That

was a concession made by the distinguished manager of the treaty, the Senator from Idaho (Mr. Church).

So the 235 Members of the House of Representatives are not necessarily saying, "Let us in on this procedure so we can vote against this disposition." I do not believe that is what those 235 Members of the House of Representatives are saying. They are just saying, "Please, Members of the Senate, and please, administration, recognize our constitutional rights and duties and let us act on this matter."

Is the Senate going to deprive the House of Representatives of the power that it has under the Constitution? If it does, Mr. President, this matter is headed for litigation. And the Supreme Court will not be able to sidestep it by saying the action is premature, or "This is action between the two Houses; we will not intervene on a legislative matter." They will not be able to say that if the Constitution is not complied with.

So why, Mr. President, would we turn down this pending amendment by the distinguished Senator from Utah (Mr. Hatch)? I regard it as the most important amendment that has been offered as to this treaty, certainly so far as the constitutional issue is concerned, though perhaps not as important as some amendments that were offered giving us greater defense rights as to the canal; but regarding the application of the Constitution, this amendment is the most important amendment that has been offered to this treaty, and the most important amendment, I daresay, that will be offered to the treaty.

Moreover, Mr. President, as I have pointed out, it does nothing to cause Panama to lose face. That is the argument made against some of these amendments: "Oh, we could not require a sovereign state to knuckle under to a thing like that." But this does not provide for any action by Panama. This is entirely action up here—action within our Government.

The treaties talk about their being ratified in accordance with the constitutional processes of the two governments. Why should we not follow the Constitution in the approval of this treaty? Let us go along with the House in this matter.

Another thing: I see the distinguished Senator from Louisiana (Mr. Long) is present. As I have pointed out, frequently here in the Senate we take a minor House bill, and the distinguished Senator from Louisiana very wisely generally has three or four of those minor bills on the Senate Calendar that he can call up whenever he has a tax measure or welfare measure or a debt-limit measure, call it up and add such a Senate provision, and then it goes back over to the House of Representatives, where they had not considered these matters added by the Senate amendment.

It is just like the farm bill, though it is not exactly in point because it did not have to go through the Ways and Means Committee of the House or the Finance Committee here in the Senate. They took a little bill having to do with raisins, as passed by the House. It came to the Senate where they called it up and attached this huge farm bill to it. The House did not get to act on the farm bill provision at all. They immediately went to conference on the raisin bill, which was greatly outweighed by the farm bill. Today,

early this morning, they agreed upon the farm bill. That action was taken in the conference committee.

I appeal to men such as the distinguished Senator from Louisiana (Mr. Long). If we attached a major provision to a minor bill here in the Senate, and they go back to the House either to accept or to go to conference, if we have told the House that we are not willing to allow them to consider something they view as their right under the Constitution, with how much favor are they going to look upon important tax bills, important revenue bills, important welfare provisions, welfare reforms, any thing that has to go through the two committees, Ways and Means and Finance?

They would say, "Well, Senator Long, why did you not vote to let us consider this matter as the Constitution provides?"

Comity between the Houses, Mr. President, requires that we lean over backward to see that the House is recognized in the balance of powers we have as between the branches of Government and as between the two Houses.

I do hope, Mr. President, that the Senate will see fit to follow the Constitution and let the House act upon this matter. As I say, I do not feel that all 235 House Members who are cosponsors of this resolution are going to vote against disposal of that property. I dare say many will take the lead in favor of that. But they do want their prerogatives recognized. I say it would be an offense against the dignity of the House to say, "No, this matter must not be considered by the House."

Mr. President, we have had amendments defeated time and time again. We have had the argument made, in effect, that, "If this amendment is agreed to, it will not please the Panamanians. Therefore, we have to defeat the amendment."

If we reject this amendment it might not please the Members of the House of Representatives. Are we less interested in the feelings and the dignity of the House of Representatives than we are the Panamanian dictatorship? We take extra effort to avoid displeasing the Panamanian dictatorship; let us take the same effort here to avoid displeasing our colleagues in the House of Representatives.

That is all this amendment would do. It is not a complicated amendment. It is a simple amendment. It guarantees against future litigation attacking this illegal and unconstitutional transfer of property of the United States. It guarantees that the prerogatives of the House of Representatives will be respected. It guarantees that the Constitution will be followed. All it says is before this treaty shall go into force, the disposition of the property which is owned by the United States in fee simple must be approved by act of Congress.

That does not cast reflections on the dignity of Panama. It does not cause them to take a single act at all. But it does say that we have to take certain acts to comply with the provisions of the Constitution as to what it takes to put the treaty in force. Panama cannot complain. We will have followed the Constitution. We will have honored the rights of the House of Representatives on this constitutional issue. We will have seen to it that the House is allowed to have the duties, the rights, and the responsibilities that the Constitution ascribes to it.

Mr. President, the Constitution provides in article IV, section 3, clause 2 that—

> Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The power given to Congress over the public property is plenary and exclusive; therefore, the absence of congressional action makes illegal or void any attempted transfer of property by treaty alone.

As chairman of the Subcommittee on Separation of Powers of the Committee on the Judiciary, on July 22, 1977, I initiated an in-depth subcommittee investigation of the precise constitutional issue which is the subject of the pending amendment. This investigation by the Subcommittee on Separation of Powers was necessary because the executive department of Government proposed for the first time in the history of the United States to attempt to exercise by treaty alone, with nothing more, the exclusive Congressional power over the disposal of public property.

A study of the issue brings me to the conclusion that the Panama Canal Treaty without a requirement of congressional authorization proposes an illegal, unconstitutional transfer to the Panamanian dictatorship of public property belonging to the people of the United States. Hence it is recommended that there be a direct amendment of the proposed Panama Canal Treaty in order to cure this clear constitutional defect and in order to preclude the possibility—or, indeed probability—that the treaty, if ratified, might later be declared void as having effected an illegal transfer of public property.

The subcommittee gave careful consideration to evidence amassed over a period of some 8 months from 36 witnesses, from court records, and from many other sources, and made a careful and painstaking anaylsis of all the precedents relevant to the issues presented as well as on a complete study of all of the recent papers prepared by the many respected legal scholars who have focused their attention on the crucial constitutional question.

To understand why there is a constitutional defect in the proposed Panama Canal Treaty, first it is necessary to understand and define the true nature of the constitutional proposition studied by the subcommittee. Stated simply, the question at issue was whether the President, by virtue of the treatymaking power, could, without congressional assent, exercise an express power of the Congress by making by treaty alone a disposal of public property to a foreign government.

Not at issue, Mr. President, were such questions as whether the United States is sovereign within the Panama Canal Zone or whether the proposed disposition of property is itself advisable or inadvisable. The existence of full sovereignty of the United States in the Canal Zone is a close question, charged with emotion, but the operative language of the Constitution grants to Congress power to dispose of "territory or other property" so that it is completely moot, Mr. President—completely moot—for purposes of this debate whether the United States is or is not sovereign in the Canal Zone. In fact, whether the Canal Zone is unincorporated territory of the United States as was held by the Fifth Circuit Court of Appeals in *U.S.* v. *Husband,* 453 F. 2d 1054 (5 Cir. 1971)

cert. den. 406 U.S. 935 (1972) is also an issue entirely moot to this debate.

All that matters, Mr. President, is that the United States does own property in the Isthmus of Panama, and since the Constitution gives to Congress the power to dispose of property belonging to the United States, then the requirements of the Constitution are triggered simply by the intention or the proposal that public property of whatever sort be transferred from the public to some other party.

Similarly, strong arguments can and have been made in the Senate and elsewhere regarding virtually every aspect of the proposed disposal of United States public property in the Canal Zone to the Republic of Panama, but, Mr. President, the pending amendment is not intended in itself to advance or to forbid these proposed multibillion dollar property transfers. The pending amendment addresses only the question of the constitutional legality of the proposed property transfers, and it seeks to establish the modes or methods by which these proposed transfers can be legally accomplished in the event the Congress should decide that any proposed transfer is in the national interest.

So this amendment, Mr. President, would not preclude a transfer of public property in the Canal Zone from the United States to Panama, but this amendment would insure that any such transfer was accomplished legally and in accordance with the Constitution.

Finally, Mr. President, inasmuch as nowhere has the claim been made that Congress does not have power to dispose of the territory or other property of the United States, then the only issue properly addressed in this debate is whether or not the power of Congress is express and exclusive. If the power of Congress is express and exclusive—and certainly it clearly is—then the President and the Senate cannot by means of a treaty alone, without any Congressional assent, alienate and transfer property belonging collectively to the citizens of the United States.

Let us, Mr. President keep that latter thought firmly in mind during the conduct of this debate. The property belonging to the United States in the Canal Zone, the zone itself, the fee simple title to the land, and the canal facilities—all estimated in excess of $10 billion in worth and known to be of untold value in terms of our national inerest—is, indeed, property owned collectively by every single man, woman, and child who is a citizen of this country. The framers of the Constitution felt, as I am sure a vast majority of the citizens of the country feel strongly today, that public property belonging to all the people should not be transferred by any unauthorized unilateral action of the President and Senate through the treatymaking process and ought to be accomplished, as is provided in the Constitution, only pursuant to authorization or assent given by the whole Congress acting on behalf of all of the people. In kind with all property transfers, any public property transfer can occur legally only with the consent of the owner, the people of the United States in Congress assembled.

Some of the many commentators on this constitutional issue have missed by a wide mark a salient point which must be understood. Dean Louis Pollak, for example, in his recent paper on this subject wholly misunderstands the basic matter at issue. Dean

Pollak infers that there is no merit to the argument that the Congress has exclusive power to dispose of U.S. property because public property can be dealt with in the provisions of a treaty. Mr. President, of course, the disposal of public property can properly be the object of a treaty, but the issue is whether it can actually be transferred by the treaty alone. Of course, the President of the United States with the advice and consent of the Senate has the power to make a treaty—a contract really—with a foreign government in which it is proposed or even promised that public property will be transferred, but the President of the United States acting by treaty with the advice and consent of the Senate lacks completely the power actually to make the promised conveyance—that can come only from Congress or can be done only with the assent and under the authority of the Congress. The argument then is not whether the President and Senate can make a treaty concerning a disposal of public property but whether the disposal itself can be accomplished except under express authority of the Congress in the exercise of its exclusive "power to dispose of * * * property * * * belonging to the United States."

Dean Pollak's mistake in this regard is typical of similar errors made by many of those who have given this question only superficial study. By this I mean no disrespect for Dean Pollak. Certainly he is a well respected scholar, but I do feel that in this instance he has entirely missed the boat. I suspect unintentionally he and others have set up a strawman and then, in their argument of this topic, proceeded to knock him down without much effort. The strawman has been this—that the President with the advice and consent of the Senate has concurrent power by treaty to dispose of public property and that the precedents and comments made in the early great debates of the treaty power establish this concurrent nature of the role of the President and the Senate in using the treaty power to deal with matters over which the Congress is given express authority in the Constitution.

Mr. President, long, long ago the issue was put to rest that the President and the Senate can deal by treaty with subjects within the province of the Congress. Thus, treaties can deal with the regulation of commerce and can promise indemnities or make financial commitments; however, Mr. President, in no context can a treaty actually carry into effect by its own terms an action over which Congress is given by the Constitution express authority. So Dean Pollak sets up a strawman by arguing that those of us who are seeking to uphold the constitutional power of Congress are seeking to deny the authority of the President and the Senate to make a treaty concerning a disposal of public property. Naturally, Dean Pollak has no trouble whatsoever demolishing that position. But that is not the position, Mr. President, that the proponents of the pending amendment have taken and either the real issue has been misunderstood as a result of superficial and hurried study or it has been misunderstood in an effort to misconstrue our arguments in order to make it possible to have an answer for them.

In short, Mr. President, the proponents of the pending amendment do not claim and would never claim that a disposition of public property cannot be conditionally agreed to in the treaty-making process, but we do claim—and we claim from a solid consti-

tutional base—that no valid transfer can occur by the operation of a treaty without express congressional authorization; that is, without express authorization from both Houses of the Congress by statute.

So the issue, Mr. President, is simply whether the congressional power to dispose of public property will be upheld by the Senate and, hence, whether the proposed Panama Canal Treaty will be freed from constitutional defect by providing in it for congressional authorization of the public property disposals which it proposes.

The amendment is needed because without it, the Panamanians would be justified in asserting that they were not on notice of our constitutional requirement in this respect and that the proposed treaty itself was sufficient to effect the promised property transfer. Now, Mr. President, I recognize that article II, paragraph 1 provides that the Panama Canal Treaty "shall be subject to ratification in accordance with the constitutional procedures of the two parties." But that provision is not sufficient to alert Panama to the fact that our Constitution has not changed since the last property disposal was made to Panama in 1955 and that like the treaty of 1955 this new proposed treaty, insofar as it would effect a property disposal, is—and I quote from the treaty of 1955—"subject to the enactment of authorizing legislation by the Congress." So let us not mislead Panama in this respect. Let us instead adopt the pending amendment so that Panama will recognize that something more is required—that one more step is required beyond the approval by the Senate of these treaties before any public property belonging to the citizens of the United States can be transferred from the United States to any third party. To do otherwise would be unfair, illegal, and—in terms of our domestic law—unconstitutional.

I might add also that should this amendment not be adopted, the requirement for congressional authorization of the property disposal will still remain. In other words, Mr. President, the adoption of this amendment is not the determinative factor in insuring the compliance of our Government with the provisions of the Constitution. Should this amendment fail, it will still be necessary before any property transfer could occur in Panama for the full Congress to authorize the transfer. Therefore, conceivably—and I believe this is something no Senator would want—the Panama Canal Treaty could be ratified and Panama would expect to receive the U.S. public property promised to Panama by the treaty, yet it could take years and possibly never for the Congress to authorize that transfer either in whole or in part. This amendment, therefore, should have the support of all Senators, both proponents and opponents of the treaty, since this amendment is primarily designed to alert Panama to the particular provision of the U.S. Constitution which vests in Congress final authority over any disposal of U.S. public property.

Now, the Attorney General, like Dean Pollak, has also seen fit, I believe somewhat hurriedly, to issue an opinion appearing to state that a disposal of public property can occur by the mechanism and exclusive action of a treaty made with the advice and consent of the Senate. Again, like Dean Pollak, the Attorney General completely misunderstands the issue. He makes the same mistake Dean Pollak makes because again he argues that the specific grant

of authority to Congress to dispose of property does not prevent the President, with the advice and consent of the Senate, to deal with a property disposal by treaty. Obviously—and I say this again, Mr. President, for emphasis—it is entirely constitutional for the President to conclude a treaty which has in part as its subject matter a proposed disposal of public property belonging to the United States, it would be proper also for the Senate to give its advice and consent to a treaty dealing with a property disposal, but it is not proper for the President to assert that the treaty power alone is sufficient actually to accomplish the transfer. The Attorney General, Mr. President, fails to appreciate this distinction, and his rather short analysis of the subject, which relies primarily on dicta from cases not on point, leads many to the conclusion that the Attorney General could not have studied carefully the constitutional question that has been under study for many months in the Senate.

I greatly respect and admire the Attorney General, but the Attorney General must deal with thousands of questions of great importance day after day and must, therefore, rely heavily on subordinates. Also, perhaps we should be candid with each other during debate of this important question and perhaps therefore we should recognize openly that, after all, the Attorney General is essentially a lawyer serving a client. So let us not give too much weight to this superficial, hurried analysis done by an Attorney General serving a client and, in essence, arguing a case. Obviously, the Attorney General cannot be free from bias in studying this matter since, even at the time the opinion was issued, the Department of Justice was defending the President and the Secretary of State in a lawsuit brought against them dealing with precisely the subject matter of the pending amendment.

But if the opponents of the proposed amendment insist on relying on the opinion of the Attorney General, it will be necessary to explain in greater detail why it is completely faulty. But one thing is certain, however, Mr. President, the opponents of this amendment are not going to quote from the opinion of the Attorney General of the United States issued in 1899 wherein that Attorney General stated:

> The power to dispose permanently of the public lands and public property * * * rests in Congress and, in the absence of a statute conferring such power, cannot be exercised by the Executive Department for the government.

We will not hear that opinion quoted to us during this debate by the opponents of the amendment, and properly so, because the opinion of an Attorney General cannot be permitted to be given any serious weight in studying this fundamental issue of constitutional law.

As I pointed out immediately before the recess, Justice Jackson, when sitting as a Justice of the Supreme Court of the United States, rejected his very own opinion issued previously when he had served in the capacity of Attorney General. Justice Jackson had the honesty and integrity to refuse to accept his own opinion as Attorney General because, and he stated this about his own work, Attorneys General may not have the time to study truly a close legal question when serving in the difficult administrative and political environment in which they inevitably work.

So, Mr. President, let us not simply wave before the Senate a copy of an opinion of the Attorney General. Let us instead analyze this question for ourselves and, in so doing, let us uphold the Constitution of the United States.

Now, what does the Constitution say? The Constitution says, "The Congress shall have the power to dispose of * * * property belonging to the United States." The Constitution also says that the President, with the advice and consent of the Senate, may conclude treaties with foreign governments. How are these two provisions in the text of the Constitution reconciled—and I might state at this point, Mr. President, that the Constitution itself is the best evidence of its meaning, and it is to the Constitution itself that we should pay greatest attention in analyzing the merits of the pending amendment. And in examining the Constitution, we do find these two provisions, on the one hand an express grant of power to the Congress to dispose of public property, and on the other hand the grant of power to the President, with the advice and consent of the Senate, to conclude treaties.

There are two cardinal rules of construction which must be used to properly understand the impact of these two grants of power in the Constitution. The first rule of constitutional and statutory construction is that express mention signifies an implied exclusion. This rule the Supreme Court has employed again and again. For instance, in *Botany Worsted Mills* v. *United States,* 278 U.S. 282, at p. 289, the Court said:

> When a statute limits a thing to be done to a particular mode, it includes the negative of any other mode.

In other words, if there is an express procedure set up, then other possible procedures are negated or forbidden. In this case, since the Constitution establishes the mode by which public property is disposed, that established, express mode excludes any other conceivable mode of disposal under the rule of construction, the rule of express mention. Nowhere in the treaty power is any mention made of the disposal of public property; therefore, the rule of express mention negates the use of the treaty power as a mode for disposing of public property because express mention of that mode is made elsewhere. The rule of express mention does not prevent the treaty power from addressing the issue of a disposal of public property, but it does prevent, in terms of modality, the disposal by treaty alone of public property.

This same rule of express mention was well known and often invoked by the founders of the United States during deliberations on the Constitution and the organization of the Government; for example, Egbert Benson in the first Congress, in which sat many framers and ratifiers, stated unequivocally that:

> It cannot be rationally intended that all offices should be held during good behavior, because the Constitution has declared [only] one office to be held by this tenure.

Thus, the fact emphasized by the opponents of the pending amendment that the property clause contains no language excluding concurrent jurisdiction of the treaty power is of no significance whatsoever. Obviously, the framers could not have drafted a national constitutional document if they had been required in each

instance in which power was granted to exclude expressly every other conceivable agency of the Government which might exercise the power conferred. The language of the Constitution, expressly giving to Congress the power to dispose of public property, therefore, under this cardinal rule of construction, leads to the conclusion that the President and Senate under the treaty power were excluded from concurrent authority.

Secondly, there is another settled rule of constitutional and statutory construction which must be used to understand the interaction of these two provisions of the Constitution. This second rule is that the specific governs the general. In *Swiss National Insurance Co.* v. *Miller,* 289 Fed. 570, at p. 574 (App. D.C. 1923), the Court said:

> Where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.

In the words of the Supreme Court in *Buffum* v. *Chase National Bank,* 192 F. 2d 58, 61 (7 Cir. 1951):

> General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.

Viewed in this light, the facts stressed by proponents of the concurrent power theory, that the framers contemplated that a treaty could "affect" territorial rights, is far from decisive since a treaty affecting territorial rights could yet be subject to the specific and special congressional "power to dispose." In short, in terms of the present issue, the specific power of disposition of territory or other property belonging to the United States governs and limits the general treaty provision.

Therefore, Mr. President, under these two, well-recognized rules of constitutional construction, it is of no moment that, as one of the witnesses before the Subcommittee on Separation of Powers testified on behalf of the administration, and I quote:

> There is no restraint expressed in the treaty power in respect to dispositions.

No restraint is expressed because under these basic, well-known canons of construction no restraint was needed to be expressed. Obviously, the treaty power itself would have extended for several pages if every congressional restraint on the treaty power were required to be specifically enumerated.

Oddly enough, Mr. President, the opponents of this amendment have relied on commentators who have relied rather heavily and ironically on a passage from *Geofroy* v. *Riggs,* 133 U.S. 258. This passage is found at page 267 and reads as follows:

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument.

Notably, Mr. President, the citation from Geofroy does not call for express restraints—the Court saw it to be entirely sufficient that restraints be found, Mr. President, in the Constitution in order to limit the treaty power. It follows that the implied exclusion and limitation on the treaty power in the case of property disposal is found in the Constitution by virtue of the express grant of the disposal power to Congress, both because the rule of express

mention negates the use of any other mode and because the rule that the specific governs the general requires a limitation on the general treaty power by the specific disposal power.

The operation of both these canons of constitutional construction is made apparent in the Supreme Court's flat statement in *Sioux Tribe of Indians* v. *United States,* 316 U.S. 317, at p. 326 (1942):

> Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive's power to convey any interest in the lands must be traced to Congressional delegation of its authority.

Now, Mr. President, there are other sources of evidence which can and will be examined during the conduct of this debate. But no source is superior to the primary source, and that primary source is unambiguous in granting exclusively to Congress the power to dispose of the property of the people of the United States. But beyond the Constitutions itself, Mr. President, virtually every other piece of evidence we have examined leads also to the inescapable conclusion that the disposal power is indeed an exclusive power of Congress. The sources of these additional items of evidence are, first, the intent of the framers of the Constitution as expressed in debate during the Constitutional Convention in 1787; second, consistent past treaty practice; and third, the various judicial authorities.

Without today going into detail in each of these areas I simply note that the limited records that do exist of the Constitutional Convention appear to demonstrate that the framers of the Constitution had the intent to preclude the President, with the advice and consent of the Senate, from acting through the treaty mode alone to dispose of Government property. Second, I note that past treaty practice supports the exclusive power of Congress to cause the disposal of property belonging to the United States. While it is true that certain treaties of peace have been concluded by which boundary disputes have been settled, nowhere has a treaty itself purported to transfer property clearly belonging to the United States. In this respect, the Committee on Foreign Relations itself has failed to appreciate the distinction between a treaty of cession and a treaty of recognition. A treaty of cession involves a disposal of property to which title has vested in the people of the United States, whereas a treaty of recognition involves simply the acknowledgement of another country's title to disputed territory along an unresolved boundary. If this distinction is property appreciated, then it is obvious that past treaty practice supports fully the exclusive power of Congress to cause a disposal of public property.

Thus, for example, in the Treaty between Panama and the United States concluded in 1955, the United States specifically made subject to the enactment of authorizing legislation that portion of the treaty which transferred public property Panama. In the same treaty, where certain, very minor boundary adjustments were also accomplished, no specific mention was made of the congressional power to dispose. The treaty of 1955, therefore, is a perfect illustration of the distinction between boundary adjustments made in treaties of recognition and property disposals covered by treaties of cession, a distinction which the August Committee on Foreign Relations has completely failed to appreciate.

Finally, Mr. President, I will conclude by observing that the judicial authorities do not dispose of this question. The United States, in the main, has been an acquisitive Nation, a growing Nation, and only rarely has the United States given up public property to foreign governments. In those cases in which the United States has given up public property to foreign governments, there has always been congressional authorization. Therefore, there has never been a situation in which the courts have been asked to decide whether a property disposal can occur through the mode of a treaty alone, as opposed to the normal mode of disposal by congressional action or consent.

There are many cases, however, that have examined the power of Congress to dispose in relation to the exercise by the President of his powers. In all of those cases, Mr. President, the courts have held consistently that the President's power must be traced to a delegation or authorization by Congress. The opponents of the amendment, no doubt, will cite the same melange of dicta which has already been cited to the Subcommittee on Separation of Powers arising out of certain Indian treaty cases, but at this stage, I will comment only that these cases provide dicta only and, if closely analyzed, actually lend themselves support to the proposition that no public property may be transferred except by the Congress of the United States.

In concluding, I call particular attention to a bill pending in the House of Representatives, H.R. 11634, which would authorize the disposal of public property in Panama pursuant to the proposed treaties. I will not support this bill and I will work against its passage, but this bill or a similar measure is the only way by which the property of the United States can be constitutionally transferred to the Panamanian dictatorship.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I know the Senator from Massachusetts has been waiting patiently, and I yield to him such time as he may consume.

Mr. HATCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HATCH. Who has the floor?

The PRESIDING OFFICER. The Senator from Maryland has the floor and the time has been divided equally to both sides. The Senator from Maryland is yielding to the Senator from Massachusetts.

Mr. SARBANES. Mr. President, I yield such time as the Senator may desire.

The PRESIDING OFFICER. The Chair recognizes the Senator from Massachusetts.

Mr. KENNEDY. Mr. President, earlier in the discussion of the Senator from Alabama, he made reference to article V of the 1955 treaty, which required action by the Congress on the disposition of certain properties.

I made reference to this treaty as well, to article VI and article VII, which were couched in self-executing terms, involving a change in the boundary of the Canal Zone. Then we entered into a brief dialog about whether the change of boundary was really a change of property.

I would just like to complete my comment on those particular provisions of articles VI and VII, and include in the record what these articles provided for in terms of transfer of property. The transfer under article VI included a strip of water around the Colon Shores, an unused site known as Battery Morgan, and a small portion of the Colon end of the Colon Corridor. The property transferred under article VII consisted of a landing pier and the land and water area under the pier.

These clearly were transfers of property. You can define them as being adjustments of boundaries, but unquestionably, they included the transfer of property. This transfer was consistent, really, with the treaty powers under article II of the Constitution and with Supreme Court interpretations of the transfer of property as being a legitimate function of the article II provision for treaties between the United States and foreign countries. Perhaps later in our comments, we can develop that treatymaking power in greater detail.

I know that reference is made to the special arrangements between the United States and Panama, but I think that, in a very careful review of the history even of those arrangements, we can see a number of examples where there has been a transfer of property on the basis of treaty.

The proponents of the amendment which is now before the Senate can also point to examples where there has been concurrent congressional action. This points out quite clearly what, at least, is my understanding of the law, that we can use the provisions of either article II or article IV of the Constitution for the transfer of property.

That has been the position of all executives throughout the history of our country. It is the understanding of a distinguished group of constitutional attorneys, the Justice Department, and many other groups who have studied the Constitution. It is, perhaps most importantly, the understanding of the Supreme Court of the United States in its holdings. Again, we may have the opportunity to explore the details of those holdings later in this discussion.

Mr. President, I should like just to address the Senate briefly on the basic treaty before us and then to make a further comment on the amendment before the Senate this afternoon.

Last month, Mr. President, the Senate of the United States wisely adopted the Resolution of Ratification of the Panama Canal Neutrality Treaty. This treaty permanently guarantees an open, accessible, secure, and efficient waterway between the Pacific and the Atlantic.

This month, the Senate can and should adopt the Resolution of Ratification of the basic Panama Canal Treaty. This treaty will transfer control of the canal to the Republic of Panama by the year 2000—completing a historical process which has been at the heart of Panama's search for territorial integrity since it became independent in 1903.

We meet after having seen and heard again from our constituents during the spring recess. I am convinced that more and more Americans are learning about the specifics of these treaties, and as a result, more and more will lend the treaties their support. This trend is confirmed by the public opinion polls. After the Senate approved the neutrality treaty, our action was endorsed by a 49 to

41 percent margin in the latest Harris survey. Even at the start of our debate on the basic treaty, it is supported by a 44 to 39 percent margin, and I predict that the margin will increase as the Senate moves to approve this treaty as well.

For those who continue to have concerns and reservations, I hope that they will carefully reconsider them on their merits, and weigh them against the long-term benefits of the Panama Canal treaties as a whole. When there are serious points at issue, they should be seriously discussed and resolved. What is objectionable, Mr. President, is the effort of a well-organized lobby in this country, not to reason over differences, but to put unreasonable pressure on Members of this body to vote against what they genuinely believe to be in our best national interests. This lobby has even launched efforts to recall Members of the Senate for voting their consciences.

I believe these recall efforts will fail. They will fail because the single issue which counts the most for the American people is what is in the best interest of our country, which has always sought to do what is right. And the American people are recognizing that it is both right and in our best, long-term interest to ratify the Panama Canal treaties.

Our best political interest is served by establishing a lasting relationship of cooperation rather than confrontation with Panama—by demonstrating to Latin America and the world that the United States is too great a nation to rely on the inequalities of the past instead of the political partnership of the future.

We can only join hands with the people of Panama if we recognize the justice of their 75-year-old claim to the very heartland of their country.

Our best economic interest is served through assured, expeditious use of the canal by our shipping under terms that are fair to us, to Panama, and to all countries of the world. The overwhelming majority of Americans understand by now what the Western Hemisphere has always understood: that the Canal Zone has been Panamanian territory ever since Panama became independent in 1903. Our true interest was never to own the canal, but to use it, and we must join hands with the people of Panama to assure the fair and efficient use of this waterway.

Our best security interest is served by the permanent neutrality of the canal, and by our ability to act against aggression or threats directed against the canal or against transit through it. We must join hands with the people of Panama to assure the continued security and efficiency of this key waterway.

Whether narrowly defined or broadly defined, Mr. President, our interests are well served by the Panama Canal treaties. To be true to our own traditions, our responsibility cannot be limited to what merely benefits the United States: It must extend to what is just to Panama.

And it surely is just that the Government and people of Panama should look forward to ending foreign military occupation over their own territory, that they should look forward to regaining full national control over their own territory almost 100 years after independence.

Would the American people have accepted French occupation of the Mississippi River in the 19th century, let alone in the 20th? No,

we would have struggled unceasingly against this injustice, just as the people of Panama have since 1903.

Historians will surely remark on the protection of American interests under the Panama Canal treaties. But they will just as surely remark on the understanding displayed by the Government and people of Panama—who have decided to wait 22 more years before regaining what has been rightfully theirs for this entire century. They deserve recognition for negotiating in good faith with four American administrations over 14 years; for voting in favor of the Panama Canal treaties after they were negotiated and signed in Washington; for preparing to work as partners with us in assuring the neutrality as well as the fair and efficient operation of a canal in which we all can take great pride, not just in this century but in the next.

Not only the American people but the Panamanian people are following each development in this debate, Mr. President. Many in Panama have been seriously concerned by efforts in this body to extend our defense rights over their own affairs. When he was in Washington last September, General Torrijos rightly warned that the neutrality pact "could, if it is not administered judiciously by future generations, become an instrument of permanent intervention."

This is why I opposed the amendment to the resolution of ratification, designed to permit the use of military force if the Panama Canal is closed "or its operations interfered with." Fortunately, the Senate voted decisively against making this an amendment to the neutrality treaty itself. The right of military action is and must continue to be defined by article IV of that treaty: We can act against aggression or threats to the canal and canal transit; we cannot act against the territorial integrity or political independence of Panama; we must not intervene in the Panama Canal on any pretext labeled as interference with its operations. Still more importantly, we can and should join with Panama in assuring that no need for military action arises in that part of the world.

Mr. President, I have said that the people of Panama have demonstrated understanding of the political needs underlying the amendments adopted by the Senate to date. We, in turn, should act with responsibility and restraint, so that any changes that we seek are not only consistent with the treaties as negotiated, but responsive to real and valid American interests. If we act in this manner, we can look forward not only to mutual acquiescence in these treaties, but to friendship and cooperation in carrying them out.

We should recognize that the basic treaty before us goes a very long way to meeting the basic interests and concerns of Americans, in the full use and efficient management of the Panama Canal.

The United States will continue to operate the canal until the year 2000. Until that time, five out of the nine board members of the Panama Canal Commission will be Americans, and the Commission will operate the canal in accordance with U.S. law.

During this period of continued U.S. control, Panamanians will move into all levels of canal management and will be prepared to run this waterway when they achieve control by the end of the century. From this perspective it is surely the residents of Panama who are being more than fair and reasonable in exercising their

full rights of sovereignty in the 21st century, after having held these rights in abeyance throughout the 20th century.

And Panama itself has a fundamental interest in the efficient management and full international use of the canal. Panama derives 12 percent of its gross domestic product and 18 percent of its foreign exchange earnings from canal-related activities. Under the new treaties, the earnings of Panama will depend on the amount of shipping that moves through the canal. Panama, not the United States or any other country, will be the biggest loser if traffic through the canal should diminish.

Last week, President Carter traveled to Latin America to further the important objectives of the United States in this hemisphere: The expansion of political, economic and social ties; the promotion of human rights; the safe use and effective control of nuclear energy.

It was brought home once again how important the ratification of the Panama Canal treaties will be to new directions and new hopes for our relations with Latin America.

The fact is that Latin Americans have viewed our Panama Canal policies for years as a litmus test of our relations in the Western Hemisphere. The canal has cut through not only Panama, but the hemisphere as a whole. American President after American President has talked about new relationships of equality and maturity. This is a critical opportunity for the United States to match words with deeds—not only to make Panama whole, but to begin to make our relationships whole with all peoples of this hemisphere.

So we must move ahead. The United States did not come into this world to occupy and colonize foreign territory. We did not come to impose our military will on the weak nations of this Earth. The foundation of our influence and stature in the world will always be our interest in liberty and fairness—in what is right. And that is why I am confident that, consistent with our national security interests, the Senate will choose moral strength over imperial strength by adopting the Panama Canal Treaty this month—and by clearing the way for the United States to pursue its other important priorities, domestic and foreign.

Mr. President, I would now like to comment briefly on the amendment which is before us at this time, the Hatch amendment. This amendment would require both Houses of Congress to act to dispose of U.S. property in the Panama Canal Zone.

There is no question in my mind that the treaty could have been negotiated in a form requiring such action under article IV, section 3, clause 2 of the Constitution—if both parties so desired. There are precedents for taking this course in transferring American property to foreign states.

But there is also no question in my mind that the power to dispose of U.S. property is available separately and concurrently to the President and the Senate under article II, section 2, clause 2 of the Constitution—permitting the President to make treaties "by and with the advice and consent of the Senate."

Last year, the Attorney General stated his opinion that—

> Territory or property belonging to the United States may be disposed of by action of the President and the Senate under the treaty clause.

Last month, 15 leading constitutional scholars, including professors Paul Freund and Lawrence Tribe of Harvard Law School, advised the Congress that:

The Constitution unequivocally permits transfer by treaty of property belonging to the United States. The treaty power, and the power of Congress under Article IV, Section 3, Clause 2 of the Constitution, are concurrent powers, and either may be used to transfer property.

Even before the 1903 treaty with Panama, the Supreme Court had confirmed that the treaty power could be used for the transfer of lands—notably in Holden against Joy (1876) and Jones against Meehan (1899). In addition to our treaties with Indian tribes, there are 12 treaties which have transferred property from the United States to other nations—from our 1819 treaty with Spain to our 1971 treaties, in which the Senate approved transfer of the Ryukyu and Daito Islands to Japan and transfer of the Swan Island to Honduras.

I am, therefore, in full accord with the Committee on Foreign Relations, which concluded in its report that—

The Constitutional text, the intent of the framers, opinions of the Supreme Court, and historical precedent all suggest that the Panama Canal Treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation.

What I strongly oppose, Mr. President, is any effort to detract from the treaty powers of the President and the Senate. With the current comprehensive treaties before us, involvement of the House would suggest that the Senate no longer has the sole legislative authority in the treaty-making process. This would, to my mind, violate article II of the Constitution and constitute an intolerable precedent for the future foreign policies of our country.

Mr. President, perhaps I could engage the floor manager in a further development of this particular issue which is before the Senate at the present time.

Mr. SARBANES. will the Senator yield for just a moment?

Mr. KENNEDY. I am glad to.

Mr. SARBANES. I want to underscore the reference which the Senator made to the letter sent to the Congress by 15 distinguished legal scholars, deans of our leading law schools and leading professors of constitutional law, because I think they state the question that is before us with respect to this amendment in a very succinct and concise way and also give a very forthright response to it.

I think if I take just a moment of the Senate's time to read the letter from which the Senator quoted, it might make some contribution to this debate.

Their letter stated:

We have been informed that the constitutional validity of the new Panama Canal Treaty has been questioned by several lawyers who have claimed that the United States may transfer its property only by legislation enacted by Congress and may not transfer its property by treaty.

We respectfully submit that such a claim is erroneous.

The Constitution unequivocally permits transfer by treaty of property belonging to the United States. The treaty power, and the power of Congress under Article IV, Section 3, Clause 2 of the Constitution, are concurrent powers, and either may be used to transfer property.

The treaty power extends to all proper subjects of negotiations with foreign nations; a transfer of United States property is such a subject, and accordingly may be effected by treaty.

Now, that puts the issue and the response to it, in as succinct a manner as one can do it. It is very strong for the position which I think our practice in this country supports over the history of the Republic, that property can be transferred by the treaty power, as well as by a legislative enactment on the part of the Congress.

The other point I want to add is that it was implied yesterday that, somehow or other, the President was seeking to reach out for extra power.

Nothing could be further from the case. The President has come to the Congress with this treaty. No treaty can take effect unless two-thirds—two-thirds—of the Members of the Senate of the United States are prepared to advise and consent to the treaty.

So the President's actions with respect to negotiating a treaty can only have an effect if the Senate is prepared by a two-thirds vote to advise and consent to the treaty.

[Mr. Melcher, assumed the chair.]

Mr. KENNEDY. The Senator, I know, is well aware of the statement by presidents of the American Society of International Law which have reached the same conclusion.

Mr. HATCH. Will the Senator yield on this point?

Mr. KENNEDY. I will be glad to yield in just a few minutes, if I might finish on this point.

Mr. HATCH. I thank the Senator.

Mr. KENNEDY. I think we ought to make that part of the Record. I will just refer to the relevant section, and I quote:

> The Constitution grants the President the power to make treaties by and with the advice and consent of the Senate, and these treaties become the supreme law of the land. The Constitution also empowers the Congress to dispose of property belonging to the United States. Nothing in the language of the two clauses limits the treaty power with respect to dispositions of property.

This is a statement by a distinguished group of presidents and past presidents of the American Society of International Law.

I understand that this is the opinion of most of our leading constitutional authorities, the presidents of the American Society of International Law, and also is the view of the committee and the holding of the Supreme Court, dating to the last century, both explicitly and in its dicta.

I referred to the *Holden* v. *Joy* case in 1872—and I will enter the relevant finding in the Record:

> It is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to grantee a good title to such lands without an act of Congress conferring it.

Am I correct that in its review of the constitutional precedents, it was the conclusion of the committee and the courts that article II as well as article IV of the Constitution grant concurrent powers and that the tranfer of property could be realized under the treaty-making authority and power of article II? That is my reading of the holdings, as well as the dicta, of the Supreme Court. That is my understanding, and I assume that is the understanding of the Senator from Maryland.

Mr. SARBANES. The Senator is correct.

The Attorney General of the United States, of course, came before the committee and, in effect, rendered a legal opinion to the committee.

The Senator from Utah suggested on the floor yesterday that no representative of the State Department or the Department of Justice has cited a single case or read from the text of a single constitutional treatise any statement by any member of the Supreme Court or any other court that even remotely suggest that Congress power to dispose of United States territory is not an exclusive power.

All I want to say is that the Senator may disagree or seek to disagree with the interpretation that representatives of the State Department or the Department of Justice place on a case. But to make the assertion that they have not cited a case and have not, in effect, put together an able legal document in support of their position simply does not square with the facts.

Mr. HATCH. Mr. President, will the Senator yield on that point?

Mr. SARBANES. I would like to finish.

Mr. HATCH. I would like to know the case they cited.

Mr. SARBANES. That is not the Senator's assertion. The Senator's assertion was that they had not cited a single case.

Mr. HATCH. That is right, and I do not believe they have.

Mr. SARBANES. They have. The legal opinion of the Attorney General discusses the wording of the Constitution. It discusses the ratification process of the Constitution in order to deal with the meanings of it. It discusses certain cases.

Mr. HATCH. But not one case——

Mr. SARBANES. And it discusses treaty practice in this country.

The Senator may want to quarrel with the Attorney General in his view. The Senator may want to quarrel with the 15 deans and constitutional lawyers who have communicated with the Members of the Senate. The Senator may want to quarrel with the presidents of the American Society of International Law. But all have reached conclusions different from that of the Senator.

In fact, the Attorney General concluded his statement——

Mr. HATCH. Mr. President, if the Senator——

Mr. SARBANES. If the Senator would desist, I would be happy to yield to the Senator after I have a chance to make the point.

Mr. HATCH. I will be delighted to desist. However, I would like——

Mr. SARBANES. I recall yesterday——

Mr. KENNEDY. Mr. President, I would like to have an understanding with the Senator from Utah. I would like to finish my exchange with the Senator from Maryland and then enter into an exchange with the Senator from Utah.

I believe I have the floor, Mr. President. Therefore, I am going to continue my dialog with the Senator from Maryland, and after I have completed that, I will be glad to yield the floor, and let the Senator from Utah address questions to the Senator from Maryland. I would like to proceed in that way. I have not taken a great deal of time in this debate, and I would like to complete my inquiries with the floor manager.

Mr. CHURCH. I insist on the regular order, Mr. President.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized, and he does not yield at this time, except to the Senator from Maryland.

Mr. HATCH. Mr. President, will the Senator from Massachusetts let me make a 10-second statement? I have to leave the floor. That is the only reason why I tried to interject at this point.

Mr. KENNEDY. The Senator from Utah has already used 10 seconds, but I will yield him 10 seconds more.

Mr. HATCH. I wanted to interject at that point because I have to leave the floor, but I will discuss this thoroughly later and discuss the 15 law professors and the argument made by the Senator from Massachusetts and the Senator from Maryland.

I apologize for having attempted to interject at this point, but that is the reason. I just wanted to make it clear in the record. I will return later and make these points clear.

I thank my friend from Massachusetts.

Mr. KENNEDY. Mr. President, as the Senator from Maryland was pointing out, I think the case has been made during this debate that there are basically three important holdings of the Supreme Court on issues which are directly related to this amendment.

There is the *Geoffrey* v. *Riggs* case of 1890, which states that the treaty power is unlimited, except when otherwise provided in the Constitution. Clearly, there can be no agreement through the treatymaking power if it is going to violate other constitutional provisions. But quite clearly, that would not only be a common and a reasonable understanding of the treaty power, it has been reaffirmed by the Supreme Court of the United States.

Then, the cases of Holden against Joy and Jones against Meehan, 1872 and 1899 respectively, conclude that a treaty may convey good title without an additional act of Congress. This is basically the holding of those two cases.

So you have the language of article II and the interpretation of what its parameters in Geoffrey against Riggs. You have the reaffirmation in the cases of Holden against Joy and Jones against Meehan, that a treaty may convey good title without an additional act of Congress.

As I understand, after the late 1800's, the Supreme Court has made no holdings that would challenge those particular decisions, which represent the supreme law of the land.

Finally, Mr. President, one of the points made by the proponents of this amendment is that we have a rather unique relationship with Panama because of our historic ties, our numerous agreements and treaties, and the important commercial and security interests of the United States. Therefore, what we really have to do is to look at the range of agreements with Panama itself that affect the territorial transfer issue.

And as I read these agreements, the record is basically mixed. There have been transfers of property under treaties and there have also been transfer of properties under actions of both Houses. We have the examples of both, and I will include those shortly in the Record.

As I understand it, this makes the case of the Senator from Maryland and the great majority of the members of the Foreign Relations Committee, that the transfer of property can be accom-

plished either under article II or article IV. In the closer examination of even our relationship with Panama, we can see different instances over the history where each article has been used. I think that this is an important point. Is my understanding of that correct as far as the Senator from Maryland is concerned?

Those who support the Hatch amendment refer to the 1933 agreement which involved changes of boundaries, the 1942 agreement which concerned land parcels in Panama, and the 1955 treaty whose article V required implementing legislation—but whose article VI and article VII provided for the transfer of property without any executing legislation.

On the other side, we have the treaties of 1936 where the United States gave up the right to take land from Panama: The rather extraordinary provision in the 1903 treaty which effectively permitted the United States to take any land in Panama at any time at its sole discretion. We have the 1950 treaty which provided for the Colon Corridor adjustment for highways, and the 1955 treaties which included the articles VI and VII already cited.

So is my understanding correct that in the transfer of property there have been examples of where the treatymaking power under article II has been used and examples where article IV has been used?

Mr. SARBANES. The Senator is correct. We do not contend that property can be transferred only by the treatymaking power. Our position is that property can be transferred in one of two ways: Through the treatymaking power or under article IV by enactment of Congress.

It is important, I think, to note that the supporters of this amendment have cited a number of cases that dealt with the question of whether either the executive or the judiciary could transfer property of the United States without the involvement of the legislative branch of our Government, and it is clear under the Constitution that cannot be done. The President alone cannot transfer property, nor the courts. The President, however, either with the approval of two-thirds of the Senate of the United States, acting through the treatymaking power, can transfer property, or, alternatively, it can be done by majority action of both Houses of Congress, both the House of Representatives and the Senate. But in either instance there is an involvement of the legislative branch of the Government, and the cases which reject any assertion of executive authority to do it alone are quite correct.

This Executive has not made that assertion. Although it has been implied and said yesterday that there was a reach for power unprecedented in our history, that is clearly not the case. The President has submitted this treaty to the Senate and awaits the Senate's action upon the treaty, and in order for it to be approved it has to have a two-thirds vote which is an extraordinary majority of this body.

In fact, if I may add this comment, I think it is a reflection of the substantive merits of these treaty provisions that the Neutrality Treaty did in fact command the support of 68 Members of the Senate, and I am hopeful that the Panama Canal Treaty will likewise command in excess of two-thirds of the body.

It is almost impossible to get two-thirds of Senators to agree on anything, and if you can get them to agree on something as involved and as important as the treaties that are before us I think that speaks to the merits of the treaties in terms of how well the substance of the treaties enhance, protect, and further American interests with respect to our situation in Panama and elsewhere in the world.

Mr. KENNEDY. I shall just pursue further with the Senator from Maryland. Now that we have talked about the special relationship between the United States and Panama, in the majority of cases the transfer of property has been accomplished either under the treatymaking provisions or under the legislation where we have disposed of excess foreign property. At least that is my understanding.

Furthermore, the most recent case which comes to mind is a case which is familiar to the Senator from Maryland. It is the treaty between Japan and the United States, involving the reversion of a sizable transfer of land in 1971. This obviously was a matter of key security interest to the United States involving millions of dollars in property of the United States, transferred through the treaty. Am I not correct?

Mr. SARBANES. The Senator is correct.

Mr. KENNEDY. As to this particular amendment of the Senator from Utah, where some Members actually voted for that treaty back in 1971, they will have an opportunity to explain any distinction in their vote. But I am not basically correct that over the period of historical precedents treaties have been a means and mechanism by which property has been transferred?

Mr. SARBANES. Treaties have been one of the means and mechanisms.

Mr. KENNEDY. That is right.

Mr. SARBANES. And statutes have been another. Again I do not want to overstate our position. We recognize both approaches as appropriate. There is a concurrent authority, and it has been done in both ways over the course of the history of the Republic. But I think the references that the Senator has made are good references and support the line of argument which he has advanced here on the floor of the Senate today.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. KENNEDY. Just in 1 minute.

Mr. ALLEN. Yes.

Mr. KENNEDY. As I understand the Foreign Excess Property Act has proved a principal interest for the transfer of property under article IV of the Constitution.

Finally, let me just ask the Senator from Maryland, who has been a floor manager, whether he has received any assurances from the supporters of this particular amendment that under this particular procedure, it would only require a majority of the Members of the Senate effectively to dispose of U.S. property, just as it would only require a majority of the Members of the House of Representatives? Is it his understanding that those who are putting this amendment forward are prepared to give an early time agreement for disposition of this issue, or has the Senator been unable to

determine that this is the position of the Senator from Utah and those who are cosponsoring the amendment?

Mr. SARBANES. The Senator asked a very interesting question, and I have to say to the Senator we have received no indication of that sort.

One might hazard a guess that what the proponents of this amendment, the opponents of the treaty, in fact, may like to have is a totally new hybrid animal that requires a two-thirds approval in the Senate of the United States and a majority approval in the House of Represntatives.

It is very interesting—and I want to underscore this—that the constitutional system that was devised by the Founding Fathers and under which we operate with respect to the disposal of property, in that instance in which the President, working only with the Senate, will dispose of property through the treaty power, that a two-thirds vote in the Senate is required.

In those instances in which you use the other authority, the statutory authority, then you need only a majority vote in each House.

But there has been no indication that the involvement of the House is designed to diminsih the requirement in the Senate from two-thirds to a majority, and I would assume the contention would be that clearly under the treatymaking power you require two-thirds of the Senate, and that is what would be necessary. But the question is a very interesting one.

Mr. KENNEDY. I would just venture to say it might be a "tribird" proposal, because you would have the basic treaty, the transfer of property, and then the implementing legislation. It just begins to show perhaps how ridiculous this would be, in terms of any fair evaluation of the diplomatic history of this country or the Constitution or the teachings of the Supreme Court or the understandings of the Founding Fathers.

Mr. ALLEN. Mr. President, will the Senate yield?

Mr. KENNEDY. I am glad to yield.

Mr. ALLEN. I believe the distinguished Senators are a little confused as to the attitude of the Senators who are seeking to strengthen this treaty. We do not propose that this treaty be considered by the House, and the Senators well know that. What we are insisting upon is that the Constitution requires that legislation be adopted by Congress—that is not this treaty, that is an entirely different matter—authorizing the disposition of this property. This treaty would not be submitted to the House, but before the treaty could go into effect it would require legislation, another piece of legislation altogether, and it is not a question of any hybrid animal.

This treaty would not be considered in the Senate and in the House. Only the matter providing for the disposition of the property.

On another matter, I would like to suggest that I am a little surprised that the distinguished Senator from Massachusetts uses the treaty with Japan returning to Japanese sovereignty the Ryukyu Islands. The United States did not own the Ryukyus, as we all know. We did not gain that title to that by conquest, and this

was not property of the United States as is the property in the Canal Zone.

What was transferred was not the property itself but our right of control over these islands. So this treaty is not in point as to the executive with a two-thirds vote in the Senate by treaty conveying property of the United States.

I would like to call the Senator' attention to the nonanalogy of the illustration.

Mr. KENNEDY. Mr. President, the point I would make on this is that the rights of the United States in the Ryukyu Islands were basically comparable, under the treaty with Japan, to the rights of the United States under the Treaty of 1903 with Panama and, therefore, the parallel is real in terms of the essence of the issue, and that is the transfer of property.

Several Senators addressed the Chair.

Mr. SARBANES. Mr. President, I want to support the Senator in that statement.

I think the parallel is very definitely real. In fact, it was stated at the time there was residual sovereignty for Japan much as there was residual sovereignty for Panama.

We had an extended discussion with the Senator from Alabama yesterday over this question of ownership, sovereignty, and jurisdiction, and the whole bundle of property rights that you can have. With respect to the Japanese treaty involving the Ryukyu Islands, it was stated at the time that about the only power to the United States did not have with respect to those islands was to transfer them to some third party.

So no matter how extensive one wants to define the rights in the Canal Zone, they are certainly not more extensive than that, and in that sense the parallel is very close, and the disposition of those islands is a very apt analogy to draw in the situation with respect to the authority of the treatymaking power with respect to the transfer of property.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. KENNEDY. Just one final point. We owned the airport, the naval air station, and other facilities in the case of Japan. This is a direct parallel, I think, to the case of the Panama Canal. Both properties are to be transferred by treaty. Then there were other rights dealing with both administration, legislation, and jurisdiction which we transferred to Japan by treaty.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. KENNEDY. I yield.

Mr. MATSUNAGA. I rise in support of the Senator's contention. There is a definite parallel in the Ryukyu Islands. We built facilities which became part of the realty which the United States owned. This is much in parallel with the case of Panama, so I think the citation of the Ryukyu Islands Treaty between Japan and the United States is very much in line.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. KENNEDY. I thank the Senator from Hawaii. Obviously, he is well-briefed and he understands fully the nature of our commitment in that part of the world. Having his comments on it I think has been very helpful.

I would be glad to yield to the Senator from Alabama.

Mr. ALLEN. I thank the Senator.

The Senator, particularly the distinguished Senator from Maryland, was saying that the property rights were the same. Of course, that is not correct because the United States purchased and owns in fee simple the property in the Panama Canal Zone, and I have a record——

Mr. SARBANES. Mr. President, will the Senator yield on that point?

Mr. ALLEN. No. I have not even finished my remarks.

The situation is entirely different. We had possession of the Ryukyus by conquest, but we know that does not vest fee simple title in the United States. So far from the situation being as the distinguished Senator from Hawaii said that we owned the land, we did not own the land. Therefore, when we gave back the islands obviously we gave back the improvements on the land. So there is no parallel at all.

We own the Panama Canal Zone by deed and by grant from the Panamanian Government. No such situation exists with respect to the Ryukyus. That was conquest, and that does not vest title under international law.

Mr. KENNEDY. I wish to make one statement, and then I would welcome yielding. My understanding is different from the understanding of the Senator from Alabama. Basically, one-third of the property—and I would like to be corrected by the Senator from Maryland—was clear title based upon a prior claim of the Panama Railroad Company.

The second third was the quitclaim from the private claims in Panama. And the final third represented untitled land. But there is very serious question and controvery as to the nature of the title in all of these areas. It is not as the Senator from Alabama has described it.

Mr. ALLEN. Just quoting——

Mr. KENNEDY. I thank the Senator from Maryland for his understanding of it.

Mr. SARBANES. I want to say the statement of the Senator from Massachusetts is correct. I do want to say in fairness to the Senator from Alabama that in the statement he just made he was very careful, after talking about owning it in fee simple and having bought it, when he made his final statement, to say that we had acquired it by deed which, I assume, are the purchases from private landowners, and by grant from the Panamanian Government.

Now, that statement, properly explained, is probably correct. What it means—and that is important—is that, first of all, we paid over $4 million to private people who owned property, some of the property in the area that is now the Canal Zone, and we, in effect, got whatever title they had.

Whatever title it was, it is not the equivalent of the property right that the sovereign government of that area has. If the Government of Great Britain or the Government of France comes to the United States and buys property from American citizens in the United States, it does not get a title to that property that is the equivalent of the title of the U.S. Government with respect to what it can do. The right of eminent domain, for example, to take over the property. By buying that property from private owners in this

country, they are not able to create a little France or a little England somewhere in the United States and assert that they have rights there to the exclusion of the Government of the United States. So even though we bought those private titles from private owners—and we should have done it; they should have been compensated, in fact, the 1903 treaty had some very careful provisions as to that. But the fact that we made that purchase from private owners did not create a little United States in that area. That is the first point.

The second point is the reference to the grant from Panama. The fact of the matter is that we got title to some of the territory by buying the rights of the Panama Railroad, and the balance of it was public lands of the country of Panama; and we did not buy them in the same sense as we bought the Louisiana Purchase or bought Alaska. In fact, we have been paying an annual payment to Panama ever since the 1903 treaty took effect. With respect to the annual payment, which came some time after the initial treaty was signed, because there was a lump-sum payment, then no payments for a certain number of years, and then we picked up with an annual payment, an analogy has been made to the effect of that annual payment being comparable to rent. And that is not a bad analogy, either.

But in neither instance did we acquire that bundle of rights of ownership, sovereignty, jurisdiction, and all the rest of it, so that the area became for us the equivalent of the area we acquired under the Louisiana Purchase or by the acquisition of Alaska.

If foreign citizens have a child in the area encompassed by the Louisiana Purchase or by Alaska, that child is an American citizen. That is not the case in the Panama Canal Zone. The 1903 Treaty is very careful to make the point that we are not the sovereign. We get certain rights as though sovereign with respect to that area.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. SARBANES. So these acquisitions did not give us the kind of property rights with respect to those areas that we acquired in the Louisiana Purchase or in the purchase of Alaska.

I think that the statement which the Senator from Massachusetts has made is eminently correct, and in fairness to the Senator from Alabama, we did note that he recognized that it was more than just by a deed from private property owners that we exercised jurisdiction over the area that encompasses the Panama Canal Zone.

Mr. ALLEN. Will the Senator yield?

Mr. SARBANES. Yes, I yield to the Senator from Alabama.

Mr. ALLEN. I thank the Senator. I do not really need the distinguished Senator from Maryland to advise the Senator from Alabama.

He brings the word "sovereignty" into this debate all the time. We are not talking about sovereignty; we are talking about ownership of property.

I would like also to call the Senator's attention to a statement made here on the floor by the distinguished Senator from Idaho (Mr. Church) on yesterday. The Senator from Maryland was here at the time, I believe.

Said Mr. Church:

I want to make it clear at the outset, that no one favoring the treaties, to my knowledge, denies that the United States has title to property in the Panama Canal Zone. I listened with some curiosity to the extended brief presented by the distinguished Senator from North Carolina concerning the origins of the United States legal title to property in the Canal Zone. He took an hour and a half pressing an open door. Of course, the United States acquired legal title to property lying within the boundaries of the Canal Zone.

I would suggest that the distinguished Senator from Maryland ought to tell the distinguished Senator from Idaho (Mr. Church) if he disagrees with Mr. Church, who says we do own the property in the Panama Canal Zone.

I repeat, it is not a question of sovereignty. That is not involved. This red herring is continuously dragged across the terrain by the proponents of the treaty.

What is involved is the transfer. Nobody claims sovereignty is being transferred. What is being transferred is property, and the Constitution requires that the House of Representatives, not as a part of the ratification of the treaty, but in a separate piece of legislation, along with the Senate, enact a statute authorizing transfer of the property.

It is not a question of sovereignty; it is a question of ownership of property. The Senator from Idaho has conceded that we own it. Now there is an argument between the proponents of the treaty, apparently, because they seem unable to agree on whether we own it or not. The President, in his fireside chat, said we do not own the property, so apparently there is a difference of opinion here, but I am willing to take the opinion of the distinguished Senator from Idaho (Mr. Church) that we do own the property in the Panama Canal, and I have here a record of some 3,500 transactions in which the United States purchased property from the private owners.

So let us not talk about sovereignty. Let us talk about the property that the United States owns in the Canal Zone, which requires, for its disposition, an act of Congress. Not approval of the treaty; that is not involved. This is a separate act of Congress that is required.

Mr. SARBANES. Mr. President, I would like to make just two points in response to that.

One is that while it may be a matter of indifference to the Senator from Alabama whether he is treated fairly, I want to assure him that it is not a matter of indifference to the managers of the bill, and I try to be scrupulously fair.

In responding to the Senator from Massachusetts, who recognizes, I think, what we had said, and who recognizes the fact that the Senator from Alabama phrases it in a way that it embodies both approaches——

Mr. ALLEN. I thank the Senator.

Mr. SARBANES. It is my intention, throughout the remainder of this debate, to continue to be fair to the Senator from Alabama.

Mr. MATSUNAGA. Mr. President, will the Senator from Maryland yield?

Mr. SARBANES. Let me make one further point.

The Senator from Vermont (Mr. Leahy), at one point in this debate, said that this debate was much like a soap opera, because when you went away and came back to it the same theme was being developed.

I might say to the Senator from Alabama I was reminded of that statement, because, as he will well recall since it happened only yesterday afternoon, he and I and the Senator from Idaho had an extended discussion about the question of ownership, sovereignty, jurisdiction, and the President's fireside chat, and the assertion that it had been inaccurate or misleading, and of course our contention that it was not when read in full.

I only hope that the people who have read the Record and followed this debate will recall that exchange. I do not intend to embark upon it again.

I yield to the Senator from Hawaii. I know the Senator from Arizona has been waiting. I intend to yield the floor shortly so he may deliver his statement.

Mr. MATSUNAGA. I thank the Senator from Maryland for yielding.

I do not believe the Senator from Alabama meant to say, as I believe he said earlier, that we owned no part of the Ryukyu Islands. The Senator will recall, I am sure, inasmuch as the Senate during his time ratified the treaty between Japan and the United States for the return of the Ryukyu Islands to Japan, that we did, in fact, pay individual owners of the property for the airstrip, and that the United States did, in fact, own realty in the Ryukyu Islands. I am sure, now that the Senator's memory has been refreshed, the Senator recalls that.

Mr. ALLEN. Will the Senator yield?

Mr. MATSUNAGA. So there is a definite parallel between Panama and the Ryukyu Islands.

Mr. ALLEN. What the Senator from Alabama was objecting to was the statement that we owned the Ryukyu Islands, which we did not own. It was merely by conquest. We know that title does not vest in a conqueror. As the distinguished Senator said, we were giving the land back to Japan. So it was Japan's land, of course.

Mr. MATSUNAGA. But the parallel lies in the fact that we did pay for realty in Panama, which the Senator from Alabama says we own by conveyance. It is just as in the case of the Ryukyu Islands, where we dealt not with the Japanese Government, but with the individual owners of land. For example, there is the airstrip, wherein we did pay the individual owners for the land. So while the individual owners had no claim to that land, for which we paid the individuals, we still did not, because of the lack of sovereignty, own such property and had to return such land to the Japanese Government. The parallel, as I see it, is so clear. Just because we have no exercise of sovereignty over Panama, and we do not, the property for which we paid the individual owners still is not property which we can say is within our sovereignty and, therefore, is American property, to which article IV applies.

Mr. ALLEN. I thank the Senator. If he sees the parallel between ownership of an airstrip and ownership of the entire Panama Canal Zone, I will say he can see something there that I cannot. In the conveyance to Japan, revesting sovereignty in Japan to the

islands that we got by conquest, we still own the airstrip property which we purchased. There has been no authorization for its disposition.

Mr. MATSUNAGA. But the parallel lies. The case does apply in the case of Panama now because we did, by treaty, convey or reconvey to Japan——

Mr. ALLEN. No, we did not convey the property. The Senator is mistaken, I feel sure.

Mr. MATSUNAGA. It is not by treaty that we returned the Ryukyu Islands to Japan and not by legislation?

Mr. ALLEN. It was by treaty. We did not return the land. We returned the oversight and sovereignty. That is all we returned.

Mr. MATSUNAGA. I am talking about the land which we purchased. We did exercise even fee simple rights over the land, which we purchased directly from the individual owners. It is just as with the Panama Canal

Mr. ALLEN. If the Senator will show me that the treaty provided for transfer of realty as distinguished from transfer of sovereignty, than I think he might be able to draw some parallel. But if we owned it at that time and Congress has not authorized the disposition of it, we still own it, even though Japan has sovereignty over it. I thank the Senator.

Mr. SARBANES. I thank the Senator from Hawaii. I believe he has made some extremely effective points with respect to the parallel between the two cases. I think the analogy he drew is absolutely on point.

Mr. President, how much time remains under the division?

The PRESIDING OFFICER. The Senator from Maryland has 108 minutes and the Senator from Arizona has 78 minutes.

Mr. SARBANES. I know the Senator has been patiently waiting. I yield the floor.

Mr. GOLDWATER. How much time do I have, Mr. President?

The PRESIDING OFFICER (Mr. Moynihan). The Senator from Arizona has 78 minutes remaining.

Mr. GOLDWATER. I assure the Chair I will not use all that time.

Mr. President, I rise to support the amendment offered by the Senator from Utah (Mr. Hatch), which I am cosponsoring.

Before I begin I might make an observation relative to the discussion concerning Okinawa and the disposition of property. As to the transfer of personal property, there was legislation which authorized it, the Foreign Excess Property Disposal Act of 1947, which conferred implied authority upon the President to convey the personal property to Japan. That did not necessitate a treaty.

Mr. President, this may be the most important amendment before us during the long debate on the Panama Canal treaties. In fact, it may be even more important than the treaties themselves, in the long run.

For if we establish the precedent now of allowing the Executive by a treaty to usurp the powers given to the whole Congress, it will be built on and built on by future administrations until our representative form of Government has been radically altered.

Mr. President, I am shocked that the State Department and the Foreign Relations Committee have not devoted adequate attention to this issue. I congratulate the Senator from Utah for the out-

standing and documented address he presented on the subject and also the Senator from Alabama (Mr. Allen), who has done yeoman's work in analyzing this issue as chairman of the Subcommittee on Separation of Powers.

Before I proceed to the substance of my remarks, let me explain just what this amendment is all about. For I believe many Senators have not yet understood just what our contention is.

We do not argue that the President cannot negotiate a treaty relating to the transfer of U.S. property.

We do not argue that a treaty cannot deal with the subject of transferring property belonging to the United States.

We do not argue that the U.S. Government cannot agree with another nation to transfer property.

In fact, Mr. President, it requires action by a treaty to first agree with a foreign country to dispose of property and then it requires a statute to complete that transfer. In fact, it takes both.

Nor, do we contend that in no case whatsoever can a treaty be self-executing.

Rather, we say that when a treaty calls for the transfer of property belonging to the United States, it cannot be carried into final operation without Congress passing a law to execute that treaty.

In other words, the President can negotiate a treaty relating to the transfer of property and that treaty can be brought to the Senate for its advice and consent. But that treaty is subject to the constitutional processes of our country, which in the case of the transfer of property requires action by the whole Congress to carry it into operation.

I. EFFECT ON REPRESENTATIVE GOVERNMENT

Mr. President, to show just how absurd the notion is that says a treaty itself can transfer property, let us look at the effect this proposition would have upon the people in the several States. If we do, we will see immediately that the idea makes a mockery of popular rule and representative government, which were at the heart of the plan of government established by the framers.

In 1787, the year of the Constitutional Convention, the total population of free citizens in the country was estimated to be 2,223,000. Omitting Rhode Island, which did not send any delegates to the Convention and did not join the Union until May 29, 1790, the population was 2,165,000.

Until Rhode Island was admitted, it took only 16 Senators from 8 States, the smallest in population, to ratify a treaty. They contained a total population of 934,000. The other one-third of the States contained 1,231,000 persons. The population statistics I am giving come from the tables actually used in the Constitutional Convention.

In other words, 43 percent of the people could approve a treaty against the will of 57 percent. Even if the 13th State, Rhode Island, were included in this calculation, the power of severing the United States would be given to a minority of four-ninths of the people, if it can be done by treaty alone.

Moreover, the framers fully expected several States having small populations to be added to the Union, such as Vermont, Maine, and Kentucky. They knew this development would add to the imbalance given the less populated regions in making treaties.

Mr. President, if we look at the latest census statistics, the result is even more striking. According to the 1970 census, there are 34 States with a population of fewer than 4 million persons. Under the theory which the State Department is using, a treaty ratified by 68 Senators representing only 62 million citizens in these 34 States could give away the Panama Canal against the protest of 32 Senators representing 140 million citizens in 16 States.

This means that States having a combined total of only 31 percent of the national population could overrule the Senators from States containing 69 percent of the people.

Mr. President, it is an absurdity to contend that the framers intended to give a power to a small minority of the population to dominate the great majority. Such a result is totally contradictory to the political thinking of the patriots who framed the Constitution and voted for it in the several State ratifying conventions.

There is no question in my mind that the framers meant for any proposed transfer of Government property or territory which might have an important bearing on the economy or security of the country, to be conditioned on the passage of legislation by the whole Congress. That is why they gave Congress the specific power in article IV to dispose of property.

And, remember that in the early years of the Republic, the Senate was elected, not by the people, but by legislatures of the States. The only check upon the President's authority to give away the territory of the United States was a nonrepresentative body, if Government property might be transferred without act of Congress. The popularly elected body, the House of Representatives, in whom was expressly vested the power to dispose of public property as a joint partner with the Senate, would be divested of this power.

II. SECRECY IN MAKING TREATIES PROVES REQUIREMENT OF EXERCISING POPULAR WILL TO DISPOSE OF PROPERTY

Mr. President, there is another aspect of the treatymaking power which reveals the absurdity in supposing that by a treaty the President and Senate might exclude the House of Representatives from acting on the transfer of Government property.

In the Federalist Paper No. 64, John Jay discusses the nature of the treaty power at length. He claims that one of the decisive reasons the framers chose to place the treatymaking authority in the Senate, jointly with the President, is that—

> Our negotiations for treaties shall have every advantage which can be derived . . . from secrecy and dispatch . . .

Alexander Hamilton says the same thing in the Federalist Paper No. 75. He argues that the large numbers of the House of Representatives are incompatible with secrecy and dispatch, which are essential to the proper making of treaties.

This reasoning may be suitable to making self-executing treaties which do not impinge on the express powers of Congress; but if the treaty power is claimed to be broad enough for carrying into execu-

tion the specific powers conferred upon Congress, then how ridiculous it would sound, in a representative government, to claim that U.S. territory could be given away in a secret session of the Senate without giving time for popular protest. This is the logical extension of the idea put forth by the State Department, but had it been suggested to the American people during the ratification process, public opinion would have been so shocked that the Constitution would have failed of adoption.

The reasoning of Jay and Hamilton, which was widely circulated to influence public support for the Constitution, makes sense only if enabling legislation was necessary to carry out such a treaty which had been made in secrecy.

III. VOTES AT CONSTITUTIONAL CONVENTION UPHELD EXCLUSIVE POWER OF CONGRESS TO DISPOSE OF PROPERTY

Mr. President, we have examined the important considerations which influenced the framers in drafting the treaty clause. Now, let us see what the framers and supporters of the Constitution actually said and did on the subject of yielding public property by a treaty.

It is true that the Constitutional Convention rejected at least two proposed amendments which would have added the House of Representatives to the making of treaties. One of these was presented on August 23, 1787, and the other on September 7.

However, this does not mean the Convention rejected the need for enabling legislation when a treaty extends to the powers of Congress. Each of the defeated amendments was offered after August 18, when, on the motion of James Madison, the Convention referred to its Committee on Detail the proposition that the Congress shall have the power "to dispose of the unappropriated lands of the United States."

As is described in a landmark study by Prof. Arthur Bestor of the intent of the framers in the domain of foreign affairs, the major task confronting the Committee of Detail was to define with precision the expanded powers being conferred on the Federal government and to allocate these powers among the three branches. The resolutions adopted by the Convention provided the mandate of the committee.

Thus, in approving Madison's resolution to give to Congress the power to dispose of unappropriated lands, the Convention had made an initial commitment to placing the power of transferring land in the whole legislature.

Knowing this, it is not surprising that on August 23, only 5 days after it had passed Madison's resolution, the Convention rejected an amendment providing that no treaty shall be binding which is not ratified by a law. Insofar as any delegate was concerned about the abuse of treaties in disposing of land, they felt secure in the fact that Madison's safeguard had already been referred to the Committee on Detail.

Moreover, Mr. President, there are other grounds on which the Convention may have rejected the amendment. As Madison later states, the rejected proposition was one which would have made the House a participant in making all treaties. But Madison and

others recognized that there was a difference between treaties which were complete and final of themselves and others which were incomplete, without implementing law.

By failing to make all treaties subject to the voice of the House, it does not follow that the Convention meant to remove the House from giving its sanction to some treaties.

In this connection, it is relevant to invoke Vattel, the 18th century authority on international law, whose writings were mentioned and relied upon in numerous instances by delegates to the Federal and State conventions.

Vattel's Law of Nations, which is known to have been in the hands of delegates to the Constitutional Convention, stated as a general principle that the very words used by the framers in conferring the treaty power—"to make treaties"—were universally understood to require implementing legislation whenever the conditions of a treaty were of a legislative nature.

According to Vattel, international law held that in all divided governments, the power given to the Executive of making contracts with other nations does not include that of making legislative regulations, but when the contract happens to embrace legislative objects, the assistance of the legislature is necessary to give it effect.

Thus, being well-versed in international law, the framers assumed, without needing to spell it out, that the treaty power was limited by the powers vested in Congress.

The same explanation applies to the vote in the Convention on September 7, when James Wilson proposed to add the House of Representatives to making treaties. By then, the Convention had reaffirmed lodging in Congress the power to dispose of territory, so that there was no longer any need for repeating what was already contained in the Constitution.

IV. STATEMENTS OF FRAMERS AT FEDERAL AND STATE CONVENTIONS SUPPORT EXCLUSIVE POWER OF CONGRESS TO TRANSFER PROPERTY

So much for the votes in the Constitutional Convention. But how was the document explained at the State conventions on approving the Constitution?

Remember, the Constitution was but a lofty piece of paper until it had received the breath of life through acceptance by at least 11 States. The way the Constitution was explained in order to win adherence in the State conventions is an important test of the true meaning of the document.

Actually, there is an abundance of statements by friends of the Constitution, who construed it in the State conventions as being subject to action by the whole Congress whenever it embraced subjects vested in Congress. At the Pennsylvania Convention, James Wilson indicated as much when he drew a parallel between the power of the King of Great Britain and that of the President and Senate, with respect to making treaties. Wilson said:

> In England, if the King and his ministers find themselves, during their negotiations, to be embarrassed, because an existing law is not repealed, or a new law is not enacted, they give notice to the legislature of their situation, and inform them that it will be necessary, before the treaty can operate, that some law be repealed, or some be made.

"And will not the same thing take place here?" Wilson asked.

At the Virginia Convention, Mr. Nicholas made a similar, direct comparison between treaties made in England and treaties made under the Constitution.

Moreover, five delegates to the second and successful North Carolina Convention, Nathan Bryan, James Gillespie, James Holland, Matthew Locke, and Absalom, Tatum, each indicated after the convention that they were given the understanding that the treaty-making power was limited by the necessity for enabling legislation whenever treaties involved the enumerated powers of Congress.

For example, James Holland said in 1796 that he would have been opposed to the Constitution except that those in favor of its adoption assured the North Carolina delegates that important subjects which had expressly been given to the Congress would remain secured to the legislature and could not be usurped by treaties.

Consistent with this interpretation of the Constitution, there also is a statement made at the Massachusetts Convention by Mr. King. He emphasized that "the treatymaking power would be found as much restrained in this country as in any country in the world." He appears to have reference to the practice in 18th century England, where, as I said earlier, the consent of Parliament was necessary to the completion of a treaty which touched on legislative powers.

Another statement which relates to the Panama Canal Treaty, since it directly involves commerce, was made by Mr. Choate at the Massachusetts Convention. He said that—

> As the regulation of Commerce was under the control of Congress, it could not be regulated by treaty without their consent and concurrence.

There also is strong evidence out of the Virginia Convention to show that the majority who voted for the Constitution believed a treaty could not dispose of Federal property without authority given by the whole Congress. Governor Randolph, who was a delegate both to the Federal and Virginia Conventions, discussed this very issue at his State convention.

In answering the charge by opponents of the Constitution that there is no restriction on making treaties, he replied that the Constitution provided "the most express restriction" on yielding property rights of the Nation in article IV, which is the provision relied upon in the pending amendment by the Senator from Utah.

Randolph was not the only one who took this view at the Virginia Convention. Francis Corbin added that popular rule was secured by the commerce clause.

Corbin said that if property is sought to be transferred by an agreement in the nature of a commercial treaty—a description broad enough to fit a treaty relating to commerce through the Panama Canal—"the consent of the House of Representatives would be requisite, because of the correspondent alterations that must be made in the law."

Mr. President, this view was repeated by so many delegates to the various State conventions on adopting the Constitution as to leave no doubt of the true meaning of our Federal charter. If we will study the past and review what was actually said by the

brilliant leaders who wrote and voted for the Constitution, we can learn how they meant for the document to operate.

V. TEXT OF CONSTITUTION PROVES TREATY IS CONDITIONED ON ACTION BY CONGRESS TO DISPOSE OF PROPERTY

But we have more than the statements of the framers. We have even more than the records of the Constitutional Convention. We have the text of the Constitution itself.

Turning to the specific words of the Constitution, I cannot see how anyone can believe that treaties may divest the Congress of its express power to dispose of property.

In the words of Albert Gallatin, one of the political giants of the early years of the Republic:

> The treaty-making power is limited by the Constitution when in the first section of Article I it is said that "All Legislative power" is granted to Congress.

Although the treaty power is expressed in article II without any limitation, the sweeping grant of all the legislative power in article I limits the power of treaties. If a treaty can execute the legislative powers, then Congress has not been vested with all such powers, but only those powers not conferred upon the treatmaking authority.

Moreover, Congress is vested with enumerated powers. As Professor Berger writes:

> There is the settled rule that the specific governs the general.

Berger continues:

> Where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act. * * *

Thus, Berger concludes, the specific power given Congress to dispose of property governs the general treaty provision.

Mr. President, I am especially persuaded by the reasoning of Professor Berger, since he supports the Panama Canal Treaty. But he insists on the need for enabling legislation since he believes the power of Congress in disposing of property cannot be subverted by a treaty.

Another provision of the Constitution which has a direct bearing on this issue is the necessary and proper clause. This clause declares that—

> Congress shall have power to pass all laws necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States or in any department or officer thereof.

In 1885, Congressman Tucker, chairman of the House Committee on the Judiciary, submitted a report to the House in which he argued that the language of this clause "makes it clear that while the executory agreement is in the treatymaking power, the power of execution is vested in Congress."

He menat by this that a treaty can agree to act, which would make it executory. But the treaty is not executed until Congress has acted in the case of powers vested in it.

Since the necessary and proper clause gives Congress power to carry into execution the powers vested in any other department of the Government, which includes the treatymaking authority, this

clause is consistent with the principle that a treaty agreeing to carry out one of the express legislative powers requires implementing action by Congress. On the other hand, the Constitution would be in conflict among its provisions if it is assumed a treaty can carry into execution the powers vested in Congress.

This interpretation would turn the necessary and proper clause on its head. Such a theory would not only read into the treaty provision a necessary and proper clause where none appears, but it would negate the one clause of this kind which is written into the Constitution by depriving Congress of its proper role in passing laws.

Another argument, which demonstrates the fallacy in the construction of the Constitution made by the State Department, was raised by James Madison in a brilliant speech he delivered in Congress on March 10, 1796. Madison objected that—

> If the treaty power alone could perform any one act for which the authority of Congress is required by the Constitution, it may perform every act for which the authority of that part of the government is required.

If the President and Senate can exercise any of the enumerated powers by treaty alone, Madison said, then they might by means of a treaty make the United States a party to war. He said:

> They might stipulate subsidies and even borrow money to pay for them; they might furnish troops to be carried to Europe, Asia or Africa * * * for the purpose of cooperating, on given contingencies with an ally, for mutual safety, or other common objects.

Those of my colleagues who hold that a treaty alone cannot commit the United States to go to war, without a declaration of war, might do well to heed the warning given by Madison. If they now accept the theory that a self-executing treaty can exercise the express power conferred upon Congress to dispose of property, then what distinction do they make as to the power to declare war?

In 1796, Madison said that if any reasonable line can be drawn, except one arbitrarily made to serve the immediate purposes of the treaty proponents, it ought to be submitted. No answer was given to Madison then, nor have I heard any suggestions by the State Department today as to where it would draw that line.

If we do not halt the treaty-power at the point where it attempts to carry into execution the powers specifically vested in Congress, then as sure as day follows night, we will be setting an open-ended precedent should the Senate advise and consent to the Panama Canal Treaty without conditioning it on enabling legislation.

For example, Congress has power to naturalize citizens. Does this mean a treaty can make hundreds of thousands of immigrants from the another area of the world instant citizens the moment they apply for admission to this country?

Can a treaty provide that the German mark shall become the currency of the United States? Can a treaty subject U.S. citizens to an international court and free the decisions of that court from review by our Supreme Court?

All these things could be done by treaty if the theory of the State Department is correct. The absurdity of these propositions illustrates the fallacy in it. There must be reasonable limits on the treaty power or our representative form of government will be replaced with a new system totally alien to the framers.

Mr. President, in closing, I want to address the heavy reliance on Calhoun, Marshall, and Story by those who argue that the Panama Canal Treaty can be self-executing. Over and over, I have heard the other side invoke the name of John C. Calhoun.

John Calhoun has suddenly become the favorite constitutional authority of the State Department. Even many civil rights activists in this body have taken to quoting John Calhoun on the Constitution.

Mr. President, I remind Senators that as brilliant as he was, Calhoun was the author of the nullification theory. He argued that no State was bound by a Federal law which it believed was unconstitutional. It took a domestic war to end that theory.

In 1832, Calhoun resigned as Vice President to enter the Senate to support his nullification theory in Congress. Also, his closing years were marked by strong support of slavery and its extension.

Mr. President, history says that Calhoun was wrong on nullification. He was wrong on slavery. And his novel theory that the treatymaking power can exercise the same powers as Congress was equally wrong.

In fact, Calhoun admits, in the speech most often quoted by the other side, that the treaty authority "has many and powerful limits."

As to John Marshall, I need only mention that when he was Chief Justice of the Supreme Court, Marshall wrote as follows:

> A treaty is, in its nature, a contract between two nations, not a legislative act, and does not generally effect of itself the object to be accomplished, but is carried into execution by the sovereign power of the respected parties to the instrument. In the United States, the Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the Legislature whenever it operates of itself, without any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the Legislature must execute the contract before it can become a rule for the court.

So said Marshall in the case of Foster against Neilson.

Mr. President, the Panama Canal Treaty is exactly such a contract as Marshall described. It engages to perform a particular act, the transfer of U.S. property to Panama, and the legislature must execute that agreement before it can be carried into operation.

Finally, Mr. President, I would note that in his famous commentaries on the Constitution, Justice Story specifically declared "the power of Congress over the public territory is clearly exclusive and universal." This is exactly what we are saying, that the power of Congress to dispose of public territory is an exclusive one, and rather than challenge our position, Story actually confirms it.

Thus, Mr. President, none of the three major authorities relied on by the other side stands up upon close examination.

Mr. President, I urge support for the pending amendment.

In closing, I state again what I stated at the outset and what I feel that many of us wander away from in this very prolonged, sometimes pleasant, sometimes unpleasant, debate on the Panama Canal treaties: Those of us who are opposing this treaty oppose it on a simple ground—the Constitution—because it requires an action by a treaty to first agree with a foreign country to dispose of

property. After that happens, it requires a statute to complete that transfer. It takes both.

Mr. President, I was most happy to receive a communication from the State Department, a rather belated one, a rather lengthy one, indicating that they, too, believe that this legislation is necessary.

So I hope that my colleagues in this body will support this approach. I see nothing wrong in keeping within the bounds of our Constitution.

Mr. President, I relinquish the floor.

(Mr. Sarbanes assumed the chair.)

Mr. MOYNIHAN. Mr. President, I congratulate the senior Senator from Arizona, a revered figure in this Chamber and in this Nation, for the character and the quality of his address. It is not the first time that the senior Senator from Arizona has risen in this Chamber or in the political forums of our Nation to speak to constitutional matters, only to find that persons such as myself have not agreed with him and only to have those persons years later wish they might have listened more closely. Evidently, this will continue to be the case. It will be so on this occasion, in any event.

This Chamber cannot have heard, in this debate or in any other debate, many such careful and thoughtful and reasoned expositions of a powerfully important position. The Senator from Arizona speaks to the integity of the constitutional provisions which inform our behavior and which constitute our mandate. He spoke splendidly.

If, on a matter of close decision, others do not share his vital judgment, surely none will deny the extraordinary authority with which he has set it forth.

Mr. GOLDWATER. I thank my good friend from New York for those very kind words.

Mr. NUNN. Mr. President, will the Senator from New York yield?

Mr. MOYNIHAN. The Senator from New York is happy to yield to the Senator from Georgia.

Mr. NUNN. I thank my distinguished colleague from New York.

The subject I am about to address has nothing at all to do with the Panama Canal. Because of the impending decision on the neutron bomb, I wish to address myself to that issue for about 4 or 5 minutes, if the Senator will yield me that much time.

Mr. MOYNIHAN. I am happy to do so.

(At this point in the proceedings there was a colloquy concerning the neutron bomb, which is printed subsequently in today's Record.)

Mr. MOYNIHAN. Mr. President, I would like, having stated the great regard with which any Member of this Senate would have listened to the address of the Senator from Arizona, nonetheless to respond to his points with an equal conviction that however ably they were presented they are not sufficiently persuasive. This has to do with the responsibility of the Senate in regard to property transfer, and it goes, Mr. President, to an experience of a century's standing in which a clear understanding as between the Senate and the Executive has emerged as to just what these responsibilities are and how they are to be executed.

Mr. President, for over a century, no serious question has been raised with respect to the authority of the President and the Senate to transfer U.S. property through the treatmaking process.

Let me just repeat it because it is so important: For over a century no serious question has been raised with respect to the authority of the President and the Senate to transfer property through the treatymaking process.

The text of the Constitution, the history of the constitutional debates, the decisions of the courts, all make it perfectly clear that the Senate and the President have the full power to dispose of property through a self-executing treaty such as the one now before us.

Perhaps, more importantly, the Senate and the President, working together, have entered into numerous treaties doing just that, disposing of U.S. property in the normal activities of a major nation with interests all around the world, which interests change from time to time, from decade to decade.

As recently as 1971, the Senate gave its advice and consent to the treaty with Japan relinquishing large amounts of U.S. property on the island of Okinawa to Japan.

In that same year the Senate gave its advice and consent to a treaty with Nicaragua relinquishing any U.S. rights to construct a canal in that country, clearly a property right, and U.S. leasehold rights over the Corn Islands.

Again in 1971, the Senate gave its advice and consent to a treaty relinquishing U.S. property on the Swan Islands to Honduras.

At that time no Member of the Senate or of the House raised any question as to the power of the Senate and the President through the treatymaking process to take these actions.

What is there to distinguish these treaties from the Panama Canal Treaty, the treaty immediately before us?

Mr. President, there is none. The Okinawa Treaty, like the Panama Canal Treaty, involved millions of dollars worth of property, and certainly no one would contend that Okinawa is not of strategic importance to the United States.

Both the Okinawa Treaty and the treaty with Nicaragua relinquished jurisdiction and authority over territory, just as the proposed treaty would do, but no one argued that these treaties required the approval of the House. The Senate and the present executive pattern had been established for over a century.

Why then is this issue being resurrected at this late date suddenly in connection with this treaty? What are the differences that really animate and explain this event?

I suggest it is not because there is any serious legal or constitutional issue involved; not because the House would be deprived of any of its legitimate legislative powers under the Constitution. Rather, I submit, this issue has been raised simply because those who do not approve the treaty believe they may not be able to prevail on the merits of the treaties themselves and are understandably attempting to obtain a second chance since they cannot defeat the treaties in the Senate, hoping to do so in the House.

We can admire the ingenuity of the effort and respect the dedication to their point of view which it involves. But we ought not to be

swayed by the argument that not only allows but indeed requires us to avoid our own responsibilities as Senators.

The Constitution clearly and specifically places the power to make treaties in the hands of the President, by and with the advice and consent of the Senate. There are, perhaps, no words in the Constitution relating to the Senate which are better known and, if I may suggest, better understood.

This is a weighty responsibility. As Senators we are required to study the merits and the demerits of treaties proposed by the President, and to give our advice and consent based on our own judgments as to our national interests.

In the case of the treaties that are as controversial as those before us, this admittedly places us in a difficult position. We all know there are those who are strongly against treaties as well as those who are strongly for them, but we cannot take the way out of our own responsibilities by asking that they be executed elsewhere. We, in this Chamber, must stand and advise and consent to the ratification of these treaties or not.

Mr. President, Is seems to me that in the midst of this diversion with which we are now dealing—I wish to say, a perfectly legitimate and understandable diversion, but one which we nonetheless regard as that—it may be useful to come back for a moment to the question of what is at stake in this debate. What will be determined by the success or failure of the treaties? It is an appropriate time to do so because only last evening the President of the United States returned from a trip to Latin American and a trip to Africa, the first trip to that continent in the history of the Presidency. The President had a strong personal success, as one would expect and hope, in each of the four countries he visited, for he is a man of transparent intergrity and good will. Nonetheless, everywhere the President went he found a cloud cast over the efforts he made to establish America's concern for those parts of the world in our desire to see them treated equally as nations, as equal members of the family of nations. The cloud, the mist that somehow obscures the vision of what we would have of our own purposes is the still hanging uncertainty of a colonialist and imperialist past which we and all the major nations of the Northern Hemisphere seem to have acquired, but which we are now at last divesting. This leaves the Soviet Union, in its imperial purposes, still more blatantly and glaringly exposed for the conquering power it is and proposes to be.

In this afternoon's Washington Star, Mr. Henry Bradsher, who accompanied the President on his trip, and who is one of the most distinguished diplomatic journalists of our time, writes a long story over which the headline is "Credibility Gap Sours Carter Trip."

In particular, he notes that in Nigeria, in Lagos, in the long conferences the President had there, in which the President called for an Africa free of foreign interposition and foreign troops, meaning the Cuban "Afrika Korps" deployed, supported, and wholly subsurvient to the imperial purposes of the Soviet Union, moving about Africa, killing and maiming as it goes, destroying the efforts at self-assertion of independence and territorial integrity of the peoples of Angola, associating itself under the direction of General Petrov, the commanding general of Soviet land forces, first in the war in the Ogudan, now in Ethiopia on the part of the Central

Government in Eritrea—somehow our call for the end of European imperialism in Africa got no response.

Now, there is more involved than just the negotiations involving the Panama Canal, and I do not for a moment suggest that our ratification of the treaty would have a decisive effect; but how long a day will it be when, with clean hands and an absolutely open record, the United States can finally ask the rest of the world to confront the fact of Soviet imperialism?

If I might introduce a personal note, it was on the 12th of August last year that I announced my own support for these treaties, calling them an extraordinary feat of diplomacy, as they were and as I believe this debate has shown them to be. I said this not with the thought that they were of such perfection that their improvement could not be imagined, but rather because the treaties give to us important rights, advantages, and privileges—and give them to us in a form that we might be able to retain them for many years to come. The treaties offer a reasonable expectation that the position of the United States with respect to the Panama Canal can indeed be sustained over the long run. It seems to me that the existing agreements, concluded 75 years ago in 1903—whatever their advantages in specific content—will not, cannot, endure into the next century at a cost which the American polity is prepared to bear.

It is my simple view that if we want the use of this canal in the circumstances that these treaties support, we should ratify these treaties; otherwise we will not find the Nation willing to put up with them.

For what will the public opinion polls show with regard to maintaining our position in Panama when we are fighting a guerrilla war there? This body has had some experience with that sort of response from the public.

Moreover, Mr. President, I have reached the conclusion that the general approach to the future of the canal as embodied in these treaties has been so much a part of American foreign policy for 20 or so years, so bound up with every American President really since the time of Franklin Roosevelt, that the rejection of the treaties by the Senate is unimaginable, an act that would be so at variance with the broad consensus that sustained American foreign policy for the past generation—and which must be continued if we are to have even the semblance of a foreign policy in the future—as to be an event of seismic character.

This is so, precisely because of the historic Senate responsibility to provide advice and consent. For in no small measure, the very terms of these treaties show the influence of Senate "advice" not only in recent years, but in recent months. If the treaties on the floor of the Senate today are sounder in meaning—and with the ratification of the first treaty with the amendments offered by the joint leadership we must certainly agree they are much sounder in meaning—and destined to be sounder in language as well, that is only because of the will of the Senate, and the role of the Senate in this process is not only intact but is more powerful in consequence.

And if the opponents of these treaties are yet not content to claim the credit they too deserve for these improvements—and indeed offer the contrary view that these improvements are no

improvement at all in order that they may continue to oppose the treaties as such, it falls to us who support the treaties to make the most of their generosity. And, in particular, we must ponder the consequences of withholding ratification from documents which we, in no small measure, have created.

With all this, one could still imagine a basis for the rejection of a treaty negotiated by the President, based on a negotiating position informed by the best advice of the Senate and even of the House of Representatives. One could indeed imagine it—if there emerged in the course of the discussion of such a treaty a compelling argument, a new set of facts, or even a startling development on the world scene which might have rendered nugatory the very premises which underlay that treaty's negotiation. But such has not occurred these past months, nor is it likely to do so in the months ahead.

Instead, we are in what I believe to be the 9th week of debate on these treaties, Mr. President, with a growing sense of the certainty of their ratification. But I believe that the public's certain drift away from the political and strategic issues this debate was designed to illuminate, if such a thing should happen, perhaps is inevitable in the consideration of an issue which has evoked an uncommonsense of seriousness and perhaps even severity among proponents and opponents alike. And, we must acknowledge further that our debates are governed by rules of procedure and parliamentary precedent almost centuries in the making. It is, therefore, not surprising that the effort to enlist such procedures and precedents as an ally in debate will lead to a mode of presentation somewhat different from that compelled by mere argument and rhetoric alone.

I am struck further, Mr. President, by the historic proportions these deliberations have now assumed as against the issues we in fact deliberate. This is one of the great treaty debates of the century—but can we say that the stakes, or the commitment, embodied in these treaties approach those of Versailles, nor even of the North Atlantic Treaty of 1949? In this last case, the Senate ratified an undertaking of the most profound importance, an undertaking unprecedented in our history—the creation of a permanent alliance, a permanent "foreign entanglement" of the sort our history had made traditionally suspect and seemingly dangerous—and that treaty, the North Atlantic Treaty, on which we may say our security as a democracy so much depends, was ratified on July 9, 1949, after having been debated for 12 days.

I offer this contrast, not in criticism, but rather as a form of apology. Is there that much more to be learned about the treaties before us—do we not already know more about the Panama Canal than most persons in ordinary circumstances would care to know—so that an additional address on the subject can be taken as a wholly gratuitous effort to maintain the floor throughout the afternoon? Indeed, let us be honest and say that we come close upon that point where rhetoric appears either tedious or tenacious—or both—especially when, for parliamentary purposes which some of us can scarely absorb, the traditional injunctions about brevity seem inappropriate. I speak to do my duty by these treaties, as but one Senator in the cause so ably led by both the majority and

minority leaders and by virtually every member of the Senate Foreign Relations Committee. I propose to add neither to the general data base so laboriously built up in support of the treaties, nor to the results of the legal reasoning which has been so cogently applied in elucidation and explanation of the treaties' terms, nor even to the fruits of the linguistic analysis which have been applied to problems of translation and grammar and—with deference to my dear friend the junior Senator from California—even semantics.

Yet, Mr. President, I believe that I can offer a different perspective on this matter, for each of us comes to this body with differing experiences, with differing habits of thought built up from ones previous profession or business, indeed, with differing stocks of information. In my own case, I have had the opportunity to represent the United States as Ambassador, first in India, later at the United Nations. I hope these experiences have contributed something of value in evaluating certain aspects of these treaties.

At the outset, I said that my support for these treaties rests on the fact that they provide us with important and beneficial rights and in a manner such that we have a reasonable expectation that we will be able to exercise and derive benefits from those rights over a long period of time. Not the least of these is an important, indeed decisive, role for the United States in the future evolution of the Panama Canal. These treaties establish a close relationship between the United States and the Republic of Panama not merely for the rest of this century, but perhaps indefinitely or as much as men can know what will be indefinite.

Panama acquires control of the canal at the end of the century, and as the price for the acquisition of this asset—as valuable as any asset can be to Panama, in that the isthmus is the only resource in Panama of substantial value, assuming that it remains developed—Panama acknowledges that the canal is a unique strategic entity for the United States, a point and a place of special sensitivity to the United States, such that we could not transfer ownership of the canal without maintaining for ourselves an exclusive right to insure that the canal is never used against us. For as much as we can attempt to determine the value of the canal, 10, 20, 30 years hence, there is in it a value of denial to potential or actual enemies. I should think that a fair reading of the Neutrality Treaty indicates that we can act to preserve what is euphemistically called the "regime of neutrality," that is to say, a regime of nonhostility to the United States of America.

On February 23, I engaged in interesting discussions on the floor with the senior Senator from Nebraska (Mr. Curtis), who is so respected in this Chamber, and with my new friend and good friend the junior Senator from Utah (Mr. Hatch), who is the author of the amendment before us.

I brought to that enterprise the very substantial support of the junior Senator from Maryland (Mr. Sarbanes), who expertise in these matters is now nationally known, and with the senior Senator from Idaho (Mr. Church), the second-ranking Democrat on the Foreign Relations Committee. I offered them two propositions which I wish today to amplify. First I offered the thought that one large achievement of the canal negotiations was to provide a con-

tinued U.S. presence in Panama, and thereafter a continued U.S. relationship which has and would have broad hemispheric and international support—whereas there was no longer any of either for the present arrangement. Second, I sought to relate this startling turnabout in the position of the United States in this matter—from a position of general opposition to one of general support—to the position of the United States in world politics as a whole. And here, I believe the major point to note is that this significant reversal is not the result of unwarranted concessions or of retreat, but rather that the treaties properly understood and exploited, will soon be seen as a turning point, a point of advance, a supreme ascension of America's future purpose and role.

It is important to note that the strategic dilemmas of today's world owe much to the force of American political ideology. The retreat of the European powers from their old colonial dominions—a process, surely, made inevitable by the exhaustion of their substance in two intra-European wars—was nonetheless hastened by American insistence that colonial regimes give way to self-government democratically organized. There is but one European power, and President Carter spoke about this yesterday in Africa, one caucasian power, still committed to the old imperialism, to the imposition of caucasian rule by force over noncaucasian peoples, prepared to import foreign mercenaries to expand its imperial interests. That single power is, of course, the Soviet Union, which seeks now to fill some presumed vacuum of power in Africa especially, but also in Asia or Latin America—wherever it feels it can gain ascendency on the cheap, or at least at the expense of other people's lives and substance. If many in the so-called Third World still seem unwilling to see the new Soviet imperialism for what it is, the more, then, ought we to stress the uniqueness of Soviet behavior in today's world.

The United States is a great power, of course, and requires for the defense of its interests and of the interests of the world's democracies with which it is allied, certain prerogatives and, if you will, privileges. In each case, those prerogatives derive from the consent of any country which chooses to afford them to us. That consent grows out of the perception of a common interest. In Europe or in Japan or in Australia, the United States finds hospitality and receptivity precisely, because it has been able to establish a common interest worthy of a joint enterprise.

Let us be honest and say that since, 1903, the same cannot be said of our relationship with Panama. This does not mean that we have mistreated or expropriated or repressed or otherwise extorted from the people of Panama that which otherwise would have been theirs were it not for our presence and our actions. Rather, it is merely to say that our relationship with Panama does not meet the same tests of legitimacy we customarily apply in our common strategic and economic undertakings with other countries. Nor does it meet the tests the world as a whole has come to apply, tests it has, incidentally, come to apply in the past 30 years in the main because of our insistence.

This is a fact, and the argument that we should somehow resist for ourselves the implication of Wilsonian principles of self-determination which now prevail in almost the whole of the world

outside the sphere of influence of the Soviet Union, when it comes to Panama may have a certain plausibility, but certainly no forthright persuasion. And yet that argument is nonetheless made, however flawed.

It offers an impossibility. It offers an irrecoverable world, a world premodern in the basic sense. In short: We can no doubt maintain the 1903 arrangements by force, for our force is sufficient; if we can convince ourselves that there is some higher necessity for so doing. But we must face the fact that such a policy is untenable over the longer run, perhaps even in the immediate future. And I believe that the broad support that the modernization of the Panamanian arrangements has enjoyed across the political spectrum, from among all the past war Presidents, from the time of Franklin D. Roosevelt, grows out of a recognition of these facts.

One measure of the success of the treaty negotiations is seen in another important respect, for the conclusion of the treaties has reduced the question of Panama to more appropriate proportions. In the past dozen years, the future of the canal, an issue in Panamanian-American bilateral relations, had been transformed into a broad international issue with a pointed anti-American character. The future of the canal became a not insignificant issue in what might be called world "ideological politics."

How is it that the canal came to intrude into the world's political agenda? We recall that in January 1972, the Security Council of the United Nations convened for the first time away from its headquarters in New York. Interestingly, in light of recent events, it sat in Addis Ababa, the capital of a country then enjoying a relative measure of tranquility—not yet the base of operations for Soviet expansionism and for the deployment of the Cuban Africa Corps under the command of Soviet generals it has now become. In any event, it was arranged in that meeting that the Security Council would meet the following year, in March of 1973, in Panama City.

That Security Council meeting 5 years ago shows the extent to which at that time we had lost control of the terms of reference of the discussion. For example, invited to participate in the council's discussion, but without the right to vote, were an additional 25 countries including such non-Western Hemisphere countries as Algeria, Mauritania, Zaire, and Zambia. Cuba was also invited. Cuba invariably sought to link the issue of the Panama Canal Zone to that of Puerto Rico as dual instances of "American imperialism"; the United States presence in Panama had never been sanctioned by the Panamanian people, the Cuban delegate would assert, and neither had our presence in Puerto Rico, despite repeated emphatic democratic elections in that Commonwealth.

The Security Council's Report A/19002 summarizes what the Cuban representative had to say:

* * * The main item on the agenda was the threat to international peace and security in the hemisphere that lay in neo-colonial relations imposed on Panama by the United States under a treaty that infringed and violated the most elementary norms of international law. Cuba considered that the perpetuity of that neo-colonial agreement should be abrogated, and the concessions as well, because there had been no free consent. The will of the United States had been imposed without the approval of the Panamanian people. As the neo-colonial enclave was affecting the

sovereignty and territorial integrity of Panama, full enjoyment of its inherent powers over the entire territory of the Isthmus must be returned to that country. * * * The hour had already struck when all forms and manifestations of colonialism and neo-colonialism in Latin America must be wiped out, including the Associated Free State of Puerto Rico, the seditious activities of transnational enterprises and the naval base of Guantanamo, a part of Cuba's national territory taken over against the express will of its people and used after the triumph of the Cuban revolution as a nest for counter-revolutionaries and spies. It was up to the Security Council to set the political and juridical framework that would guarantee recognition, obedience and respect for the sovereign rights of Panama in its negotiations with the United States regarding the Canal Zone. The alternative was clear-cut and final: either the Canal and the Canal Zone were made Panamanian and Latin America was allowed to be freed and developed or peace and security would be increasingly endangered in that part of the world.

Interesting words from the representative of a government which has placed thousands of its soldiers at the service of the only remaining old-fashioned imperial power in the world, the Soviet Union. Yet they clearly indicate the capacity of those nations to think in terms of direct military aggression and, in this case, it would be military aggression in which the whole world would hold our position to be illegitimate, and theirs to be sanctioned by international usage. This possibility disappears altogether. Mr. President, not ever to reappear, when this second treaty has been ratified by the Senate and implemented by the two nations.

It is an important fact that, in the past 5 years, the terms of reference so arrogantly protruded by Cuba—which is to say the Soviet Union—redound increasingly to the disadvantage of the totalitarian powers. The Security Council met in Panama as part of a scheme to isolate the United States in this hemisphere, to link Latin American issues with so-called Third World issues so as to organize overwhelming international majorities against the position of the United States—especially in Panama. That policy, seen today, is a failure.

Are we to say that our diplomacy had nothing to do with this reversal? Ought we deny ourselves whatever measure of satisfaction our own handiwork deserves? I reiterate my basic point: the ratification of these treaties will underscore the isolation of Castro and Castroism in this hemisphere, will highlight the bizarre adventure of Soviet-Cuban imperialism in Africa, will in sum derive for the Unites States a continued strategic and political position in the Isthmus. But it will be a position supported by those very States which others had sought to turn against us on this issue.

Let us recognize that these treaties are a worthy result of a long and difficult negotiation, a result which preserves for us important and substantive interests, and a result which also has strengthened the institutional role of the Senate while allowing the President the opportunity he needs to conduct foreign policy with a reasonable base of domestic support.

It is so important to understand that when these treaties are behind us, a new period is ahead of us. We become the spokesman for the Wilsonian principles of self-determination, of independence, which we ought to be, which we have been, but whose words have been blurred to those who might have wished to hear them and have been ignored by those who do not wish to, because of this one remaining legacy of a long-since-used-up past.

Mr. President, in closing I should like to introduce into the record a statement by the Liberal Party of New York State on the subject of the Panama Canal treaties entitled "Justice and Fair Play." I do not suppose there is a political group in this Nation which can claim as honorable an attachment to the principles that Franklin D. Roosevelt brought to this Nation and this world than the Liberal Party of New York State. It has produced an exceptionally persuasive, concise, compelling statement of why the good neighbor policy, known across the world and respected throughout this hemisphere, can have as one of its shining monuments in this decade, four decades after it was propounded by Franklin Roosevelt, the approval of these treaties by the United States and their ratification by the two nations involved.

Mr. President, I ask unanimous consent that the complete text of the Liberal Party's statement be printed in the Record.

(Mr. Riegle assumed the chair).

Mr. MOYNIHAN. I thank the Chair.

There being no objection, the statement was ordered to be printed in the Record, as follows:

JUSTICE AND FAIR PLAY IN PANAMA

(A Statement on the Panama Canal Treaties by the New York State Liberal Party)

The Liberal Party of New York State, committed to the principles of justice and fair play, calls on the Senate of the United States to honor these principles by giving its assent to the Panama Canal Treaty Concerning the Neutrality and Operation of the Panama Canal.

At stake are four critical issues—the maturity of the American people in a rapidly changing world, the consistency with which we apply the same standards to our own behavior as we do to others, the security of the United States, and equity for Panama.

The United States is confronted with a test of its maturity in the conduct of its relations with other nations. Britain, France, Netherlands, Belgium, Portugal and other European countries with a far larger stake in their colonial possessions have already demonstrated, albeit with varying degrees of reluctance that they have reached maturity in the post-war era. We are now being asked to give up a colonial outpost no longer vital to our economic or security needs in a country whose people are no longer willing to accept external domination.

Twenty years ago, while protesting Egypt's nationalization of the Suez Canal, we prevented Britain and France from restoring international control of the Canal, and we accepted the principle of Egyptian ownership and management. We must be consistent, applying the same standards to our own behavior with the Panama Canal.

Those whose role in our national government is to be forceful advocates of protecting our national security—the Secretary of Defense and the Joint Chief of Staff—have asserted that "these treaties fully serve and *greatly promote* our national security interests." (Testimony of Harold Brown before the Senate Foreign Relations Committee, September 27, 1977; emphasis added.)

The proposed treaties go at least part of the way in establishing greater equity in our relations with the Republic of Panama. Last year, Panama received $2.3 million for the lease of some 550 square miles of the Canal Zone, on which there are fourteen military bases. That same year, Spain received $20 million from the United States for leasing land for three military bases.

The United States has deprived Panama of a fair return on its principal economic asset—strategic geographical location—and preempted the use of some of the choicest land within that small country.

Even more important than economic considerations is the United States' denial under present treaty arrangements of the principle of political fairness. "It does not," commented a Panamanian civic leader in a letter to a U.S. magazine recently, "feel good at all when your country is divided in two by a ten-mile-wide zone in

which your language is not spoken, your laws are not applied, and your country is not your country."

The issue of political fairness extends the implications of our action on the proposed treaties far beyond our relations with Panama. What we do with respect to Panama will have an enormous effect upon our future relations with the rest of Latin America. Any future relationship with Cuba will be vitally affected by what we do with Panama. The question is whether we are going to continue the Good Neighbor Policy with respect to Latin America. Perhaps more important still, nations throughout the world and especially those of the Third World, are watching closely to see whether we will apply our own rhetoric to ourselves and be true to our anticolonial heritage and our commitment to human freedom and national independence.

The opponents of the treaties are noisy, well-heeled and well-organized. Using jingoism of the worst sort in their appeals to a distorted sense of American patriotism, they appear to be less interested in the treaties themselves than in using the cause to engineer a conservative take-over of the Republican Party. Their case centers around four false arguments:

1. The United States gave Panama its independence. (Not so. The Panamanians tried over fifty times to assert their independence from Colombia in the nineteenth century. We assisted when they finally succeeded in 1903 but did not create their desire for independence.)

2. The 1903 treaty gave the United States sovereignty over the Canal Zone. (Not so, again! That treaty gave "rights," not "ownership.")

3. The Canal Zone is essential to our economy and security. (Not so. Less than one percent of our Gross National Products is affected by the Canal, and only sixteen percent of United States international trade uses the Canal. The importance of the Canal is out-dated today. The Secretary of Defense and the Joint Chiefs of Staff do not think the Canal is vital to the security of the United States.)

4. The proposed treaties are a "giveaway." (On the contrary. The 1903 treaty was a giveaway by Panama to the United States!)

One other argument is sometimes used by the treaty opponents: We should not give a monopoly to Panama by agreeing not to be a party to constructing a competing canal. The alternative most frequently mentioned is a sea-level canal through Columbia, the so-called Route 25. But Colombia is a sovereign country and the United States has no monopoly on the necessary international finance or engineering skills.

If the Liberal Party is critical at all of the proposed treaties, it is because they do not fully meet the test of political fairness. By giving the United States rights of access in perpetuity, the new treaties constitute a significant abridgement of Panama's sovereignty. The fact that a third of the Panamanian people voted no in recent referendum on the treaties is a reflection of this fact. But we recognize the need for compromise in balancing conflicting interests internationally and domestically, and therefore urge speedy Senate approval of the treaties.

President Torrijos is not our ideal of a political leader, but that is no argument against Senate approval of the treaties. The Panamanians must work out their own political destiny for themselves. The sooner the United States eliminates its colonial presence in Panama, with the continuing temptation to manipulate Panamanian political choice, the better.

The 1903 treaty is an intolerable anachronism which debases our American principles of justice and fair play, and makes a mockery of our support of human freedom in Southern Africa and elsewhere.

The conservative opponents to the 1977 treaties are seventy-five years out of date with a rapidly changing world.

In urging prompt Senate approval of the 1977 treaties, the Liberal Party of New York State calls upon all objective, sane, responsible political forces and right-thinking people throughout the United States to join with it in the fight for treaty approval by rededicating themselves to the time-honored American ideals of justice and fair play.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. MOYNIHAN. The Senator is happy to yield to the Senator from Maryland.

Mr. SARBANES. I thank the very able junior Senator from New York (Mr. Moynihan) for an extremely thoughtful and perceptive statement, and in particular, for his emphasis on two things. One is the opportunity which these treaties open up to the United States,

not only in terms of establishing a fair relationship between ourselves and Panama, but in terms of what the United States will stand for in that part of the world and, indeed, elsewhere in the world; and the contrast, then, that we can develop between how America seeks to base its relationship with small nations, such as Panama, and the approach which the Soviet Union takes to its relationships with nations around the world. Contrast, if you will, the brutal aggression by the Soviet Union in Czechoslovakia and in Hungary to establish their interests, without any legal or moral basis, clear and simple aggression, with this effort on the part of the United States to establish a relationship with Panama based on equity and fairness and justice as embodied in these treaties, treaties which protect our interest and protect the interests of the Republic of Panama and the people of Panama. It seems to me that that contrast and the opportunity for us to establish that contrast in the thinking of peoples across the world gives us a chance here to carry forward the Wilsonian and the good neighbor principles which the Senator from New York has spoken about so eloquently.

(The following occurred later in today's proceeding and are printed at this point by unanimous consent.)

Mr. SARBANES. Will the Senator yield for a moment?

Mr. CHURCH. I am happy to yield to my distinguished colleague, the Senator from Maryland.

Mr. SARBANES. Mr. President, earlier today in the course of the debate, the very able and distinguished Senator from New York (Mr. Moynihan) made a very perceptive, thoughtful, and eloquent address, concerning the meaning of these treaties to the United States position not only on Panama and Latin America, but, indeed, throughout the world.

I would like to briefly make reference to the welcoming statement given by Venezuelan President Carlos Andres Perez on the arrival of President and Mrs. Carter in Venezuela on their trip. I hope Members will pay close attention. It will take only a moment or two.

We have heard the contention made on the floor of the Senate by some opponents of the treaties that the people of Latin America, the leaders of the Latin American countries, do not really care whether these treaties are approved. We have had it suggested that the treaties could be rejected and we could still maintain close and friendly relationships with the Latin American countries. Opponents of the treaties have downplayed, their significance in Latin America.

President Perez said the following:

> We Venezuelans receive your visit with profound pleasure. President Carter and his wife have stood out as two genuine standard bearers of the cause of universal democracy, which makes it especially satisfying for Venezuela that our fatherland should be the first one you visit in Latin America, Mr. President.
>
> You have come to Latin America at a time in which all our people have their eyes and ears upon the U.S. Congress. The Senate is discussing the future of hemispheric relations between South America and North America. Every word said there on the ratification of the new Panama Canal treaties has deep repercussions in all countries of Latin America. When we, the government leaders of Latin America, were in Washington in the headquarters of the Organization of American States, all of our people, without distinction as to race, belief or origin of their governments, supported the documents signed by you and the Panamanian chief of government, Gen. Omar Torrijos. Not since the entrance into World War II by the United States had

the people Latin America expressed such unanimous and enthusiastic support as that which they gave these treaties signed by you, the chiefs of government of the United States and Panama.

This means that that day, 7 September 1977, is marked in the history of the hemisphere as the date in which resentments were erased and a historic era ended. [They] were erased as they had been earlier between the United States and England or between Latin America and Spain. Such is the immense meaning of those treaties in the context of the friendship and fraternity between our peoples.

The President of Venezuela then continued in his welcoming speech to President Carter at the Simon Bolivar Airport in Venezuela:

We have confidence in the American spirit and the democratic justice of the U.S. Senate. Republicans and Democrats represent a great people who identify their existence with the struggle for freedom, the dignity of peoples and their sovereign rights which they were the first to champion when they proclaimed their independence in 1776.

I say all this, Mr. President, interpreting the feelings of the Latin American people with full optimism but without being able to hide the sincere concern we throughout Latin America feel toward any congressional action which may detour the noble route of this gallant initiative, the emblem of the U.S. bicentennial, which we Latin Americans joyously celebrated just as we want to celebrate with the same fraternal joy the ratification of the new treaties, which will be the initiation of a new era of friendship and cooperation between Latin America and the United States. Such is the symbolic meaning of the new Panama Canal treaties. Not only will this be a ratification of a new, just and honorable treaty of sovereignty, but also a ratification of the eternal friendship between the United States and Latin America.

Mr. President, I ask unanimous consent that my comments, and any colloquy related to the statement of the President of Venezuela which I have just read to the Senate, be included in the Record immediately after the colloquy with the distinguished Senator from New York (Mr. Moynihan) in which he spoke of how important these treaties were for America's position throughout the world.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I thank the Senator from Maryland for having read into the record the statement by President Perez of Venezuela. Venezuela is one of the most important democratic governments in the Western Hemisphere. I think the statement of President Perez adds eloquent testimony to the strong endorsement given these treaties by the governments of Latin America.

(This concludes proceedings which occurred later in the day.)

Mr. MOYNIHAN. I thank the Senator and would just confirm his impression of what I have said.

The Senator knows, no American of Greek ancestry could not know, this a dangerous world. If one is not prepared to fight for what he has, he might find he does not have it any more, that armed force is a reality, and that the forces of the totalitarian expansion exist in the world. With every day we find some new effort, some new Soviet weapon, some new Soviet expeditionary force.

There is no question in the minds of the proponents of these treaties of withdrawing from the world. We cannot withdraw. We can lose our rights, we can lose our strength, we can lose our importance in the world, but we cannot get out of it.

The President of the United States was not withdrawing from the world in Venezuela, Brazil, Nigeria, Liberia. He is asserting that we are still out there.

But how difficult, curious, and short-sighted on the part of other nations that they will still look to whatever excuse they can find to avoid the reality of what they see as a greater Soviet threat.

What these treaties do is get rid of the unfinished business of the middle half of the 20th century so we can focus on the serious problems of totalitarian expansion in the rest of the world.

Nobody on this side of the treaties, nobody on both sides of the aisle, of course, has any thought of withdrawing from the world. Our concern is with an effective and respected American voice in the world. A big country that can get rid of a small problem like this is a country that can do anything—nobody can do everything, but we can do large and serious things worthy of the American respect.

We are here not just to handle this not very important technical matter. We are here to show what kind of people we are and what kind of country we propose to continue to be and what kind of influence we hope to have in the world in the generations ahead.

Mr. President, I thank the Chair and the Senator from Maryland for his thoughtful and friendly remarks.

The PRESIDING OFFICER. Who yields time?

Mr. Hatch addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, the Senator from Kansas had a statement at this point, but I am not quite sure where he is.

Mr. Moynihan addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. As the Senator from Kansas does not appear to be on the scene, I would like to take the opportunity to extend my own remarks for just a moment in view of the fact that the junior Senator from Utah is on the floor.

I have been speaking of the President's visit to Africa, of his warnings against the Cuban mercenaries, of which he spoke, of the failure of his Nigerian hosts to provide any reciprocal suggestion that they agreed with the President's views about the need to free Africa of Soviet aggression.

Over the weekend I had the great pleasure of reading an extensive review essay, as I believe they are called in academic life, in a new journal of international affairs in which the Senator from Utah reviewed five books on the situation in Southern Africa. He did so with clarity, with conciseness and a view which will be persuasive to a great many persons.

He points to the needs of the United States to maintain a viable position in that role in the world and the Soviet purpose that we should not do so.

I have been so persuaded by his argument, yet I thought he would immediately recognize the direct connection between African developments and the impediment which the old Panama treaties impose on the pursuit of a larger, certainly more noble, and incontestably more contemporary undertaking.

Mr. HATCH. I certainly thank the distinguished Senator from New York for his expression.

I always enjoy his friendship, and I certainly am his friend.

I do see some differences, however, in the review of the books and the Panama Canal. However, I do appreciate the contrary opinions of the distinguished Senator from New York.

I want to compliment him for his comments here today, even though we are on opposite sides of this question.

Mr. MOYNIHAN. I thank the Chair.

Mr. President, I believe the Senator from Kansas is on the floor. I understand he wishes to speak now.

Mr. Dole addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Mr. President, I, unfortunately, have not had an opportunity to listen to much of the debate the past 2 or 3 days. Many of us have been working on legislation to help America's farmers. I suggest that we are on the threshold of accomplishing that end, hopefully, by tomorrow at this time there will be some conference agreed to which will present the American farmers, and I might add the American consumers, with an opportunity which we believe should be accepted, and we believe should be adopted by the Senate, by the House and signed by the White House. That is the new concept in farm programs known as flexible parity.

So, for that reason, Mr. President, I have not had the opportunity to listen to the distinguished junior Senator from Utah, or other Members of this body who debate what I consider one of the important amendments to this treaty.

Mr. President, I support this effort to reaffirm the constitutional responsibility of the House of Representatives to participate in transfer of ownership of the Panama Canal Zone territory. Certainly, this discussion is one of the most significant aspects of the canal treaty debate. The resolution of this issue has important ramifications, not only for this treaty, but as a precedent for similar proposals in the future.

The source of confusion arises because of two separate sections of the U.S. Constitution which contradict each other under the present circumstances. It has already been made abundantly clear in the course of this discussion, but I will briefly reiterate:

Article II, Section 2 of the Constitution states that the President "shall have power, by and with the advice and consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur * * *"

Article IV, Section 3 of the Constitution states, with respect to the transfer of United States property: "the Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States * * *"

Mr. President, last September, the Senator from Kansas proposed a reservation to the Panama Canal Treaty to reaffirm the role of the House of Representatives in the transfer of our property in the Panama Canal Zone. Reservation No. 2, offered by the Senator from Kansas on September 23, states that, before the canal treaty enters into force, "the Congress" must adopt appropriate legislation to transfer the Canal Zone to the Republic of Panama. I feel at this time, as I did then, that this type of approach would protect the right and the responsibility of the House of Representatives to participate in this significant decision.

JUDICIAL PRECEDENT

One of the principal issues in this debate has been the question of whether the Canal Zone is, in fact, American territory.

U.S. title to the Canal Zone property has been affirmed on several occasions by the highest courts in our land. In 1907 the Supreme Court, by unanimous decision, confirmed our clear title to the Canal Zone property:

> It is hypercritical to content that the title of the United States is imperfect, and that the territory described does not belong to this Nation because of the omission of some of the technical terms used in ordinary conveyances of real estate. (*Wilson* v. *Shaw,* 204 U.S. 24.)

That is the phrase—"hypercritical to contend."

That unanimous Supreme Court decision affirming U.S. sovereignty over the Panama Canal still stands as a law of our land, and was reaffirmed by the U.S Court of Appeals decision in 1971 (*United States* v. *Husband R. Roach,* 453 F. 2d 1054, 1057) where the court said:

> The Canal Zone is an unincorporated territory of the United States.

Both of these cases clearly reaffirm the fact that the Canal Zone is "territory" of the United States. Consequently, under the terms of article IV, section 3, of the U.S. Constitution, not only two-thirds of the U.S. Senate but a majority of the U.S. House of Representatives must approve the proposed treaties as well.

Additionally, it should be pointed out that our Government actually made payment to individual property owners at the time the original treaty was promulgated. Besides the initial payment of $10 million to the Panamanian Government, the United States paid approximately $4 million for acquisition of property from ownerships that existed in the Canal Zone area. We paid over $300,000 to the French for land rights they already possessed in that region. So I think there is little question that we currently have clear title to this territory. As such, both Houses of Congress must participate in its transfer, and the amendment offered by Senator Hatch of Utah will make this a precondition to enforcement of this treaty.

POPULAR SUPPORT

Mr. President, the communications I have received from constituents in my own State, as well as from other parts of the country, indicate that there is considerable attention and concern about this aspect. It is not simply a dilemma dreamed up by treaty opponents as a means of obstruction.

I often have wondered, since the debate on the first treaty, why those who offer amendments and those who try to perfect the treaties are referred to more often than not as obstructionists, while others who support the treaties and beat down every effort to amend the treaties are sometimes referred to as statesmen.

I suggest that this amendment is not offered for that purpose. It is not simply a dilemma dreamed up by treaty opponents.

Because there is so much attention to the issue, I feel that the historical decision on this point, which will be made by the Senate on Wednesday of this week, may have serious ramifications for the perceived legitimacy of the treaty ratification process. It is consid-

erably significant that 231 Members of the House of Representatives have already petitioned their own leadership to give them a voice in the transfer of our Canal Zone property. That is over one-half of the House membership. It is rare that you get such strong bipartisan consensus on such a controversial issue. Unfortunately, there are not many Republicans in the House of Representatives.

A PRECEDENT FOR THE FUTURE

Perhaps the thing that concerns me the most, Mr. President, is the fact that the decision which we make on this very important question will stand as a precedent for future treaty consideration by the U.S. Congress. It is precisely because there is no clear precedent at this time that this issue has been so controversial. The Senate will, in effect, be establishing a very significant constitutional standard. It will bear not only on the separation of powers between the executive and legislative branch, but also upon the relationship between the two Houses of Congress with respect to treaty consideration.

Let us not underestimate the historical consequence of our duty in this regard. In my opinion, the detrimental aspects of denying the House of Representatives their rightful participation in the transfer of our property could, in effect, upset a delicate balance of duties which were carefully drafted by the Founding Fathers of this Nation.

I reject the contention by one of my distinguished colleagues who sits on the Senate Foreign Relations Committee, who, during the course of committee consideration on this point, asked rhetorically:

Why should we give them (the House of Representatives) a shot at it?

The comment was meant to suggest that this was simply another effort by treaty opponents to kill the accord. But I feel that comment was insensitive to the legitimate desire by our colleagues in the other body to exercise their proper role in the transfer of American property in Panama.

It is my hope that serious reflection by each Member of the Senate will facilitate adoption of this amendment on Wednesday.

Mr. President, I commend the distinguished Senator from Utah for his tireless efforts. He has spent hour after hour on this floor, on this one issue, not just because he desires to talk about the Panama Canal Treaty or the amendment, but because he recognizes the significance of this amendment.

It seems to me that there is a dilemma. We have almost gone full circle during the debate on the treaty first consider, the Neutrality Treaty, to this treaty, which in effect it is the giveaway. Whether you are for or against the treaty, it is a fact that this gives the Panama Canal to Panama.

It gives more power to Omar Torrijos. Maybe he should have more. Maybe we should ask the American people to prop up that leader of Panama.

I suggest that we probably are dealing with one of the most important amendments to be considered by this body.

The Senator from Kansas indicated at the outset that he has not had the opportunity to pay close attention to the debate for the

past 2 days. But as I review my mail on the Panama Canal issue, as I look back to the preconvention campaign in 1976, I recall that this was the big issue in the Republican Party. It became an issue because of the efforts of Governor Reagan. I do not share the view of Governor Reagan. In fact, the sovereignty issue does not bother the Senator from Kansas as much as control and maintenance and who is going to be there to operate the canal, and all the other ramifications about the cost and about the interests of our country.

Is the canal important? Is it important to our military interests? Is it important to our economic interests? Will these interests be jeopardized if we transfer the property to Panama? No one knows for certain.

I never have questioned the motives of those who support the treaties. I think the distinguished majority leader and the distinguished minority leader deserve great credit for those who support the treaties because they were able to get enough votes.

So the first treaty was adopted. Now we have reached the second treaty. Of course, it is obvious that amendments will not be accepted willingly. So the distinguished Senator from Utah is making every effort to educate the American people, to inform those of us in the Senate who have the final responsibility of the serious nature of this amendment.

The issue seems rather clear, just upon a reading of the Constitution, if we look at article III, section 2, as the Senator from Kansas indicated earlier. It says that the President shall have the power, with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators concur.

Then we look at article IV, section 3, with respect to transfer of property. Based on the Supreme Court decision referred to, we know that it is the property of the United States. That is where we have the dilemma, because that article clearly states "the Congress"—and the Congress is both the House of Representatives and the Senate of the United States. Article IV, section 3, states:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory of other Property belonging to the United States; * * *

So, Mr. President, the Senator from Kansas supports the amendment and commends the distinguished Senator from Utah for his tireless efforts.

Mr. HATCH. Mr. President, I thank the distinguished Senator from Kansas for his usual effective approach to many problems. I have deep appreciation for the astuteness with which he has approached this area and for the kind remarks he has made about the Senator from Utah.

Mr. President, how much time is remaining to the Senator from Utah?

The PRESIDING OFFICER. The Chair advises that the Senator from Utah has 30 minutes remaining and the Senator from Idaho has 50 minutes remaining.

Mr. HATCH. I thank the Chair.

Mr. President, the purpose of my remarks yesterday was to reveal the many errors contained in the Foreign Relations Committee Report on the constitutional question of whether the President may dispose of public lands by a self-executing treaty. In my view,

every paragraph, and indeed almost every sentence of the report addressing this question is either false, misleading, or irrelevant.

At the appropriate time, after I have had an opportunity to study all of the committee's responses to my analysis of the report, I shall again return to this subject.

Today, however, I wish to discuss, in greater detail, one of the more conspicuous errors of the report by the Foreign Relations Committee and to bring to the attention of the Senate additional facts and precedents which the committee has overlooked. These facts and precedents, as I shall demonstrate today, go the heart of the committee report and completely undermine the peculiar theory of the treaty power which the committee, the State Department, and the Justice Department are attempting to engraft upon the Constitution.

Throughout the committee report, as I noted yesterday, the constitutional issue has been repeatedly misstated and misrepresented. Again and again the report states that the issue we are debating is whether the treaty power may be exercised in order to transfer property. The statement on page 65 of the report provides a representative sampling of the committee's profound misunderstanding of the constitutional question we are considering, "The constitutional text," says the committee, "gives no reason to assume that the power to dispose of property may be exercised only by statute, and not by treaty."

The question, of course, is not whether property may be disposed of by treaty, but whether it may be disposed of by a self-executing treaty. Why the committee and its supporters on the floor persistently misrepresent the true issue is a matter of no little concern to me. By improperly presenting the constitutional issue, the committee has promoted widespread confusion and misunderstanding that can only serve to conceal a dangerous exercise of unprecedented executive power and embarrass the Senate. What is more, these continued misrepresentations have very artfully set up a strawman to make it appear that my amendment is challenging a well-established practice of transferring public lands by a treaty. But I remind the members of the Foreign Relations Committee that there has never been any serious doubt, at least since 1795, when the Jay Treaty was debated on this floor, that the power to dispose of property may be exercised by treaty. No Member of this body is challenging the right of the President to make a treaty disposing of American territory and property. What we are challenging is the administration's claim that such a disposal can be effected by a self-executing treaty, without the approval of Congress. When the President makes a treaty, all he makes is a contract, an executory contract. He has the right to do that. But only Congress can make that contract the law of the land when the contract calls for the transfer of American territory to a foreign government. He can make the treaty, he can make the contract, but he cannot make the law. Only Congress can convert the treaty into law, and without a law this contract to give away the Panama Canal has no legal effect.

The source of the committee's hopeless confusion, Mr. President, seems to be the committee's profound misunderstanding of the so-called concurrent power theory of the President respecting treaties.

Both the State Department and the Foreign Relations Committee have insisted that the President has the authority to bypass the House of Representatives because he has concurrent authority with Congress to dispose of public property. Such a view represents a complete distortion of the concurrent power theory.

To understand the origin and meaning of the concurrent power theory, which rests at the whole foundation of the Foreign Relations Committee report, it is necessary to turn back to 1795, when this theory was first offered by Alexander Hamilton. The first major treaty that this Nation made under the new Constitution was the Jay Treaty of 1795.

The purpose of the treaty was to resolve disputes between the United States and Great Britain arising out of the American Revolution and the refusal of the British to abide by certain provisions of the treaty of 1783, which had been made by the Congress under the Articles of Confederation. In 1794, Chief Justice John Jay concluded a treaty of peace and commerce, which was approved by the Senate the following year after a bitter contest and one of the greatest political debates in American history.

The major objection to the treaty was that it violated the Constitution. The treaty regulated commerce and the Constitution gave that power to Congress, which included the House of Representatives; yet the House had not been consulted. The treaty also involved naturalization, the punishment of piracies, the laying of imposts, and the expenditure of money—and all of these subjects were expressly placed under the control of Congress. Thus the question was raised whether a commercial treaty, or an international compact requiring an appropriation of money, or indeed any treaty whatever dealing with the delegated powers of Congress could be made by the President.

In a series of public letters under the signature of "Camillus," Alexander Hamilton vindicated the treaty and set to rest the question of constitutionality. These letters by Hamilton were his last great exposition of the Constitution, and they represent the most extensive analyses of the treaty power ever written by one of the Framers.

In letter No. 36, Hamilton explained that the Constitution does not specify the kinds of treaties which can be made, and that

> The general proposition must, therefore, be, that whatever is a proper subject of compact between nation and nation, may be embraced by a treaty between the President of the United States, with the advice and consent of the Senate, and the correspondent organ of a foreign state.

At the same time, he insisted the treaty power is not unlimited:

> It shall not change the Constitution; which results from this fundamental maxim, that a delegated authority cannot alter the constituting act, unless so expressly authorized by the constituting power. An agent cannot new-model his own commission—a treaty, for example, cannot transfer the legislative power to the executive department * * *

Furthermore, he added:

> A treaty which should manifestly betray or sacrifice the private interests of the state, would be null . . . Thus the power of treaty, though extending to the right of making alliances offensive and defensive, might not be exercised in making an alliance, so injurious to the state as to justify the non-observance of the contract.

But, he said, these are the only exceptions to the treaty power. It is therefore erroneous to state——

that a treaty can establish nothing between the United States and a foreign nation, which is the province of the legislative authority to regulate in reference to the United States alone.

The important distinction to keep in mind, Hamilton observed, is the difference between laws and treaties. They operate by different means and on different subjects:

The power to make laws is "the power of pronouncing authoritatively the will of the nation as to all persons and things over which it has jurisdiction,"; or it may be defined to be "the power of prescribing rules binding upon all persons and things over which the nation has jurisdiction."

In other words, he explained, the power to make laws is primarily an internal matter that—

acts compulsively upon all persons, whether foreigners or citizens, and upon all things within the territory of such nation, and also upon its own citizens and their property without its territory in certain cases and under certain limitations.

But the power to make laws—

can have no obligatory action whatsoever upon a foreign nation, or upon any person or thing within the jurisdiction of a foreign nation.

On the other hand, the power to make treaties, said Hamilton—

is the power by agreement, convention, or compact to establish rules binding upon two or more nations, their respective citizens and property. The rule established derives its reciprocal obligation from promise, from the faith which the contracting parties pledge to each other—not from the power of either to prescribe a rule for the other.

Thus, it may be seen that—

the means which the power of legislation employs are laws which it enacts, or rules which it enjoins; the subject upon which it acts is the nation of whom it is, the persons and property within the jurisdiction of the nation. The means which the power of treaty employs are contracts with other nations and the subjects upon which it acts are the nations contracting and those persons or things of each to which the contract relates.

So on the one hand we are talking about legislating and on the other contracting. The difference between the two is further amplified by the fact observed Hamilton, that—

though a treaty may effect what a law can, yet a law cannot effect what a treaty does.

The key to an understanding of the difference between laws and treaties, concludes Hamilton, is recognition of the fact that the purpose of treaties is to accomplish that which cannot be done by laws; or as Hamilton puts it—

It is the province of the latter (treaties) to do what the former (laws) cannot do.

Applying these considerations to the Jay Treaty, which included provisions for commercial agreements, Hamilton rejected the view that the United States could not make a treaty with Great Britain on this subject simply because it is provided in the Constitution that Congress "shall have power to regulate commerce with foreign nations." Congress, he noted, may regulate, by law, our domestic trade and "that which foreigners come to carry on with us."

But here is the crucial consideration: Congress "cannot regulate the trade which we may go to carry on in foreign countries"; Congress "can give to us no rights, no privileges there. This must

depend on the will and regulations of those countries; and consequently it is the province of the power of treaty to establish the rules of commercial intercourse between foreign nations and the United States. The legislative may regulate our own trade, but treaty only can regulate the national trade between our own country and another country."

To put it another way, the treaty power extends to "commerce with foreign nations" in those instances where the laws of Congress cannot reach, that is to those aspects of foreign commerce which are subject to the jurisdiction of a foreign government. Congress has the "power to regulate commerce with foreign nations." But it does not have the power to regulate the commerce of a foreign state that lies beyond the jurisdiction of the United States; that commerce can be reached only by the treaty power and the acquiescence of a foreign government. As Hamilton explans:

> When it is said that Congress shall have power to regulate commerce with foreign nations, this has reference to the distribution of the general legislative power of regulating trade between the national and the particular governments; and serves merely to distinguish the right of regulating our external trade, as far as can be done by law, which is vested in Congress, from that of regulating the trade of a State within itself, which is left to each state.

In sum—

> It is indeed an absurdity to say that the power of regulating trade by law is incompatible with the power of regulating it by treaty; since the former can, by no means, do what the latter can alone accomplish.

One of the principal purposes of the treaty power, then, is to accomplish an objective through contracts with foreign nations that cannot be accomplished through law. In this sense, the treaty power allows the United States, in its sovereign capacity, to attain goals which cannot be reached through the ordinary course of legislation. Simply put, the treaty power extends to those objects which are beyond the jurisdiction of Congress and the Nation.

In this instance, neither the House of Representatives nor the Congress as a whole can properly object to the exercise of the treaty power on constitutional grounds, since the object of the treaty is beyond the scope of Congress delegated powers.

When, however, the obligation assumed under a treaty falls within the purview of Congress powers, and the object of the treaty could also have been achieved through legislation, it is clear that the treaty cannot become the law of the land unless Congress consents. Otherwise the treaty power could be used to override the delegated powers of Congress. This would amount to the transfer of the legislative power to the executive department by treaty which, as Hamilton explains, is forbidden by the Constitution.

Applying Hamilton's reasoning to the territorial or disposal-of-property clause of article IV of the Constitution, it is readily apparent that a treaty disposing of public lands seeks to accomplish an objective which can already be reached by regular statute. It is not the same as a treaty which purports to deal with objects beyond the jurisdiction of the United States, and can be reached only by treaty—American territory is a domestic concern. It, as well as the inhabitants therein, is under the jurisdiction of Congress and the United States. The subject of a treaty disposing of American territory, unlike a treaty concerning external commercial relations with

a foreign state, is strictly internal. It is, to repeat, a domestic matter concerning American property and American citizens. The treaty power is not even needed to effect the disposal.

The principle was clearly explained by Edward S. Corwin, the preeminent constitutional authority, in his classic study on The President: Office and Powers. On February 9, 1922, Congress passed a statute creating a commission to carry out agreements with other governments regarding certain foreign debts. The question was raised whether these agreements should not be made by treaty rather than an act of Congress. "The fact is," observed corwin, "that on occasions like this the treatymaking power is a fifth wheel to the coach. For ever had it been resorted to, the resulting agreements would still have to receive the approval of Congress, to which the Constitution assigns the power to dispose of property of the United States, which is what these debts undoubtedly were" (p. 216). "Similarly, there are even instances where territory has been acquired by Congress after the treaty process broke down. Thus it was by simple congressional resolution that Texas was annexed in 1845 after the Senate defeated a treaty for the same purpose. It was thus that Hawaii was annexed in 1898 after a treaty for the purpose had been blocked by a group of Cleveland Democrats" (Corwin, p. 216).

In letter No. 37, Hamilton discusses the relationship between certain delegated powers of Congress and the treaty power, and argues that "In all these cases the power to make laws and the power to make treaties are concurrent." Here, then, is Hamilton's theory of concurrent powers which the State Department and the Foreign Relations Committee repeatedly cite in support of the view that the President may dispose of public lands by a self-executing treaty. As we shall now observe, however, this represents a gross distortion of Hamilton's views.

One of the delegated powers of Congress which Hamilton examines in detail is the disposal-of-property power under article IV. According to the opponents of the Jay Treaty, he observes—

> The Constitution is said to be violated in that part which empowers Congress to dispose of, and make all needful rules and regulations respecting the territory, or other property of the United States, by those provisions of the treaty which respect the adjustment of boundary in the cases of the rivers St. Croix and Mississippi.

But upon closer examination we find, says Hamilton, that there has been no violation of the Constitution because the property in question is subject to dispute. Only were the property clearly and unquestionably belongs to the United States, he suggests, is the President forbidden to transfer it by treaty alone. "As to the disposal and regulation of the territory and property of the United States," says Hamilton, "this will be naturally understood of dispositions and regulations purely domestic, and where the title is not disputed by a foreign power." But, he continues, "where there are interfering claims of foreign powers * * * treaty must directly or indirectly adjust the dispute."

What Hamilton is suggesting, in other words, is that Congress has full and complete control over territory and property belonging to the United States, and that property of this nature, which is "purely domestic," would not be subject to the treaty power unless, of course, Congress authorized its disposal. In the case of disputed

property, on the other hand, only the treaty power can adjust the boundary and establish clear title, because the power of Congress does not extend to territories which do not clearly belong to the United States or are not under the jurisdiction of the United States. In cases of this kind, Congress does not really have any property to dispose.

Now if we apply Hamilton's understanding of the relationship between the disposal of property power and the treaty power to the Panama Canal Treaty, it is obvious that Hamilton would oppose the transfer of this territory by a self-executing treaty. The Canal Zone is an American territory, "purely domestic," that is under the jurisdiction of Congress. There is no disputed title. If Congress has the power to dispose of this territory under its own authority—which it surely has—without the need of a treaty, then surely the President does not have the authority to dispose of it by a self-executing treaty, contrary to the wishes of Congress. The treaty power cannot be used to nullify the powers of Congress or remove its jurisdiction unless Congress indicates that it wishes to surrender or delegate its power to the President.

In Letter No. 38, Hamilton goes one step further by pointing out that even treaties with Indian tribes, which do not involve cessions of American territory, but boundary disputes and the acquisition of land, have proceeded on the basis of congressional approval. "Our treaties with several Indian nations," he observes, "regulate and change the boundaries between them and the United States. And in addition to compensations in gross, they stipulate the payment of certain species and perpetual annuities. Thus a treaty in August 1790, with the Creeks (article 5) promises them the yearly sum of $1,500. And similar features are found in subsequent treaties with the six Nations; the Cherokees, and the North Western Indians. This last has just been ratified by the unanimous voice of the Senate. It stipulates an annuity of $9,500 and relinquishes to the Indians, a large tract of land which they had, by preceding treaties, ceded to the United States."

From this Hamilton concludes that—

> Our former treaties under the present government, as well as one subsequent to that under consideration, contradict the doctrine set up against its constitutionality—in the important particulars of making dispositions concerning the territory and property of the United States, and binding them to raise and pay money. These treaties have not only been made by the President and ratified by the Senate, without any impeachment of their constitutionality, but the House of Representatives has heretofore concurred, and without objection, in carrying them into effect, by the requisite appropriation of money.

So there we have it, Mr. President, from Hamilton himself. The Indian treaties for the acquisition of land are constitutional, in Hamilton's view, because Congress carried them into effect. Since these were purchases of land, an appropriation was necessary to carry them into effect; and it may reasonably be deduced that if they were disposals of land, Congress would have to agree to the disposal to carry them into effect also. For the criterion, once again, is whether Congress has given its authority. To acquire property, Congress gives its authority by appropriating the necessary funds; to dispose of property, Congress gives its authority by authorizing the transfer. And where there is a boundary dispute and the United States does not have clear title, Congress approval

is not necessary because disputed lands are not necessarily under the jurisdiction of the United States. But according to Hamilton's reasoning, the approval of Congress would be required even for a treaty resolving a boundary dispute if the treaty called for the purchase of any of the disputed lands.

Mr. President, it should be abundantly clear to anyone who has read the letters of Camillus that Hamilton did not intend by the concurrent power theory to justify the exercise of the treaty power that is presently contemplated under the Panama Canal Treaty. As Hamilton clearly explains in letter No. 37, the power of Congress to dispose of territory and property extends to what he calls "purely domestic" property of the United States, "where the title is not disputed by a foreign power." In other words, the disposal power of Congress would extend to a territory such as the Panama Canal Zone. It is an American territory to which we have clear title.

The power of the President, on the other hand, extends to disputed property because only the treaty power can resolve the dispute and establish clear title.

By concurrent power, Hamilton obviously means, in connection with the disposal of property, that both Congress and the President have the power to dispose of property. But the exercise of this power is determined by the jurisdiction which each branch has over the property in question. Thus the Congress has the sole power to dispose of property that is under the jurisdiction of the United States—that is purely domestic property such as American territory, where our title is clear; and the President's power extends to disputed territory, where our title is not clear and the jurisdiction of the United States is either uncertain or nonexistent.

In other words, the Congress and the President have concurrent power to dispose of property, but only Congress has the power to dispose of property belonging to the United States. Of course the treaty power may also be used to dispose of property belonging to the United States, but only if the Congress authorizes the transfer. In general, the purpose of the treaty power is to accomplish what cannot be accomplished by ordinary legislation, not to substitute the treaty power for the legislative power and render the latter null and void.

Such, then, was Hamilton's understanding of the relationship between the power of Congress to dispose of public lands and the treaty power. It is in no way inconsistent with the position that was finally adopted by the House of Representatives with respect to the Jay Treaty. On April 6, 1796, the House passed what is known as the Blount Resolution.

Mr. President, the claims of the House of Representatives which are recorded in this resolution have never—I repeat, never—been relinquished by the House. What is more, this resolution accurately reflects the meaning and substance of the amendment that I have offered to the Panama Canal Treaty. Here are the words of that resolution—and they bear repeating:

Resolved, That, it being declared by the second section of the second article of the Constitution, "that the President shall have power, by and with the advice of the Senate, to make Treaties, provided two-thirds of the Senate present concur," the House of Representatives do not claim any agency in making Treaties; but that

when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such Treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good. (Annals of Congress, 4 Cong. 1 Sess., reprinted in Allen Johnson (ed.), Readings in American Constitutional History, 1776–1876," p. 205).

Mr. President, Alexander Hamilton is the author of the concurrent theory that the Foreign Relations Committee and the State Department have invoked to justify the disposal of the Panama Canal by a self-executing treaty. As I have said before, it is the whole foundation of the Foreign Relations Committee report. But in the hands of the Foreign Relations Committee, its true and original meaning has been distorted—gnarled and twisted beyond recognition. Like every other precedent cited by the committee, the preposterous rendition of the concurrent power theory is a fraud. And with the departure of this theory, the whole report of the Senate Foreign Relations Committee collapses.

It is also worthy of mention, Mr. President, that Alexander Hamilton favored not a narrow construction of the treaty power, but the broadest construction possible. His writings, especially his Letters of Camillus, are generally regarded as the touchstone for a broadly based exercise of the executive power. And yet we have seen that not even the arguments of Alexander Hamilton can be stretched to support the expansive views of the treaty power concocted by our imaginative Foreign Relations Committee.

Mr. President, one false assumption will give rise to a hundred errors, layer upon layer. Such is the unfortunate circumstance of the Foreign Relations Committee report. The committee's profound misunderstanding of the concurrent power theory explains in large measure why the committee has been unable to grasp the basic constitutional issue that we are addressing. Perhaps this also explains why the committee has apparently been unable to formulate the question properly for others to examine.

I must confess that I am somewhat amused for example, by the distinguished Senator from Maryland's repeated references to a letter signed by 15 law professors. Apparently the constitutional issue was improperly presented to them, because the statement they signed proves absolutely nothing. It is, in fact, an unsupported statement which simply tells us what we have known all along.

Here is the statement that these law professors signed.

> We have been informed that the consitutional validity of the new Panama Canal treaty has been questioned by several lawyers who have claimed that the United States may transfer its property only by legislation enacted by Congress and may not transfer its property by treaty.
>
> We respectfully submit that such a claim is erroneous.
>
> The Constitution unequivocally permits transfer by treaty of property belonging to the United States. The treaty power, and the power of Congress under Article IV, section 3, clause 2 of the Constitution, are concurrent powers and either may be used to transfer property.
>
> The treaty power extends to all proper subjects of negotiation with foreign nations; a transfer of United States property is such a subject, and accordingly may be effected by treaty.

And that, Mr. President, is all the statement says. Why the Senator from Maryland regards this statement as so important is quite puzzling to me. All that these lawyers have said is that the

transfer of property is the "proper subject" of a treaty, and that "the Constitution unequivocally permits transfer by treaty of property belonging to the United States."

Now who would no sign this? Of course the transfer of property is a proper subject of a treaty. Of course "The Constitution unequivocally permits transfer by treaty of property belonging to the United States."

Indeed it is also true that the treaty power and the power of Congress under article IV are concurrent powers, as Alexander Hamilton explained.

These lawyers might just as well have been asked to sign their names to a statement declaring that two plus two equals four. What they did not sign—and here, Mr. President, is the real significance of this statement—is a statement declaring that the President has the power to transfer American territory to a foreign government by a self-executing treaty. The words "self-executing" are, in fact, conspicuously absent from the statement.

So it appears, Mr. President, that the misunderstandings of the committee regarding the constitutional issue before us have now spread the confines of the committee to other quarters. Even though some of these lawyers are alleged to have been in the employ of the State Department or are apologists for the most liberal construction of the Constitution imaginable, I would hesitate to suggest that any of these distinguished gentlemen is collaborating with the administration.

Rather, I think that they, like Members of the Senate, are the innocent victims of the Foreign Relation Committee's helpless misunderstanding of the constitutional issues before us. I regret to say there seems to be no end to this mischief, and I sincerely hope that the committee will improve its understanding of our Constitution before long.

The PRESIDING OFFICER (Mr. Paul G. Hatfield). The time of the Senator from Utah has expired. The Senator from Idaho has 16 minutes.

Mr. CHURCH. Mr. President, within the last few minutes, I have heard the Foreign Relations Committee labeled incompetent, charged with foisting misrepresentations on the Senate, accused of falsehoods, and indicted for issuing a gnarled, twisted and distorted report.

Mr. President, I happen to be proud of my membership on the Foreign Relations Committee. I have served on that committee for nearly 19 years. Throughtout the history of the Senate, the Foreign Relations Committee has long been regarded as highly competent, skillful, and knowledgeable in the work it performs and the service it renders to the Senate as a whole.

I think it is rather sad that a freshman Senator should attack the committee in so unrestrained a manner.

The Senator from Utah reminds me of a bumblebee, biggest when first born.

He argues that the Foreign Relations Committee report completely ignores the precedents distinguishing self-executing treaties from those that are not self-executing. He says:

The committee's report makes no mention of the rules that have traditionally been followed by Congress, by our courts and by past Presidents' rules that must be

consulted in order to determine the character of this treaty. The report simply assumes, without discussion, without even acknowledging the existence of these precedents, that this is a self-executing treaty.

Mr. President, the reason the committee's report does not discuss the specific issue of whether this treaty is self-executing and the reason why the Attorney General, the State Department legal adviser, and other administration witnesses did not address that issue as such, is that it begs the question to say that the treaty is self-executing.

The very question in dispute is whether a treaty provision disposing of property belonging to the United States can be self-executing. The entire committee report is directed at discussing this question, as is the testimony of each of the administration witnesses who testified on it. The committee and the administration—and the overwhelming majority of legal scholars who have expressed themselves on the issue—all believe that such a treaty can be self-executing.

The Senator from Utah seems to assume, however, that this is simply one additional question to be debated with all the others. He seems to believe that the question is whether the treaty is intended to be self-executing. Of course, it is intended to be self-executing; it is not necessary to apply any court-formulated test to conclude that. The language of the treaty, the testimony of the administration, and the report of the committee all make clear beyond question that the treaty is intended to be self-executing. That is why we are having this debate. The kinds of tests that Senator Hatch cites are applied by the courts only for the purpose of determining whether the agreement was intended to be self-executing. Said Prof. Louis Henkin in his authoritative treaties "Foreign Affairs and the Constitution":

> The courts have considered that to be a matter of interpretation of the agreement, but agreements have often been drafted without attention to that question so that it may be difficult to determine what was contemplated.

I suggest to the Senator that anyone following this debate knows precisely what is contemplated in the Panama Canal Treaty.

It is my intention, Mr. President, to directly rebut the extended arguments of the Senator from Utah by referring to three self-executing treaties of the past which conveyed U.S. Government owned property to foreign governments without benefit of any legislation by Congress. Before doing so, I note that the distinguished Senator from New York is on the floor. I have spoken with him in committee conferences during the day and I know he has come to the floor several times expecting to address this issue. I propose to him that we divide the time remaining to our side between us.

Mr. JAVITS. That is fine, Mr. President.

Mr. CHURCH. For that purpose, Mr. President, I ask the Chair how much time remains to the opponents of the pending amendment.

The PRESIDING OFFICER. Thirty-six minutes.

Mr. JAVITS. If the Senator will yield me 15 minutes, I shall be grateful.

Mr. CHURCH. I yield the Senator 15 minutes.

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Mr. JAVITS. Mr. President, I have addressed this issue before, and as we approach the close of the debate on this issue, since we vote tomorrow—and the time tomorrow will be very limited—I should like those who do read the RECORD tonight to have some concept of my own position respecting it.

I realize the temptation to reply to individual points of difference and argue the meaning of individual cases on both sides. This is a temptation in an extended debate such as we are having that it is very easy to accept and, indeed, could prove to be very useful.

Mr. President I should like, if I may, to sum up the legal position which I believe sustains the fact that, this treaty having been submitted as a treaty, a two-thirds vote of the Senate makes the law of the land, which is what the Supreme Court has held time and again with respect to treaties and which is what the Constitution calls for. It is fully within the cases and the historical precedents that, in that treaty, property may be transferred fully in accord with the Constitution.

The point which I think is critical to this matter is, one, that the President exercise his option to submit this particular treaty as a treaty. Of course, the President could, if he chose, have entered into an executive agreement relating to the Panama Canal, which would have been then submitted to both Houses. But he did not choose that course; he chose this course. I believe that our history indicates that this is the course which is proper and can be followed.

I heard with great interest the fact that 235 Members of the House had introduced a resolution alleging that the House also desired jurisdiction of this particular matter. That is House Concurrent Resolution 348, the principal sponsor of which is Mr. Hansen, with, allegedly, 235 cosponsors. I have no doubt; I use the word "allegedly" only because they are not all printed. I am sure that is so.

Mr. President, I suppose we could get a pretty big majority of the Senate to assert its claim to a revenue measure or a tax measure, which must originate in the other body. We would love to do that on many occasions, and I am sure many Senators could concur. But what does that prove? It simply proves that they do not like the way the Constitution is written; they would like it written some other way. But it is a matter about which we can do absolutely nothing.

It is in acord with legislative desire to want, as it were, to have a part in this particular activity. At a given level, the house will. Their implementing legislation is essential; and we shall have an opportunity, too, to implement the terms of this treaty. But it is not essential under the Constitution.

That is certainly no reason why the Senate has to surrender its jurisdiction, the fact that the House wants it. I have stood in this Chamber on many closing days, Mr. President, in many Congresses in my career here, and have found that the House has gone home, leaving us with some essential appropriations bill which we did not like and which, in our judgment, was odorous to high heaven. But there was nothing we could do about it but take it. No matter how many petitions or how many resolutions we would have filed, the house was not coming back.

So, Mr. President, it is the case with this matter. It has been submitted as a treaty. Therefore, the Constitution says we must have the responsibility. While we respect our House colleagues, that is certainly no argument that the Constitution can or needs to be undone.

Second, Mr. President, it is very clear to me that the tenor of the cases—and the cases are not many that are leading cases on this subject, going to the leading ones, in my judgment—Jones against Meehan, which has been cited time and time again, decided in 1899; Holden against Joy, decided in 1872; and Jeofroy against Riggs, decided in 1890—they clearly decide the fact that when a transfer of property is an incident to a treaty and that property certainly, unequivocally, is outside the confines of the United States, and the issue is between the United States and a foreign country—which is true of the issue here—that can be decided, determined, and made operative by treaty.

The idea which has been put forward here is that it is self-operating, meaning it is something different from another law, some extension, some outreach of authority. Well, Mr. President, this is as much law as any other law that Congress passes. If it were not, it would not be binding, and we could not do anything about the Panama Canal, or taxation treaties, or treaties of commerce and friendship, or agreements with respect to any other matter which is susceptible of being dealt with by treaty between two countries.

So, Mr. President, though there has been a lot of smoke, there is very little, if any, fire, and what little has been flatly determined over the generations by the practice which we have pursued and by the decisions of the Supreme Court.

I believe that transfers of property are not even unusual by force of treaty in the matter of the Panama Canal at all.

In 1955, though some of the transfer of property was passed on by the House, some of the transfer of the property was also made in the treaty itself, and there was no challenge to it. It was, as a matter of fact, law, as that part which went to the house and was enacted as a law.

Of course, we have many other instances. I do not want to steal any of Senator Church's thunder, but the issues are the same in respect of Ryukyu and Okinawa where we gave up a very valuable piece of property, and the Swan Islands, which have been argued here, with a Central American nation. Similarly, in the treaty with Nicaragua, also affecting property outside the United States.

This leads us to reason, Mr. President, then what is the treaty power about if it stops at an act which is an act between the United States and other foreign countries, to wit, a transfer of any property which we may have?

Is it contended for one moment that to acquire or to release or to sell a piece of property which belongs to the United States in a foreign country that we can only do that by law and not by treaty with that foreign country?

Of course, it makes the whole treaty power absolutely barren of real effect.

So, Mr. President, in the final analysis, we must realize one other thing. Our colleagues who are against this treaty and feel

that it is a very serious detriment to the united States to enter into this treaty, naturally, will try to defeat it by every means they possibly can, including, if they possibly can do it, making us believe we do not have the power to ratify this treaty and that it must go to the other body.

That is as good a way as defeating it as any other. Indeed, I must say I have a little doubt about this, I doubt very much that the 235 Congressmen who put their names to the resolution they wanted would vote against it if they could because they, too, would then be put to, "What is the best interest of the United States?"

That question has been argued completely and thoroughly and there is no need of my adding to that argument in my own arguments or in the arguments from the cases.

The fact is, Mr. President, that this case has been argued and reargued and reargued in the hope that somehow or other the American people would be induced to rise in their anger in solemn judgment and say to the Senate, "We don't want this treaty."

Indeed, there have been considerable exaggerations, stretching of what the treaty really says and what it really does.

This has gone on, Mr. President, for some 26 or 28 days of debate, for a couple of months of time. But, Mr. President, there has been no such revolution. If anything, the country has gotten more and more accustomed to the fact that this treaty is an absolute necessity if we are going to have tranquility in the Western Hemisphere and that it should be approved.

Mr. President, upon that, I rest my case, the point of Senate debate on the law and the facts, and the policy is to persuade and convince.

I respectfully submit that the persuading and the convincing has been done, not by the opponents, but by the proponents, and that the revolution which they envisaged on the part of the American people has not occurred at all.

On the contrary, this debate has gotten quieter and quieter, as witness the empty galleries and the empty press gallery. The fact that we transmit it over the radio may be a little more of a bore than it is an amusement to most of the American people who are listening to the radio because it has been protracted, probably beyond the point of real instruction.

But, be that as it may, I am a proponent, not an opponent, and the opponents of this treaty not only have every right, but is their duty, I have said that before, to debate it to the full extent that they feel that it ought to be debated.

Mr. ALLEN. Will the Senator yield?

Mr. JAVITS. Not yet.

But, Mr. President, I believe that the fundamental point has been made now on the law, on the facts, and in the eyes of the public. I hope very much, therefore, that this question may at long last be settled as soon as we possibly can settle it, hopefully, as we expect, this month, and that we may go on to other critical business as far as the country is concerned.

But I deeply believe and I submit that the question of law which is here posed by this amendment is not really a question of law any more and that it has been profoundly settled by decision and by historical precedent, and at least that part of it is clear, that a

piece of property can be transferred by a treaty, ratified according to the Constitution, by the Senate of the united States, and that the transfer is legal, valid, and binding on the United States.

Indeed, I offer the prediction, Mr. President, that if this treaty is ratified, there will be no effective contest of the fact that the property transferred under it is legally and fully transferred and that its ownership has truly changed.

Mr. ALLEN. Will the Senator yield?

Mr. JAVITS. If I have any more time, I will.

Mr. CHURCH. I think we are on limited time. I have reserved just enough time to make the concluding argument.

The PRESIDING OFFICER. The Senator from New York has 2 minutes.

Mr. JAVITS. I yield that, if that is all right.

Mr. ALLEN. I thank the distinguished Senator from New York for yielding.

The Senator has talked about the 1955 treaty. Of course, article V in the 1955 treaty makes reference to three separate dispositions of property and in each case it has the phrase, "subject to enactment of legislation by the Congress."

Then the Senator spoke of article VI and VII which actually have to do with boundary line disputes rather than the actual conveyance of property. But even in that instance, I call the distinguished Senator's attention to the fact that Secretary Holland back in 1955, when the 1955 treaty was before the Senate Committee on Foreign Relations, and Senator Morse was questioning him. He asked about the legislation that was to be submitted.

I have here before me what appears in the report of hearings before the Foreign Relations Committee of the Senate on the Panama Canal Treaty, pages 60 and 61, where Mr. Holland, representing the State Department, submitted a memorandum. I refer to it here, and his memorandum says:

> Articles V, VI, and VII of the treaty and item 2 of the memorandum transfer certain lands and improvements to Panama. Authorizing legislation is required. Necessary replacement would require appropriations.

So, apparently, the Secretary of Inter-American Affairs, appearing before the Foreign Relations Committee in support of the 1955 treaty, stated that authorizing legislation by the Congress would be required.

Does the Senator have familiarity with that hearing?

Mr. JAVITS. Mr. President, not to intrude, I do not think anything the Senator has said challenges the proposition that there was a self-executing transfer of property in that treaty. In aid of that, I ask unanimous consent to have printed in the Record a memorandum specifying the terms of the paragraphs of the treaty which are referred to.

Mr. ALLEN. Authorizing legislation was enacted, was it not?

Mr. JAVITS. I said that.

Mr. CHURCH. Mr. President, I call for the regular order. I am on limited time.

There being no objection, the material was ordered to be printed in the Record, as follows:

Treaty Between the United States and Panama (Mutual Understanding and Cooperation), January 25, 1955, 6 U.S.T. 2283

The treaty of 1955 provided for transfers of property belonging to the United States in Articles V, VI, and VII. Article V was not drafted in self-executing terms but was predicated on enactment of legislation by the Congress. It concerned real property located in the territory under jurisdiction of Panama and depended on a determination that such property was no longer needed. The details were specified in a Memorandum of Understandings (attached to the treaty), item No. 2.

The transfers in Article VI and VII were couched in self-executing terms and involved a change in the boundary of the Canal Zone. The property transferred by Article VI consisted of (a) a strip of water around the Colon shores, (b) a small unused site known as Battery Morgan and (c) a small portion of the Colon end of the Colon Corridor. The property transferred by Article VII consisted of a landing pier and the land and water area under the pier. All properties transferred were described in the Message of the President, transmitting the treaty for advice and consent to the Senate (84th Cong., 1st Sess., Sen., Executive F). The self-executing nature of the transfers in Article VI and VII were expressly recognized both in the Memorandum of Understandings attached to the treaty, item No. 2 f, and in the Congressional statutes implementing the article providing the transfers (71 U.S. Stat. 509, Sec. 102(b)).

Memorandum of Understanding Reached

In connection with the 1953–1954 negotiations between representatives of the United States of America and the Republic of Panama, which have resulted in the signature of a Treaty between the two countries, the following understandings have been reached:

On the part of the United States of America:

1. Legislation will be sought which will authorize each agency of the United States Government in the Canal Zone to conform its existing wage practices in the Zone to the following principles:

(a) The basic wage for any given grade level will be the same for any employee eligible for appointment to the position without regard to whether he is a citizen of the United States or of the Republic of Panama.

(b) In the case of an employee who is a citizen of the United States, there may be added to the base pay an increment representing an overseas differential plus an allowance for those elements, such as taxes, which operate to reduce the disposable income of such an employee as compared with an employee who is a resident of the area.

(c) The employee who is a citizen of the United States will also be eligible for greater annual leave benefits and travel allowances because of the necessity for periodic vacations in the United States for recuperation purposes and to maintain contact with the employee's home environment.

Legislation will be sought to make the Civil Service Retirement Act uniformly applicable to citizens of the United States and of the Republic of Panama employed by the Government of the United States in the Canal Zone.

The United States will afford equality of opportunity to citizens of Panama for employment in all United States Government positions in the Canal Zone for which they are qualified and in which the employment of United States citizens is not required, in the judgment of the United States, for security reasons.

The agencies of the United States Government will evaluate, classify, and title all positions in the Canal Zone without regard to the nationality of the incumbent or proposed incumbent.

Citizens of Panama will be afforded opportunity to participate in such training programs as may be conducted for employees by United States agencies in the Canal Zone.

2. With reference to that part of Article V of the Treaty signed today which deals with the conveyance of the Republic of Panama free of cost of all the ritht, title and interest held by the United States of America or its agencies in and to certain lands and improvements situated in territory under jurisdiction of the Republic of Panama, steps will be taken as provided in this Item.

(a) Legislation will be sought to authorize and direct the transfer to the Republic of Panama of all the right, title and interest held by the United States or its agencies in or to the following real property:

1. The J. N. Vialette and Huerta de San Doval tracts in the city of Panama and the Aspinyall tract on the Island of Taboga.

2. Las Isletas and Santa Catalina Military Reservations on the Island of Taboga. This transfer will include the cable rights-of-way which have a width of 20 feet (6.10 meters) and extend between the Ancon Cove Military Reservation and the Santa Catalina Military Reservation, and between the El Vigia Military Reservation and the Las Isletas Military Reservation.

3. The lot in Colón now reserved for consulate purposes.

4. Certain lands on the westerly shores of the city of Colón described roughly as extending from the southerly boundary of the de Lessepa area (4th Street extended) to the Colón-Canal Zone boundary and bounded on the east by the east wall of the old freight house and, below that structure, by a line 25 feet (7.622 meters) west of the center line of the most westerly railroad track. This transfer will include the certain improvements consisting of the old freight house and Colón Pier Number 3.

(b) Legislation will be sought to authorize and direct the Panama Canal Company to remove its railway terminal operations from the city of Panama and to transfer to the Republic of Panama free of cost all of the right, title and interest of the Panama Canal Company in and to the lands known as the Panama Railroad Yard, including the improvements thereon and specifically including the railway passenger station. This action will also relieve the Government of the Republic of Panama of its obligation under Point 10 of the General Relations Agreement between the United States of America and the Republic of Panama signed May 18, 1942 to make available without cost to the Government of the United States of America a suitable new site for such terminal facilities.

(c) With respect to those areas in the city of Colón known as de Lessepa, Colón Beach and New Cristobal (with the exception of two lots in the de Lessepa area which the United States intends to use for consulate purposes), legislation will be sought to authorize and direct the gradual withdrawal from these areas and the conveyance or transfer to the Republic of Panama free of cost of all the right, title and interest of the United States and of its agency, the Panama Canal Company, in and to the lands and improvements thereon. Under this process of gradual withdrawal the United States Government, and/or its agencies, will not be obligated to install any new structure in such areas and, as severable parts of the areas cease to be needed, the lands and improvements would be conveyed or transferred. The severability of parts of the areas depends upon a number of practical considerations including those having to do with the present obligations of the United States, with respect to the subject areas, concerning water and sewerage facilities, street cleaning and paving, water supply, et cetera, as stipuated in the Instrument of Transfer of Water and Sewerage Systems, executed between the Governor of the Panama Canal and the Foreign Minister of Panama on December 28, 1945.

(d) With respect to the railroad passenger station and site in the city of Colón, legislation will be sought to authorize and direct the withdrawal from such site and structure at such time as the withdrawal from the areas known as de Lesseps, Colón Beach and New Cristobal, contemplated by the next preceding subparagraph, shall have been fully completed, and the conveyance to the Republic of Panama free of cost of all the right, title, and interest of the United States and of its agency, the Panama Canal Company, in and to such site and structure. However, the railroad tracks and trackage area in Colón, being required for switching purposes serving the Cristobal piers, will be retained for such purposes.

(e) All transfers or conveyance of lands and improvements contemplated by this Item subject to legislative authorization and direction, will necessarily be made subject to any leases which may be outstanding in the respective areas, and will also contain provisions fully protecting the Government of the United States of America against any claims by lessees for damages or losses which may arise as a result of such transfers or conveyances.

(f) The transfers or conveyances contemplated by this Item, subject to legislative authorization, are in addition to the conveyance of Paitilla Point as specifically covered by Article V of the Treaty signed today, and to the transfer of real property effected by Article VI of said Treaty.

3. Articles, materials, and supplies that are mined, produced or manufactured in the Republic of Panama, when purchased for use in the Canal Zone, will be exempted from the provisions of the Buy American Act.

4. Referring to the exchange of notes dated March 2, 1936, accessory to the General Treaty between the United States of America and the Republic of Panama signed on that date, relative to the sale to ships of goods imported into the Canal Zone by the Government of the United States of America, the United States of America agrees, effective December 31, 1956, and in benefit of Panamanian com-

merce, to withdraw wholly from, and thereafter to refrain from, any such sales to ships, provided that nothing in this Item shall apply:

(a) to sales to ships operated by or for the account of the Government of the United States of America,

(b) to the sale of fuel or lubricants, or

(c) to any sale or furnishing of ships stores which is incidental to the performance of ship repair operations by any agency of the Government of the United States of America.

5. Legislative authorization and the necessary appropriations will be sought for the construction of a bridge at Balboa referred to in Point 4 of the General Relations Agreement of 1942.

6. The United States of America agrees, effective December 31, 1956, to withdraw from persons employed by agencies of the Government of the United States of America in the Canal Zone who are not citizens of the United States of America and who do not actually reside in said Zone the privilege of availing themselves of services which are offered within said Zone except those which are essential to health or necessary to permit them to perform their duties.

7. It is and will continue to be the policy of the Panama Canal agencies and of the Armed Forces in the Canal Zone in making purchases of supplies, materials and equipment, so far as permitted under United States legislation, to afford to the economy of the Republic of Panama full opportunity to compete for such business.

8. In general connection with the matter of the importation of items of merchandise for resale in the sales stores in the Canal Zone, it will be the practice of the agencies concerned to acquire such items either from United States sources or Panamanian sources unless, in certain instances, it is not feasible to do so.

9. With respect to the manufacture and processing of goods for sale to or consumption by individuals, now called on by the Panama Canal Company, it will be the policy of the United States of America to terminate such activities whenever and for so long as such goods, or particular classes thereof, are determined by the United States of America to be available in the Republic of Panama on a continuing basis, in satisfactory qualities and quantities, and at reasonable prices. the United States of America will give prompt consideration to a request in writing on the part of the Government of Panama concerning the termination of the manufacture or processing of any goods covered in this Item as to which the Government of Panama may consider the criteria specified in this Item to have been met.

10. Prompt consideration will be given to withdrawing from the handling of commercial cargo for transshipment on Canal Zone piers so soon as Panamanian port facilities are in satisfactory operation in Colón.

11. The United States agrees that the term "auxiliary works" as used in the Treaty includes the Armed Forces of the United States of America.

On the part of the Republic of Panama:

1. The Republic of Panama will lease to the United States of America, free of all cost save for the recited consideration of one Balboa, for a period of 99 years, two parcels of land contiguous to the present United States Embassy residence site, as designated on the sketch (No. SGN–9–54, dated November 19, 1954) and accompanying descriptions prepared by the Comisión Catastral of the Republic of Panama, attached hereto.

2. The Republic of Panama assures the United States of America that the property, shown and described on the attached map (No. SGN–6–54, dated October 1954) and accompanying description prepared by the Comisión Catastral of the Republic of Panama, in front of the United States Embassy office building site and between the Bay of Panama and Avenida Balboa as it may be extended between 37th and 39th Streets, will be preserved permanently as a park and not developed for commercial or residential purposes.

3. So long as the United States of America maintains in effect those provisions of Executive Order No. 6997 of March 25, 1935 governing the importation of alcoholic beverages into the Canal Zone, the Republic of Panama will grant a reduction of 75 percent in the import duty on alcoholic beverages which are sold in Panama for importation into the Canal Zone pursuant to such Executive Order.

4. In connection with the authorization granted to the United States of America in Article VIII of the Treaty, the United States shall have free access to the beach areas contiguous to the maneuver area described in said Article VIII for purposes connected with training and maneuvers, subject to the public use of said beach as provided under the Constitution of Panama.

The provisions of this Memorandum of Understandings Reached shall enter into force upon the exchange of instruments of ratification of the Treaty signed this day by the United States of America and the Republic of Panama.

Done in duplicate in the City of Panama, in the English and Spanish languages, this 25th day of January 1955.

Hecho en duplicado en la ciudad de Panama, en Inglés y en Español, a los 25 dias del mes de Enero de 1955.

For the United States of America:

For Los Estados Unidos de America:

Selden Chapin.

Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Panama Embajador Extraordinario y Ministro Plenipotenciario de los Estados Unidos de America en la Republica de Panama.

For the Republic of Panama:

For La Republica de Panama:

———— ————.

Minister of Foreign Affairs of the Republic of Panama.

Ministro de Relaciones Exteriores de la Republica de Panama.

[SEAL].

Mr. CHURCH. Mr. President, as the distinguished Senator from New York pointed out, our prior treaty practice contradicts the contention of the sponsor of the pending amendment. A number of self-executing treaties may be considered as precedents for disposition of property without authorization by act of Congress. I will discuss three of them: First our 1971 treaty with Honduras, relinguishing all U.S. claims to the Swan Islands and also transferring property and equipment on the islands to Honduras; second, the 1971 treaty between the United States and Japan returning Okinawa and other islands to Japan, and; third, our 1970 treaty with Nicaragua by which the United States returned to that country certain proprietary rights we had held since 1914.

The Senator from Utah (Mr. Hatch) alleged yesterday that "the President has never made a self-executing treaty ceding American territory and property to a foreign state."

Yet, as he himself later conceded, the President has indeed transferred property to a foreign government by self-executing treaty, "Congress silence," said the Senator, "may have indicated tacit consent to the transfers of disputed parcels of insignificant property" under the Honduras Treaty of 1971.

Let me review the situation that existed between the United States and Honduras which led to the dispute over the Swan Islands and exactly what the Honduras Treaty of 1971 accomplished.

In the first half of the 19th century, American explorers claimed they had discovered the Swan Islands, located just off the coast of Honduras. The islands were covered with guano, a valuable fertilizer. The United States claimed sovereignty over the islands by the Guano Act of 1846. Honduras objected, claiming sovereignty as well. The dispute lasted for more than a century ending with the Honduras Treaty of 1971, whereby the Swan Islands were ceded to Honduras. Let me review exactly what the treaty with Honduras on the Swan Islands, entered into on November 22, 1971, provides.

Article I of the treaty provides:

The Government of the United States recognizes the sovereignty of Honduras over the Swan Islands.

Article IV of the treaty provides:

The Government of the United States of America transfers to the Government of Honduras as of the date this Treaty enters into force all land, buildings, equipment

and other real and personal property in the Swan Islands to which it holds title, except as agreed pursuant to Article II of this Treaty.

Article II related to certain meteorological and communication facilities used for a cooperative program established on the same date.

Although the relinquishment of the claim to sovereignty over the islands might be construed as stemming from the Guano Island Act of 1856 (II US Stat. c. 164, Sec. 4), the transfer of U.S. Government-owned property later located on the island cannot rest on that statute.

Now, Senator Hatch says that the treaty involved "two minute islands of no significance to the United States." However, if article 4, section 3, clause 2 of the Constitution actually acts as a limitation of the power of the President and the Senate to make treaties, as alleged by the Senator, the size of the property transferred or its importance is of no relevance whatever. If the Constitution did restrict the treaty power, as the Senator maintains, the restriction would apply to all property whether it be the Canal Zone or 1 square foot of desert salt flat.

The Senator from Utah argues that the Swan Island Treaty can be distinguished because it involved disputed territory. The Senator also dismisses previous boundary settlement treaties for the same reason. If the disputed nature of a claim to territory is all that it takes to remove the prohibition on transfer of property by treaty, which the Senator says the Constitution imposes, then how can he exempt the Canal Zone? If anything, the Canal Zone's status is in dispute; not only with reference to sovereignty, but also as to valid title to much of the land the United States claims. Moreover, the Senator's allegation that disputed territory is not covered also ignores basic facts taught in first year law school courses on property. Leaseholds, options, residual interests, and other lesser interests in property, including disputed claims, are still property interests and must be treated as such. If the Constitution required an act of Congress to convey properly rights claimed by the United States, as alleged by the Senator, it would necessarily apply to disputed claims of title.

Finally, the Senator from Utah states "Congress silence, in the Swan Island case, may have indicated tacit consent to the transfers of disputed parcels of insignificant property." I have already dealt with the arguments on the disputed or insignificant nature of the property, but the most glaring error of the Senator's argument is the implication that Congress, through silence, can legitimate what the Senator implies would otherwise be an unconstitutional act. Should this be true, there would be nothing to prevent the President from unilaterally appropriating funds, declaring war, or imposing taxes, as long as Congress did not object. Such a convoluted argument is not only wrong, it is a subversion of our constitutional system.

Let me describe another treaty that contradicts the assertions of the Senator from Utah. On June 17, 1971, the United States and Japan agreed to the Treaty on the Reversion of the Ryukyu and Daito Islands.

The major island of the Ryukyu group is Okinawa, the island we conquered during World War II in one of the bloodiest and costliest

battles in the Pacific war. On Easter Sunday, April 1, 1945, two corps of army and marines, commanded by Lt. Gen. Simon Buckner, invaded Okinawa. The Japanese fought desperately and organized resistance did not end until more than 2 months later, on June 21, 1945. During that battle, Lt. Gen. Buckner was killed, our forces suffered 49,000 casualties, while Japanese kamikazes sunk 36 of our ships and damaged 332 others. It proved to be the last major island battle of the war.

Under article III of the Treaty of Peace with Japan, the United States obtained sole and full power of administration, legislation, and jurisdiction over the territory of the islands, including their territorial waters. Japan's "residual sovereignty" was recognized by the United States just as Panama's "titular sovereignty" was recognized over the Canal Zone. Again, as in the case of Panama, the rights of the United States to Okinawa were granted for an indefinite period.

Now, let me describe the 1971 treaty by which the United States transferred its rights in Okinawa and other islands back to Japan.

Article I of the treaty provides:

1. With respect to the Ryukyu Island and the Daito Islands, as defined in paragraph 2 below, the United States of America relinquishes in favor of Japan all rights and interests under Article 3 of the Treaty of Peace with Japan, signed at the City of San Francisco on September 8, 1951, effective as of the date of the entry into force of this Agreement. * * *

Article VI of the treaty provides:

1. The properties of the Ryukyu Electric Power Corporation, the Ryukyu Domestic Water Corporation and the Ryukyu Development Loan Corporation shall be transferred to the Government of Japan on the date of the entry into force of this Agreement and the rights and obligations of said Corporations shall be assumed by the Government of Japan on that date in conformity with the laws and regulations of Japan.

2. All other properties of the Government of the United States of America, existing in the Ryukyu Islands and the Daito Islands as of the date of entry into force of this Agreement and located outside of the facilities and areas provided on that date in accordance with Article III of this Agreement shall be transferred to the Government of Japan, except for those that are located on the lands returned to the landowners concerned before the date of the entry into force of this Agreement. . . .

3. Such lands in the Ryukyu Islands and the Daito Islands reclaimed by the Government of the United States of America and such other reclaimed lands acquired by it in these islands as are held by the Government of the United States as of the date of entry into force of this Agreement become the property of the Government of Japan on that date.

This treaty's article VI was a self-executing transfer. This is evident from the President's message of transmittal to the Senate and the report of the Foreign Relations Committee. Both statements say "article VI transfers to the Government of Japan certain properties of the United States" (92d Cong. 1st Sess., Ex. J., p. IX, 92d Cong. 1st Sess., Ex. Report 92–10, p. 3). The corporations mentioned in article VI were owned by an agency of the U.S. Government, the United States Civil Administration.

We had paid for the islands, particularly Okinawa, with the blood of Americans, they were of enormous strategic value, and American property, valued in the hundreds of millions of dollars was involved. Yet the treaty effectuated the transfer; no act of Congress was necessary.

Also of relevance to this debate is the treaty between the United States and Nicaragua for Termination of Rights and Options under the Bryan-Chamorro Treaty, entered into on July 14, 1970.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. CHURCH. I will yield when I am through with my argument if I have the time.

Mr. ALLEN. I thank the Senator.

Mr. CHURCH. Mr. President, let me first describe the Bryan-Chamorro Treaty of August 5, 1914. We consummated this treaty with Nicaragua to insure we would be able to build a canal through that country if we thought it best for the United States. As Senators know, we never did build that canal, and studies consistently have shown that the most economic route is still through Panama.

Nonetheless, the Bryan-Chamorro Treaty granted to the United States:

First. "* * * in perpetuity the exclusive proprietary rights necessary and convenient for the construction, operation, and maintenance of an inter-oceanic waterway * * * over Nicaraguan territory, the details of the terms * * * to be agreed upon by the two governments whenever the Government of the United States shall notify * * * its * * * intention to construct such canal";

Second. A leasehold for a term of 99 years, with the option of renewal by the United States for another 99 years, of Great Corn Island and Little Corn Island; and

Third. The right to establish a naval base on the Gulf of Fonesca, likewise for a period of 99 years subject to a renewal by the United States for a further 99-year period. The islands and the base were to be subject to the laws and sovereign authority of the United States during the terms of such lease and grant.

The consideration was a payment of $3,000,000 to Nicaragua. Congress appropriated the $3,000,000 in the Deficiency Appropriation Act of September 8, 1916, passed after the entry into force of the treaty on June 22, 1916.

The United States never exercised any of the rights or options granted by the 1914 convention and never entered under the leases, except for the construction of a lighthouse. Nevertheless, these rights were territorial and property rights belonging to the United States, valued at $3,000,000 at the time of their acquisition and were relinquished by treaty, in 1970, without benefit of statute.

I think these examples demolish the argument that transferring U.S. property to the Government of Panama by self-executing treaty is some new departure, not founded upon past precedent. We have done it before, it is a constitutional exercise of the treaty-making power, and we can do it again as provided by the terms of the Panama Canal Treaty.

In doing so, Mr. President, we simply reconfirm the authority vested in the Senate by the Constitution of the United States, and we do so in line with past practices.

I am happy to yield to the Senator for a question.

But I shall first require: How much time remains for that purpose?

The PRESIDING OFFICER. The Senator has 4½ minutes remaining.

Mr. CHURCH. I yield to the Senator for a question.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, could we ask unanimous consent that an additional 10 minutes to be equally divided between the sides be granted? I ask unanimous consent to that effect.

The PRESIDING OFFICER. Is the Senator aware that there is an order to recognize Senator Bartlett at 6 p.m.?

Mr. ALLEN. Notwithstanding that, I take it on myself to say that the Senator from Oklahoma will not object.

Mr. CHURCH. Mr. President, I wonder if the Senator would not try to cover this in the time remaining so Senator Barlett may be accommodated. He is expecting to take the floor at 6 p.m.

Mr. ALLEN. Very well.

I am interested very much in the speech the distinguished Senator has been reading, and I have been interested in his analysis of the Ryukyu treaty and his feeling that that constitutes precedent for the transfer of property by treaty.

Of course, the Senator knows that as to the conquest of Okinawa I had some little familiarity with that because I happened to be there some 3 days before the invasion actually started and throughout the invasion. But the United States acquired no title by conquest under international law to the Ryukyus, including Okinawa.

So what the United States conveyed was not the real estate, but it was instead our right of administrative control over the island and, of course, not having the title to the real estate by conquest the structures that were placed on that real estate went with the land.

So I would hate for the Senator to feel that this is a proper precedent to indicate that the Senate only through the treatymaking power has the right to transfer property belonging to the United States.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. ALLEN. I make that statement to the distinguished Senator. And he pointed out what we had were the rights of administration over this.

Also I call attention to the Senator, and he is very familiar with the Foreign Aid Act, there is a provision there for the President to dispose of surplus foreign property that we own and in all likelihood if any transfer of foreign property were made it was made under the provisions of this act. I believe the Foreign Relations Committee report states that it may well have been under that act.

Does the Senator care to comment on that?

Mr. CHURCH. Mr. President, obviously there are various ways by which property belonging to the United States can be disposed. Congress has the authority to dispose of such property by statute or it may confer that authority on the President as is the case under the Foreign Aid Act.

But a third way that property interests may be transferred is by treaty, when the terms of the treaty are self-executing. This was the method used in the three treaties to which I referred. And it seems to me that the observations of the distinguished Senator from Alabama do nothing to deny the validity of these precedents.

Of course, we had conquered the Ryukyu Islands, but the jurisdiction that we obtained in the Treaty of Peace with Japan, en-

tered into in San Francisco, extended far beyond the rights of conquest. Under the terms of that treaty cessions were made to the United States. Later when we decided it was in the American interest to restore the Ryukyu Islands to Japan, that too was accomplished by a self-executing treaty, without benefit of statute.

Mr. ALLEN. I thank the Senator for yielding.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized for 8 minutes.

Mr. BARTLETT. Mr. President, I yield 30 seconds to the Senator from Utah.

Mr. HATCH. Mr. President, I sat here for 2 days to hear the arguments on this matter, and it seems to me that to base the arguments on the dictum in Holden against Joy, the Japan treaties and the Honduran and Nicaraguan treaties hardly justify the transfer of the Panama Canal and hardly substantiate the position of the Senate Foreign Relations Committee.

I basically feel that, as I understand it, with all kinds of constitutional lawyers investigating what we raised yesterday, they hardly have come up with any precedents which really sustain this, I think, violent overthrow of constitutional principles.

I thank the distinguished Senator.

Mr. BARTLETT. Mr. President, I yield 30 seconds to the other side.

Mr. SARBANES. Mr. President, I appreciate the Senator's courtesy in offering to make 30 seconds available, but I do not think it is really necessary. The Senator from Utah has made his extended statement. We have analyzed it very carefully, and we think we have responded with good authorities.

The Attorney General was accused earlier of making a statement without even citing any authority. That was clearly not the case, and just because people differ with the Senator from Utah does not, I submit, mean that their position is without merit. I thank the Senator for his courtesy.

PRIVILEGES OF THE FLOOR

Mr. HATCH. Mr. President, I ask unanimous consent that a change in the Record be noted. Yesterday, I listed and asked unanimous consent that Mr. Kenneth Merrin, M-E-R-R-I-N, of the Congressional Research Service, be on the floor during pendency of this amendment and any vote thereof. I should like the Record to be changed to read Kenneth Merin, M-E-R-I-N, of the Congressional Research Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that a member of my staff, Mr. Sam Currin, be accorded the privilege of the floor during discussion and any votes thereon in connection with the pending treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent that Ken Fish of the Senate Armed Services Committee be accorded that privilege also.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HEINZ. Mr. President, on March 14, in a statement on the Senate floor, I indicated that the Panama Canal Treaties were

unacceptable as submitted to the Senate. I also stated that if, and only if, the treaties were amended and three major changes made—changes I judged essential to strengthen the treaties and fully protect our taxpayers and our security interests—would I then support the treaties.

My position today is exactly the same.

In addition to the Baker-Byrd amendments, the two changes I suggested to the Neutrality Treaty were adopted by the Senate when it accepted the reservation by the gentleman from Georgia (Mr. Nunn) and my own reservation. With these amendments and changes, I voted for the Neutrality Treaty on March 16.

The third and remaining change, the one that needs to be made to the second treaty, the Panama Canal Treaty, is one I will continue to insist on. That change is the same one I cited in my March 14 speech. The Panama Canal Treaty must be amended to make certain that any unpaid balance of the so-called $10 million annual contingency payment to Panama, which is supposed to be paid only from surpluses, is not a residual liability to be borne by U.S. taxpayers. The treaty must leave no doubt that if there are any uncollected contingency payments, the balance does not accumulate beyond 1999 and does not come due at that or any other time. Without incorporating this change into the treaty resolution. I will not support the treaty. But, as I have previously stated, I will support the treaty if such a clear and unequivocal provision is adopted, and I am optimistic that such a provision will be included in the treaty resolution.

A PANAMANIAN POINT OF VIEW

Mr. CULVER. Mr. President, the March 19 edition of the Cedar Rapids Gazette contained an excellent interview about the Panama Canal treaties with Mr. Wilfredo Uriah Robinson-Hinds of Colon, Panama, who is currently a graduate student at the University of Iowa.

Mr. Robinson-Hinds makes a number of valuable observations in his interview, and his reasonable views offer hope for a cooperative and successful relationship between Panama and the United States under the new treaties.

Mr. President, I ask that the Cedar Rapids Gazette article be printed in the Record.

The article follows:

PANAMA CANAL FOES UNINFORMED

(By Art Hough)

(EDITOR'S NOTE: Wilfredo Uriah Robinson-Hinds of Colon, Panama, is a graduate student at the University of Iowa. He came to the University of Iowa in August 1977 to work on his master of arts degree in mechanical engineering. He is a graduate of the University of Panama and is on a fellowship sponsored by the Organization of American States, in cooperation with the University of Iowa. He is scheduled to receive his advanced degree in December, after which he will return to Panama. His goal is to become a university professor, hopefully in machine design. This interview is an attempt to get the Panamanian point of view concerning the controversial treaties between the United States and the Republic of Panama.)

IOWA CITY.—President Carter and President Omar Torrijos Herrera of Panama signed two controversial treaties last fall. The first would gradually cede control of the Panama Canal to Panama by the year 2000. The second would guarantee neutrality and permanent protection of the canal by the United States.

Within a few weeks, more than 700,000 Panamanians voted in a plebiscite to ratify the new canal treaties. The final count was a 2-1 mandate of 506,805 to 246,177 in favor of the treaties.

In the U.S., there has been strong public sentiment, both for and against ratification of the treaties, but the Senate ratified the neutrality treaty Thursday.

"First of all," said Robinson-Hinds when we talked in the Memorial Union, "my opinion is just an opinion. The population of Panama is about 1,800,000 and I am just one person."

About the group of American people who are against the treaties, he said, "I think some of them would not have that idea if they were better informed about the U.S. role within the Republic of Panama and the Panama Canal.

LEASED, NOT BOUGHT

"Something that has kind of surprised me are the arguments some of the people who are complaining against the treaties use. For example, there is a group that says the canal was bought fair and square. It seems to me they have not really read the (old) treaty, because no part of the treaty says the land on which the canal was built was sold to the U.S. government.

"So it's surprising when lawyers, senators, governors, attorneys general use statements like those.

"The word, in my judgment, that would fit it best is 'lease.' I cannot quote the article in the treaty, but the first articles says something to that effect. Those five miles on each side of the strip for the canal were leased to the U.S. for the purpose of building, constructing, maintaining, defending and operating the Panama Canal.

"There was just one point within that treaty that says this lease is for eternity or perpetuity, which cannot be today in international law. You cannot sell or lease part of a country for eternity.

"The other part to look on is that when the treaty was signed, Panama was a very, very young nation—very poor, weak and vastly uneducated—and that the people who did the major part of the negotiations, if you could call it that, were not even Panamanian. They were members of the French construction company that was trying to salvage some of its investment. To my knowledge when the primary representative came to the United States to sign the treaty, the treaty was already signed. They just handed him a copy.

"So now that the small nation of Panama has learned and has grown and matured to some extent, they have realized they could have a major role in the operation because it is in our country."

"Some people have the belief that the Republic of Panama gained importance because of the construction of the canal in 1903, but a little history would let us know that long before that the Isthmus was very important to the American continent and the European continent because it was a convenient way for Spain to get to its gold mines in South America and Peru in early colonial days, the 1800s and before.

"There had always been ideas of constructing some sort of a route across the Isthmus. There was a road first, because the ships found it very inefficient, to go all the way around South America to come to the other side. So they would come to the atlantic coast of the Republic of Panama and then go by road across the southern coast and then by ship again down to South America and reverse that process.

"So, that's why the French began construction of the canal in 1855.

"Our prime source of economy is not the revenue from the canal company. Within the Republic of Panama are other prime interests, such as the international airport, a major stop for the vast majority of airline routes because of its geographical position, not only because of the existence of the canal. Also, we have a free zone here, commercial fishing and agriculture."

The Panama Canal runs south and southeast from Limon Bay at Colon, on the Atlantic, to the Bay of Panama, at Balboa on the Pacific.

The canal was built by the U.S. between 1904-14 on territory leased in perpetuity from the Republic of Panama.

In 1903, Panama revolted against Colombia and gained independence. Invoking the treaty of 1848 the U.S. sent a warship to Panama, preventing Colombian troops from quelling the outbreak.

Wilfredo noted that there is a faction in the Panama Canal comunity, Americans and Panamanians who work for the canal company, who would not like to lose "a sort of privileged atmosphere," but he adds that of the work force of about 16,000 people, between 11,000 and 12,000 are Panamanians and the rest Americans, as apart from the soldiers and civilian personnel.

Asked why the Panamanians want new treaties, he said the treaties are not a new idea, "Signs of wanting a new agreement, or at least wanting to negotiate the previous agreement to better terms, have been popping up for a very long time, probably before I was born.

GOVERNING PROBLEMS

"I could state several reasons. For example, the way in which the so-called Canal Zone is operated and governed. It has created some differences and problems within the Republic of Panama."

Panamanian children in the Canal Zone were taught English, up until 8 or 10 years ago, Wilfredo said. "Although they were Panamanian citizens these people were never really incorporated to the Panamanian nationality, because they lived apart.

"This has a psychological effect on some of these people, who have begun to believe they are American citizens. Nothing is wrong with that, but some of them have begun to deny their nationality. The United States government, I think, cannot recognize them as U.S. citizens, contrary to the children of those American workers who were born in the Canal Zone.

"Another problem could be they are not getting sufficient economic benefit from the operation of the canal. Until lately, Panamanian employees of the Panama Canal Co. have had only lower paying jobs. The operation of the property is by the United States. We know that. They built it. But, if two men are doing the same job they should get the same benefits."

We suggested that some of the "cons" feel that ratification of the treaties will mean Americans will get kicked out of the Canal Zone entirely and theat they worry, too, about getting warships through the canal in the event of emergencies.

PRIVILEGED PASSAGE

"I don't think that is true," the Panamanian replied. "As far as I understand it, the new treaty would establish that after the year 2000 most of the operation, if not all, would be in the hands of the Panamanian government. I think, also, the strip of land called the Canal Zone would not exist anymore. But, I would not look at it as being 'kicked out.'

"Because," he continued, "that agreement is established that the United States would have privileged passage through the canal and also would have priority in the case of emergencies or wars. Also, the treaty establishes an agreement by which the U.S. would fortify the Panamanian military capabiity for them to offer significant means of protections and defense of the Panama Canal.

"The prime issue here is that the U.S. government believes and I agree with it, that if they negotiate a treaty that is to the satisfaction of the Panamanian government and people, then the fear of defending the canal against sabotage, or whatever, is very negligible.

"Because the treaty is to our benefit, there would be no strong parties within the country that would attempt to do anything, like crippling the canal. Some people interpret this as a threat, saying that if the treaty is not negotiated to Panama's satisfaction, then we would try to sabotage. That's not true.

"What would happen is that the nations of the world would make use of the uncomfortable situation between Panama and the United States, in other words try to infiltrate to break out a big sore in the Republic of Panama, like they have done in Vietnam, Korea, Cuba, Angola, and Ethiopia.

NOT A DICTATOR

"The Panamanian people don't want that. That's something the people of the U.S. should know. They may look at us as a small, poor country, that is looking for support anywhere and that if we can't get it from the United States we'll go to Communists. That's not really true.

"We've lived a Republican and Democratic life all of our lives and to change our lifestyles to Socialist or Communist would be a very hard blow."

Asked about General Torrijos, Wilfredo said it hurts him when Torrijos is called a dictator, comparing him to Castro or Idi Amin. He agrees that Torrijos is powerful. "Because he was the sponsor of the revolution in 1968 . . . the powers give him the authority to override some decisions within the government machinery. But he doesn't dictate laws. We have a constitution and we abide by that constitution.

"The treaty will be carried out. I have no reason to believe that it won't, because, as a matter of fact, if it is not respected I would see a lot of harm to the Panamanian nation and the Panamanian people.

"We can not survive without aid not only from the United States but from Latin American neighbors.

"I think that because of the importance of the relationship between the two nations (U.S. and Panama), the U.S. people should have been informed more thoroughly and more properly. It is because of the group that is contrary to the treaty that the people have been misled in public opinion of the uncertainty of Panama people's integrity and the integrity of the government.

"I feel personally there is no doubt in the high officials of the U.S. government and the responsible ones that the treaty is the best thing.

"I believe they know best and that they'll do everything to get the treaty ratified because they know what it would mean if it was not ratified. There would be deterioration of relations not only with Panama but with other Latin American countries.

"I feel it will be approved—not without a very strong and high battle in the Senate. And probably even after approval there will be a lot of backfire and bad names."

[From the Congressional Record—Senate, Apr. 5, 1978]

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No. 2, with the time to be equally divided and controlled by the Senator from Idaho (Mr. Church) and the Senator from Utah (Mr. Hatch).

The clerk will report the treaty.

The assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, the Panama Canal Treaty.

The Senate resumed consideration of the treaty.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time may be charged fully against both sides on the absence of a quorum, which I now sugget.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. HATCH. Mr. President, the moment of decision has finally arrived, and in a short while the Members of the Senate will come marching into the Chamber to vote on the question of whether the President shall have the power to give away the Panama Canal by a self-executing treaty. It will be one of the most important decisions this body will ever make.

My first inclination was to roll another wheelbarrow full of precedents into the Chamber in the hope that some Senators might be persuaded, at the 11th hour, to support our amendment. But what is the use of it? Two days ago the managers of this treaty were crowing about all of the fine legal precedents they had to support the theory that the President can snub his nose at Congress when he makes a treaty to transfer an entire American territory, lock, stock, and barrel, to a foreign government.

In response to the arguments of the Foreign Relations Committee, which seems to be little more than an arm of the State Department these days, I demonstrated that every paragraph, and practically every sentence of the committee's report on this issue was either false, misleading, or irrelevant. Yesterday we even showed that the concurrent power theory which the committee relies upon so heavily had been twisted and distorted beyond recognition. The author of that theory was Alexander Hamilton and his writings, which directly addressed the disposal-of-property power, showing beyond all doubt that Congress must authorize the disposal of American territory and property.

The distinguished manager of the treaty (Mr. Church) answered me by saying, we shall respond to your criticisms. We shall prove that the constitutional text, the intent of the Framers, the judicial precedents, and prior treaty practice all suppport the claim that

the President can give away the Panama Canal whether Congress agrees or not.

Three days passed. And what was the response offered by the commitee to my analysis and summary of the committee report? Absolutely nothing. There basically was no response. The hundreds of so-called precedents which the committee had been recklessly throwing around this chamber suddenly vanished into thin air.

When the dust settled, the committee came back with our old favorite, the spurious dictum from Holden against Joy, and three treaties—one with Japan where we returned captured territory that we did not even own, according to the House Committee on Armed Services, one with Honduras where we gave up two rock islands that we did not own because of disputed title, certainly distinguishable, and one with Nicaragua—a treaty not even cited in the original committee report—where we gave up rights to property that did not belong to the United States and which involved a lease. I even heard the distinguished Senator from Hawaii (Mr. Matsunaga) argue that the comittee's position is supported by the fact we gave away some air strip to the Japanese.

As every Senator knows, these pathetic precedents do not, in any way, support the general proposition that the President may dispose of the entire American-owned Panama Canal Zone by a self-executing treaty. The truth of the matter is there are no precedents for this action, and everybody knows it.

But I am enough of a realist to know also that many Senators probably are not interested in some of the constitutional arguments, particularly when they run counter to the political decision they have made respecting this treaty. During the last 2 days, I would estimate that not more than a dozen Senators have even bothered to come over to the floor to hear the arguments. The Senate, it is said, is the world's greatest deliberative assembly, and I certainly agree with that, and yet it seems that it neither deliberates nor assembles with regard to one of the most monumental constitutional issues raised in our country's history.

Yesterday the senior Senator from Idaho (Mr. Church), I think boasting of 22 years of seniority, criticized me for being too aggressive, too harsh with the Foreign Relations Committee, and suggested that because I was a freshman Senator that I should be more respectful. I certainly respect the Senator's seniority, but I shall insist that I as a U.S. Senator representing the great State of Utah and representing all of the people across this country have a right and a duty to oppose forcefully any breach of the Constitution—particularly when there is only a handful of Senators fighting to save it and particularly when after better than 6 months of looking into this question without hardly anyone in America knowing the importance of this question the Foreign Relations Committee with all of the constitutional expertise of the State Department, the Justice Department, the Foreign Relations Committee, et cetera, cannot come up with any precedents really that hold serious water.

Maybe my amendment will fail—not on its merits but because, I believe, some Senators are persuaded that if it passes, the House would oppose the transfer. I do not know that they would, and I think that consideration, which I considered to be a political consideration, is beside the point. We are here to defend the Constitu-

tion, not to defend it simply when it is politically convenient or expedient to do so.

No doubt some Senators believe that we can disregard the Constitution in this one instance, because a single breech will not hurt our Government. Perhaps they have persuaded themselves that the power to dispose of property is not such an important power anyway and that we can afford to give it to the President. To those who may be thinking in these terms, I can only say they misunderstand what is at stake. We will be establishing a new precedent here, for the first time in American history, if we let the President get away with this. Who knows what this will lead to 10 years from now, 50 years, a hundred years? You cannot bargain away a principle. It is either inviolate or it does not exist. As a lady cannot surrender only part of her chastity, the Congress cannot surrender only part of its sovereignty over the territory and property of the United States. It cannot surrender only a part of its power without a reduction in its coequal status under the separation of powers doctrine. We cannot remold our principles to suit the needs of the hour.

The present situation reminds me of the time when one of the greatest Senators ever to serve in this body, Robert A. Taft, opposed the Nuremburg trials, because they violated a basic principle of our Constitution. I remember too when he came out against President Truman's decision to send troops into Korea without a formal declaration of war by Congress. And a few years later, when a half million of our men were stumbling through the jungles of Vietnam, without a formal declaration of war, Robert Taft would surely have stood here at his desk and said "I told you so."

Mr. President, the great Senators of the past who have graced this Chamber were great, because they lived by their principles—men like Robert Taft, Daniel Webster, Henry Clay, John C. Calhoun, and Robert LaFollette. Their spirit will live forever, and they will always serve as an inspiration to us. But it is my sincere hope that today the Senate will rise to greatness and embrace our Constitution—not because it is politically expedient to do so, not because they think it will please the people back home, but because they love it and believe in it.

Yesterday one of the finest Senators in this body came over to the floor to speak against my amendment. I respect this Senator very much, because I believe that he is one of the most intelligent, hard-working Members of this body. I refer to my friend from New York, Mr. Javits. He is a dear friend, and he has been very kind to me, albeit I am a freshman Senator.

Frankly, Mr. President, I was a little surprised that he did this, that he came over yesterday. I say this because just a few years ago he wrote a book on the abuses of Presidential power, and I had thought that he would once again stand firm against Executive encroachment. In his book on "Who Makes War: The President Versus Congress," Senator Javits complained that Executive power has been increasingly abused in recent decades.

He wrote:

> Over the past ten years, we have been forced to confront the fact that constitutional process has eroded, that congressional responsibility has been abdicated, that unfettered Presidential power has been asserted and that it is time to call a halt.

The bitter experience of Vietnam, a war, as I mentioned yesterday, that was supported by artificial precedents supplied by the State Department, not unlike those offered in connection with the Panama Canal Treaty, led Senator Javits to introduce his war powers bill, cosponsored by Senators Stennis, Eagleton, Bentsen, and more than 50 other Senators. Had I been a Member of the Senate at that time, I, too, would have cosponsored that bill because I share Senator Javits' conviction that Congress has a responsibility, as he himself has said:

"To make sure that the democratic process protects us from one-man decision-making" (p. 268).

Especially pertinent in this regard is Senator Javits' keen observation regarding the need of the full Congress to check the treaty power. As Senator Javits puts it:

A national commitment does not automatically flow from the mutual security treaties to which the United States is signatory. These international agreements specify that they will be carried out in accordance with the "Constitutional processes" of the nations involved. The War Powers Act, for the first time, specifically defines Congressional concurrence as an element in the constitutional process. (Ibid).

So I commend the distinguished Senator from New York for his forthright statement pointing out the importance of defining these constitutional processes to include congressional concurrence. That is what we did in the War Powers Act, and that is what we are seeking to do in connection with this treaty. I deeply regret that he does not see that now, and it is a matter of great sadness and of some serious concern to me.

Then there are other Senators, I suppose, who believe that there is a higher value than our Constitution which must prevail. The end justifies the means. I know how the liberal mind works. The Panama Canal, they have suggested, is such a moral blight on the history of this great Nation that we must get rid of it at all costs—purge and cleanse ourselves so that once again we may be pure and kind and benevolent and the wonderful, generous liberals that we are. This, I believe, is the attitude of many Members of this body, and it is this attitude which is an obsequious attitude, which explains why every worthwhile amendment that has been offered to this treaty, including those which would clearly improve this treaty and protect our interests, has been beaten down, has been stonewalled, if you will, to borrow a term from the great Senator from Alabama.

But this is not thoughtful liberalism, this is mindless liberalism—the true liberal knows that if we really want to help the Panamanians, we will stay down there and work with them in a joint venture or make the canal the operation and pride of all the nations of this hemisphere. The true liberal knows that you do not promote liberalism by promoting the interests, and propping up the regime, of a tyrant like Omar Torrijos. A true liberal knows that if the United States falls, liberalism is dead in this world.

Above all, Mr. President, the true liberal knows that it is the Constitution which gives liberalism its greatest protection. All of the values that we share, as liberals and as conservatives—I consider both of those words basically meaningless, except for the fact that what used to be defined as a liberal is now defined as a

conservative—owe their existence and their vitality to the Constitution. The Constitution provides the rules for politics, and we must not continue, as we have time and again in the past, to keep changing the rules in order to secure an immediate political victory.

Some Senators have been suggesting that they are now statesmen, because they are willing to stand up and support these treaties whether their constituents like it or not. The distinguished majority leader (Mr. Robert C. Byrd) has even been quoting Edmund Burke's speech to the electors of Bristol, asserting that he is going to vote for what he believes is in the best interests of his constituents rather than what they think is in their best interests. I say to the distinguished Senator, and those who may have similar thoughts, that neither Edmund Burke nor any of the founders of this Government ever believed that it is in the best interest of a nation to scuttle the constitution in order to achieve a political victory, or purge the nation's soul of guilt feelings.

The real statesman, Mr. President, is the man who places our Constitution above all other political considerations, whether those considerations have merit or not. Because the real statesman knows that without the Constitution—we are finished.

So I urge my colleagues to think this issue through carefully before they cast their vote today, and to keep in mind that it is the Constitution they are voting on, not the Panama Canal Treaty. When the canal is gone, the Constitution will still be here—and that is what this Nation will live with in the years ahead. Whether it is a strong and viable Constitution, or just an old piece of parchment, depends, in no small measure, on how we vote today.

Mr. President, I reserve the remainder of my time.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. HATCH. I would be delighted to yield to my friend, the distinguished Senator from Alabama (Mr. Allen).

Mr. ALLEN. I thank the distinguished Senator from Utah.

Mr. President, this amendment offered by the distinguished Senator from Utah (Mr. Hatch) is unquestionably the most important amendment that will be offered to the Panama Canal Treay because it seeks to preserve our constitutional processes; it seeks to assure that the Constitution will be followed in the matter of the disposition of property of the United States in the Panama Canal Zone.

Yesterday, in colloquy between the distinguished Senator from Massachusetts (Mr. Kennedy) and the distinguished Senator from Maryland (Mr. Sarbanes), they sought to make it appear that this amendment would make of the treaty and the treaty approval process something of a hybrid instrument, indicating that they though that the amendment would cause the treaty to have to receive a two-thirds vote in the Senate and then a majority vote in the House of Representatives.

Of course, they know full well that that is not correct. The amendment would not send the treaty to the House of Representatives for action, for approval or disapproval; it would merely require that before the treaty is put into force and effect, Congress, as required by the Constitution, must enact legislation giving congressional approval to the transfer of property of the United

States. So the treaty would continue to be acted on only by the Senate, and the provisions in the treaty having to do with disposition of property of the United States would merely be inchoate, of no force and effect, until life is breathed into those provisions by the action required by the Constitution of the United States, which is congressional approval, congressional authorization for the disposition of property of the United States.

The argument has been made against many amendments—and I might say that no amendments have been accepted by the leadership and the managers of the treaties except the two so-called leadership amendments, which fell far short of their stated goal, that is, providing for the proper defense of the canal after the year 2000. All other amendments have been rejected by the leadership and rejected by the managers of the treaties, usually on the ground that amendments would kill the treaties; that amendments, by changing the terms of the treaty, would necessitate a new plebiscite in Panama.

Why they thought a new plebiscite would be required in that dictatorial regime is something that I do not fully understand, because we know that in that one-man government, Dictator Torrijos would have no difficulty approving whatever amendments we add to the treaty.

But the leadership, the managers of the treaties, and the administration have beaten down every effort that a group of at least 32 Senators and sometimes as many as 42 Senators have sought to make in an effort to strengthen these treaties, to provide for greater defense rights by the United States of the canal and the Canal Zone, and to protect the interests of the American taxpayers. All of those amendments have been stricken down because, they say, it might not please the Panamanians.

That is a mighty poor excuse for beating down amendments that would protect our national interests and our national security, and the interests of the American taxpayer.

This amendment, saying that the treaties shall not go into effect until the disposal of the property of the United States in the Canal Zone has been authorized by congressional action, merely carries out the provisions of article IV, section 3, clause 2 of the Constitution. Also, Mr. President, it would promote the necessary and desirable comity that should exist between the two bodies, because already at least 235 Members of the House of Representatives, and perhaps more by this time, have sponsored a resolution calling upon the administration to see to it that this matter of disposition of American property is presented to the House for consideration as legislation. At least 235 Members of the House of Representatives feel that the Constitution requires that, and they have called on the administration to intiate legislation authorizing the disposition of this property. Would it not be the better part of wisdom, Mr. President, for the Senate to agree to this amendment to see that the constitutional processes of the United States are followed in the matter of the approval of this treaty?

As to the other amendments which have been defeated at the behest of the leadership, at the behest of the administration, and at the behest of the managers of the treaty, they have been amendments that they say would be unacceptable to the Panamanians.

Well, this is one amendment that has nothing to do with action by the Panamanians, so I assume they will not bother to make that argument. This is something that the United States would be required to do to follow the Constitution. So we would be promoting comity between the two Houses; we would be respecting the provisions of article IV, section 3, clause 2 of the Constitution, which gives Congress the power to dispose of the property of the United States; and then, too, Mr. President, we would avoid a delay in the implementation of this treaty, because, just as sure as the Sun is going to rise tomorrow, litigation will be started against this treaty unless this amendment is adopted, on the grounds that the Constitution has not been followed in the matter of the disposition of property of the United States.

Other suits have been filed in the past on this question, but the courts have ruled that the suits had been premature, it ought to appear that it ought yet to be presented to the Congress, it ought to appear that the congressional action might yet take place. The treaty has not yet been ratified. Therefore, any action saying that the provisions of the Constitution have not been complied with would be premature. Also, that it is a matter of controversy between the two Houses, which the courts would not enter into.

Once a treaty is ratified by exchange of notes of ratification between the heads of the two governments, then it would be a fait accompli. The treaty would be in force and effect, except for the failure to observe the constitutional provision of getting legislative authorization for the transfer of property of the United States. Unquestionably, an action would lie in this regard.

So we can avoid the treaty being held up by litigation; we can avoid having the hopes and dreams of the Panamanians dashed when the court says that we have not acted as the Constitution requires in the matter of disposition of the property of the United States.

The distinguished Senator from Idaho (Mr. Church) just the other day conceded, of course, and we will take his concession as being correct since we like to remove all sources of contention and argument, that the United States does own the property in the Canal Zone. That being true, before it can be disposed of, this section of the Constitution must be triggered and must be acted upon.

If we go through the formality of agreeing to a treaty and the President ratifies it by exchange of notes with dictator Torrijos, and then the Supreme Court says that we have not followed the Constitution in the matter of disposal of the property, think of the dashed hopes which will result in Central and South America.

As I understand, one of the reasons for this treaty is to give billions of dollars of property away as a good neighbor policy. I believe that is carrying good neighborliness much too far. If we purport to agree to the treaty and then the Supreme Court says that the disposition of the property is illegal because the Constitution has not been followed, the treaty having been placed in Panamanian hands and they having relied upon our assurances that the provisions of the Constitution have been complied with, we would have to jerk the treaty back. That would be much worse than defeating the treaties at this time. Once they feel that the treaties

are in place and in force, and then to be told by the Supreme Court of the United States that they are not because the Constitution has not been followed, Senators can imagine the reaction of the Panamanian people to that.

So this ounce of prevention is worth a pound of cure. We have the opportunity now, by agreeing to this amendment, to require that before the treaty goes into force and effect—with no action by the Panamanians—the Congress, by a separate instrument, by a separate and different means, must authorize the disposition of this property.

So, Mr. President, agreeing to this amendment would assure that the constitutional processes of the United States are followed; that due recognition is given to the powers, the rights, and the privileges of the House of Representatives. Should we figuratively thumb our noses at the House and say, "No, we have the right, here in the Senate along with the President, to put this treaty into force and effect, and even though the Constitution says that the Congress has the power to dispose of property of the United States, we are going to disregard that and dare you to do something about it"?

Is that the proper attitude for us to take with regard to our colleagues in the House of Representatives? I say no. I believe the Senate will rue the day when we say to the House, "Because we have the power to disregard your plea that this matter be considered by the entire Congress, we disregard your plea that the Constitution be observed." We will rue the day that we say that to the House.

Every Senator, I feel, has legislation which he feels is in the national interest. How are these 235 House Members going to feel about legislation coming from the Senate to the House by the very people who have denied the House the right to exercise its constitutional right to pass on this matter along with the U.S. Senate?

Again I say, Mr. President, that does not take away one iota from the right that the Senate has to advise and consent with respect to treaties, nor does it give the House any right to participate in the treatymaking power, which is reserved to the President with the advice and consent of the Senate.

The treaty, if the amendment is agreed to, would merely be a tentative approval of the entire transaction, subject to action by the entire Congress.

I call attention, Mr. President, to the fact that in the 1955 treaty, the treaty between the United States and Panama where property is conveyed, in three different places in article V as they seek to transfer property of the United States they put in this phrase: "subject to the enactment of legislation by the Congress."

Mr. President, that is exactly what this amendment provides in just a few extra words. The basic thrust of the amendment now pending is to say that this disposition of the property of the United States is subject to the enactment of legislation by the Congress. That is all it does.

Why we are straining at accepting this provision of the Constitution and doing honor to the rights and powers of the House seems to me to be seeking to arrogate to the President and the Senate a power that belongs to the entire Congress, which belongs to the

people of the United States whose property is being disposed of, by depriving the people's representatives in the House of Representatives from having any say in this matter.

Now, Mr. President, why is the leadership, why are the managers of the treaty, why is the administration afraid of the House of Representatives? Are they frightened by this number of 235 House Members who have joined in this resolution? I do not feel that every one of these 235 House Members would vote against conveying the property of the United States to Panama. But I do believe that all 235 of these House Members want the rights of the House of Representatives to be respected by the Senate, to be respected by the administration, to be respected by the leadership of the Senate.

How is our leadership going to be able to negotiate with the House of Representatives when we have completely disregarded their rights, their prerogatives, under the Constitution? I do not believe that is conducive to comity. It is not conducive to settling this issue, because the courts will be the final arbiters; public opinion will be the next arbiter.

Have shortcuts been taken by the administration with regard to the approval of this treaty? Has it been handled as the Constitution requires? What will be the verdict of public opinion? If we can get a two-thirds majority here, in the Senate, on the treaty, why is it supposed that there would be any difficulty passing legislation—separate legislation; the treaty does not go to the House—which would require not two-thirds in the Senate, but a majority vote; not two-thirds in the House, but a mere majority vote?

Why is the administration fighting, and fighting hard, to prevent agreeing to this amendment, which merely puts in the treaty the very same provisions that were in the 1955 treaty with Panama respecting disposition of the property of the United States? Why should they fear following the Constitution? How hollow would the victory of the administration be if they do not follow the constitutional processes in obtaining the power and right to dispose of property of the United States?

Mr. President, could we, by treaty with Mexico, convey the property of the United States to Mexico by treaty, agreed to by the President and approved by the Senate, without the House of Representatives being brought in? I heard one of the Senators say on the floor recently that 97 percent of the property in his State was owned by the U.S. Government. If that be true and if the contention of the leadership and the managers of this bill be true, inasmuch as we acquired this vast area there in the Far West from Mexico by conquest and then by minuscule payment, if the President wanted to right that wrong—and they speak of righting this wrong with Panama—if the President wanted to right that wrong with Mexico and, by treaty, agree to transfer 97 percent of the property in one of the Far Western States to Mexico, do we say that the House of Representatives would not have any voice in that, that the President and the U.S. Senate could decide that matter? How ridiculous can you get?

Mr. President, there are four primary areas from which evidence can be drawn for an understanding of the function of the Congress in disposing of public property in relation to the function of the President, with the advice and consent of the Senate, to conclude

treaties. The first and most important is the text of the Constitution itself. Second and of less importance is the legislative history of the Constitutional Convention of 1787 from which the intent of the Framers can be ascertained. Third is past treaty practice in which the power to conclude treaties has been exercised by the President, with the advice and consent of the Senate, and in connection with which the power of the Congress has been exercised to authorize public property disposals. Finally, there are the decisions of the various courts which comment on the scope of the power granted to Congress over the territory or property of the United States. Yesterday, I discussed at length the proper construction of the text of the Constitution. Today, I will review the three remaining primary sources of evidence supporting the conclusion that the power of Congress over public property is indeed plenary and exclusive.

Records of the Constitutional Convention of 1787 are rare, Mr. President, but what records are available do indicate that the Framers clearly intended to preclude the President, with the advice and consent of the Senate, from disposing of Government property by treaty alone. Such records of the Constitutional Convention as are preserved indicate that the Framers were seized throughout their deliberations by a desire not to permit the unilateral disposition of public lands by the President with the Senate. Frequently during the debates various devices were therefore discussed to prevent the Senate and the President from, as the matter was put by George Mason, "selling the country by means of treaties."

Ultimately, Mr. President, the Framers resolved this issue by adopting article IV, section 3, clause 2, thus limiting the power of the President acting with the Senate to make agreements with foreign powers disposing of the territory or public lands of the United States. This limitation on the treaty power was achieved by express grant of power to the Congress over the method or mode of public property disposal. This check on the treaty power was, apparently, not intended to extend to the mere resolution of boundary disputes by means of treaties of recognition, but the records of the convention do show that this limitation was intended to insure that territory or property actually and clearly belonging to the United States would not be handed over to a foreign power by a treaty of cession except under authority of the entire Congress. In other words, the President and the Senate were left free to recognize the title of another government to disputed territory or property, but the President and the Senate were deprived of the power to transfer title to undisputed public lands or property inasmuch as that power was given expressly to the full Congress.

Thus, Mr. President, very early in the debates at the Constitutional Convention during discussion on whether the Senate could share in originating revenue-raising bills, George Mason, in arguing against the inclusion of the Senate in that process, asserted that, already, "The Senate, by means of a treaty, might alienate territory without legislative sanction." Soon after Mason raised this point, Mr. President, the Framers referred the article IV progenitor to the Committee on Detail. This is reported in the records of the Federal Convention in volume II at page 321 and page 324.

This progenitor provision granted to the legislature the power to dispose of public lands and would thus answer the objection raised by Mason by guaranteeing that no treaty of cession could be adopted except under authority or legislative sanction of the whole Congress. This provision was revised in the Committee on Detail and reported in its present form as it appears now in article IV of the text of the Constitution. The provision was debated and promptly adopted. (See 2 Farrand 466.)

Much later in the debates, Mr. President, during discussion of the treaty power, Madison moved to "except treaties of peace" from the two-thirds requirement for advice and consent. The Madison motion, for a time, was agreed to by unanimous consent. (See 2 Farrand 540.) Therafter ensued a debate of matters centering on the advice and consent function of the Senate in considering treaties of peace. I am impressed by the fact that this entire ensuing discussion dealt only with treaties of peace (or treaties of recognition) and did not deal with treaties of cession. No discussion whatsoever was held regarding the proportion of votes for treaties of cession since the Framers had presumably already addressed that problem by granting to Congress in article IV the power to authorize the disposal of undisputed territory or public property. Yet even if treaties of cession had been under discussion, the remarks made by the Framers in the Madison exception debate would in no way be dispositive of the present issue since all that was under discussion was the advice and consent role of the Senate in respect to a particular subject matter appropriate for international negotiation but not under discussion was the extent of the power of the Congress over that subject matter. Thus, when the advice and consent function was under discussion, and after the temporary adoption of the Madison exception, Williamson and Spaight moved that "no treaty of peace affecting territorial rights should be made without concurrence of two-thirds of the members of the Senate present." In short, Williamson and Spaight sought to exclude from the Madison exception regarding treaties of peace those treaties of peace which would affect territorial rights. Williamson and Spaight were simply seeking to recoup a part of the loss in the temporary adoption of the Madison exception by restoring the requirement of a two-thirds vote in those cases of treaties of peace in which disputed territory was at issue. In like fashion, Gerry, also speaking for a greater proportion of votes on "treaties of peace," said that here "the dearest interests will be at stake * * *. In treaties of peace also there is more danger of the extremities of the continent being sacrificed than on other occasions."

Again, the important point to note here is that these proposals advanced during the discussion of the advice and consent function, and within the context of the temporarily adopted Madison exception, were designed only to affect the vote required in the Senate in matters involving treaties of peace. The involvement and powers of the whole Congress were not at issue.

In short, in matters involving the settlement of boundary disputes which might arise in the case of treaties of peace when the claim of the country has not yet been made good and where title was still disputed, the Framers debated the restoration of the two-thirds vote requirement for granting advice and consent to ratifica-

tion. These discussions evidenced a fear that boundary treaties might include a provision adjusting disputed boundaries in a fashion unfavorable to the United States. But the discussion did not touch on the question of the power to dispose of territory already clearly the property of the United States, nor did it touch upon the power to dispose of other property in which good title was vested in the United States. Those issues had been resolved already by the adoption of article IV. Thus, on the following day, when Sherman and Morris spoke "against leaving the rights, established by the Treaty of Peace with Great Britain to the Senate, and moved to annex a 'proviso that no such rights should be ceded without the sanction of the legislature,' " a clear reference was being made to boundary disputes and again still within the framework of the Madison exception. The Sherman suggestion (it was not voted upon) referred to the rights conferred on the United States by the settlement with Great Britain. These rights were, inter alia, unresolved claims to territory relinquished by Great Britain in favor of the United States, which claims would for many years remain disputed by other nations and would eventually be resolved by purchase and by treaties of recognition in the nature of treaties of peace; for example, the treaty with Spain of 1819. Thus, the Sherman motion did not address treaties of cession or the power of the Congress to dispose of public property. The entire matter was, in any event, resolved by striking the Madison exception so that treaties of peace, like all treaties, require the advice and consent of two-thirds of the Members of the Senate present.

Now, Mr. President, throughout this discussion of the Madison exception of treaties of peace from the two-thirds requirement, the only matter under consideration was the performance of the Senate's own advice and consent function without a trace of a desire to curtail the already established congressional disposal function under article IV. The Attorney General's reliance in his opinion on the legislative history developed during the debate which centered on the Madison exception is, therefore, wholly erroneous. The Attorney General and the opponents of the pending amendment have failed to realize that the quotes they have plucked from the records of the Constitutional Convention were taken from the context of a debate dealing only with the vote requirement for the performance of the advice and consent function in the Senate with respect only to treaties of peace or treaties of recognition, hardly a debate on point with the present issue.

Finally, Mr. President, in reviewing the records of the Constitutional Convention, it remains to note that the decision of the Framers do deal with the congressional disposal power in article IV was entirely logical because article IV would be the article of the Constitution concerned with the territorial integrity of the Nation and with the territorial arrangements between the States and the Federal Government within the proposed new Union. Article IV would, therefore, have seemed to the Framers to have been a sensible place for granting to Congress exclusive power to dispose of territory or property clearly belonging to the United States.

For example, article IV, section 3, deals with the admission of new States by the Congress into the Union as well as the manner in which States can be realined within the Union. Furthermore,

the section states that nothing in the Constitution "shall be so construed as to prejudice any claims of the United States or any particular State." Obviously, then, in drafting the progenitor article IV for referral to the Committee on Detail, the framers recognized that they were dealing with the principal article of the Constitution respecting the established territorial and proprietary integrity of the national commonwealth. Equally, obviously, they reserved for inclusion in that article the language conferring on Congress the exclusive authority to give up title to public lands vested in the United States and thus not properly subject to divestiture as merely disputed territory which might be surrendered by the mechanism of a treaty of peace in the nature of a treaty of recognition. Thus, when the disposal power was referred to committee, it was submitted in the following form: The legislature shall have power "to dispose of the unappropriated lands of the United States." (See 2 Farrand 321.) This original language obviously refers to lands not held by the individual States, but in which good title would vest in the United States and over which the Congress would be given exclusive authority. Since article IV had been adopted in its present form by the time of the debate of the treaty power, the power to dispose of territory or other property clearly belonging to the United States was not at issue. The matter had already been resolved by the adoption of article IV.

In this connection, it is singular that, during the discussion of "the legislature shall have power to dispose of * * * the territory * * *," no mention at all was made of any exception to the legislative power to permit dispositions to be made under the treaty power. Also notable is the fact that, during the debate of the treaty power, discussion centered only on treaties of peace which would involve disputed claims. No mention was made of treaties of cession by which undisputed lands belonging to the United States might be promised to be conveyed to a foreign sovereign. Since territorial matters were hotly debated throughout the convention, manifestly there was no intention that an exception would be made to permit actual disposition of the public lands without congressional authority by means of treaty of cession. In fact, a careful reading of the debates of the Constitutional Conventions is persuasive that article IV, section 3, clause 2 was intended to satisfy objections that the treaty power might be used to dispose of public lands, while at the same time preserving to the executive and the Senate the power to resolve without full legislative sanction the many then-pending boundary conflicts by means of treaties of peace of recognition.

In short, where a territorial claim was vague, the President and the Senate were left free to make adjustments by means of treaties of peace or treaties of recognition, but where the claim of the United States had been perfected, and it could be clearly demonstrated that the land involved was territory or other property belonging to the United States, then congressional authorization would be required before alienation by any means would be permissible.

This evident, intent of the Framers in adopting article IV, section 3, clause 2, has until now, been consistently carried out in practice and at no time whatsoever has territory or other property

clearly belonging to the United States been alienated by treaty alone, whereas on many occasions disputed claims have been adjusted by treaties of recognition or by treaties of peace, without specific congressional authority.

So, Mr. President, to confirm our understanding of the Constitution as its plain words evidence and as the intent of the Framers implies, we ought next to examine past treaty practice to see how the intent of the framers and the requirements of the Constitution have been carried into effect consistently until this moment. In looking at past treaty practice, perhaps the best point of departure is the report of the Committee on Foreign Relations on the Panama Canal treaties which rather ingenuously provides at its pages 68 and 69 a list of treaties alleged to transfer territory of property belonging to the United States to other nations without congressional authorization. So let us look at this list of treaties provided by the Committee on Foreign Relations.

First, the committee lists the treaty between the United States and Spain of February 22, 1819. The treaty was a treaty whereby Spain ceded its Florida territory to the United States, and the United States recognized the title of Spain to Texas. Hence, the treaty has virtually nothing to do with the present issue inasmuch as it was a treaty of recognition or a boundary treaty insofar as the then-vague U.S. claims to territory west of the Florida territory, and insofar as it affected Florida, it was a treaty of cession from Spain to the United States. Nevertheless, congressional debates of the Spanish Treaty of 1819 included House consideration of two resolutions submitted by Congressman Henry Clay. The first resolution would have affirmed the exclusive power of the Congress to dispose of the territory and property. The second expressed the view that, because of the exclusivity of the disposal power, the disputed lands west of the Florida territory (Texas) should not be acknowledged to belong to Spain without congressional authorization. Since a cession of U.S. territory was not involved nor was any title to U.S. property actually transferred, the Clay resolution was inappropriate because no American territory or property was ceded by the 1819 treaty and, moreover, even if a cession had occurred, the provisions of the treaty terms were in any event specifically authorized by the act of March 3, 1819 (3 Stat. 523). In arguing against the Clay resolution, Represenatative Anderson of Kentucky repeatedly emphasized that the lands involved were never in American possession and, therefore, article IV was not triggered by the 1819 treaty, stating:

> There is certainly nothing which falls more aptly within the power to form treaties than the settlement of the limits of disputed or undefined territory.

He also argued that the treaty has already been approved in the most solemn manner by which it could be approved:

> It must be borne in mind, too, that this House has approved the treaty in the most solemn manner in which it can act * * * by the passage of a law * * * the forms of our government do not admit any further ratification than this treaty has received.

Here Representative Anderson was referring to the act of March 3, 1819. Indeed, similar legislation was again enacted by the Congress in the act of March 3, 1821 (3 Stat. 637).

Certainly, Mr. President, two statutes of the Congress authorizing the transaction, which in itself was merely a recognition of a boundary, ought to have been sufficient to our Senate Committee on Foreign Relations to permit them to perceive that the treaty with Spain of 1819 does nothing whatsoever to support their position and, in fact, supports rather strongly the contrary position. But this latest excursion in innovative interpretation of history and law is not uncharacteristic of the work of that committee.

Mr. President, the next treaty cited in the report of the Committee on Foreigh Relations is the treaty between the United States and Great Britain of August 9, 1842, which is generally referred to as the Webster-Ashburton Treaty. Similar to the Webster-Ashburton Treaty is another treaty cited by the committee, the treaty between the United States and Great Britain of June 15, 1846, the Oregon Boundaries Treaty. Both treaties are pure treaties of recognition wherein each party recognizes the claim of the other party to the territory on the other side of the boundary between the parties. In other words, there is no cession of property inasmuch as both parties to the agreement merely acknowledge the title of the other party and thereby establish a settled boundary in an area in which only claims of title are made by either country. A classic example of this process is found in this Oregon Boundaries Treaty, and certainly Senators will remember the phrase, "54°54′ or Fight!", which was used extensively by those seeking to grab as much territory in the Northwest as possible. In fact, the disputed area was resolved along a 49° latitude boundary, Great Britain recognizing the title of the United States below the 49° parallel and the United States recognizing the title of Great Britain above the 49° parallel.

Again, no cession of American territory was involved nor was any transfer of U.S. property accomplished by either this treaty or recognition or the similar Webster-Ashburton Treaty.

Incidentally, Mr. President, the distinction between these two types of treaties, treaties of cession and treaties of recognition, is well-established in international law. Crandall, in his definitive study, "Treaties, Their Making and Enforcement," states unequivocally:

> A treaty for the determination of a disputed line operaties not as a treaty of cession, but of recognition.

But this distinction does not appear to be understood by the august committee on Foreign Relations because it next cites in its report three more boundary treaties, this time treaties between the United States and Mexico, those being the treaty of 1933, the treaty of 1963, and the treaty of 1970. None of these treaties involved public property and they, too, were classic treaties of recognition wherein boundary disputes or potential boundary disputes were resolved by one party recognizing the claims of the other party, and vice versa. Additionally, in each case, statutory enactments did authorize the change in status of lands which occurred, in the first instance as a result of the meanderings of the Rio Grande in its channel between Texas and Mexico. These statutes are, in the case of the treaty of 1933, the Rio Grande Rectification Act of 1935 (Public Law 74-286) and, by implication, the State

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and Justice Appropriations Act of 1937; in the case of the treaty of 1963, the American-Mexican Boundary Convention Act of 1964 (Public Law 88-300); and in the case of the treaty of 1970, the American-Mexican Boundary Treaty Act of 1972 (Public Law 92-549). Significantly also, prior to the first Mexican boundary treaty of 1933, the Congress had established by legislative act the International Boundary Commission, Mexico and United States, for the purpose of rectifying the boundary between the two countries as a result of the changes in course of the Rio Grande. Therefore, all three treaties had prior underlying congressional authorization in that they were each based on decisions of the International Boundary Commission previously established by act of Congress.

Moreover, the American-Mexican Boundary Convention Act of 1964 provides specific, statutory authorization for the "acquisition of all private lands required for transfer to Mexico." And again, the American-Mexican Boundary Treaty Act of 1972 authorizes the acquisition of "all lands or interest in lands required for transfer to Mexico." Also of interest is the fact that article I of the 1970 treaty, the most recent in the series, provides specifically that, "Once this treaty has come into force and the necessary legislation has been enacted for carrying it out * * *", a provision which clearly implies that no transfer could occur except with congressional approval. Since these treaties do not in the first place dispose of Federal property except in the sense that Congress authorized Federal acquisition of property for subsequent transfer to Mexico, since the disposals involved came about only pursuant to specific, statutory authorization, and since in any case the treaties involved a resolution of a disputed or potentially disputed boundary, they do not in any way support the position of the Committee on Foreign Relations or the opponents of the pending amendment.

Mr. President, the Committee on Foreign Relations next cites the treaty between the United States and Honduras of November 22, 1971, the Swan Islands Treaty. This treaty also provides no support whatsoever for the Foreign Relations Committee's position, and it is astonishing that it would be cited as a precedent for transferring U.S. property without congressional approval. This treaty was again a treaty of recognition designed to resolve the conflicting claims of the United States and Honduras to the Swan Islands. The U.S. claim was tenuous at best and was based on the Guano Act of 1856 which authorized the extraction of guano from the islands. The Honduran claim to the islands was clearly superior and antedated the American claim by several centuries. Although the Swan Islands were thus briefly of interest to the United States in the mid-19th century, in recent times the only conceivable value of the islands to the United States is their current use as a weather and observation station. In the words of the Committee on Foreign Relations in its report on the Swan Islands Treaty:

> The Islands have no intrinsic value to the United States * * * the only United States interest in these Islands is the operation and maintenance of a meteorological and telecommunications facility and an air navigation beacon.

In the treaty, the United States recognized the superior claim of Honduras to the islands and, in turn, the Honduran Government recognized the claim of title made by the United States to the particular property and improvements necessary to the operation

of the meteorological and telecommunications facility. Again, the Swan Islands Treaty was a treaty of recognition and not a treaty of cession.

The Committee on Foreign Relations as authority for its novel theory of concurrent power to dispose cites additionally the treaty between the United States and Japan, the reversion of the Ryukyus and Aito Islands. This treaty equally cannot be used as a precedent for a transfer of territory by treaty alone since this treaty grew out of article III of the 1951 Treaty of Peace with Japan by which the United States received the right to exercise powers of administration in the Ryukus but by which Japan did not renounce its right, title, and claim to the Ryukyus. No property rights as a territorial owner ever arose in the United States and hence no territory belonging to the United States was by the later treaty ceded back to Japan. By the same token, the nonterritorial property transfers arguably effected by the Ryukyus treaty were, as is noted in the report of the Committee on Foreign Relations, made pursuant to authority granted by Congress in the Foreign Excess Property Disposal Act and related subsequent statutes (see particularly 40 U.S.C. sections 511 and 512). Thus, again, if the Ryukyus treaty is precedent of any sort, it is precedent for the proposition that property disposal must be authorized by Congress.

The final treaty cited by the Committee on Foreign Relations is the treaty between the United States and Panama of 1955, the Treaty of Mutual Understanding and Cooperation found at 6 U.S.T. 2283. This ironically is the same treaty cited in the report of the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary as the best possible historical evidence for the proposition that the power of Congress to dispose of territory or other property of the United States is exclusive. Frankly, I find it startling and truly astonishing that the treaty of 1955 would be cited to support the opposite contention.

This treaty of 1955 in its article V, the article which makes a major public property transfer from the the United States to Panama, repeatedly uses the phrase, "subject to the enactment of legislation by the Congress." I believe that our negotiators insisted upon the use of this language so that as a matter of international law the Panamanians would be on notice of the fact that authorizing legislation was required before the transfers contemplated by article V could be completed. This fact is astutely ignored in the report of the Committee on Foreign Relations, which instead calls attention only to articles VI and VII which purport to transfer property to Panama without authorizing legislation. In fact, both articles VI and VII are, oddly enough, "boundary adjustments," one boundary adjustment involving the Colon Corridor leading to the city of Colon and the other adjustment involving a single pier extending into the waters in the vicinity of the city of Colon. Neither article VI nor article VII deals, therefore, with anything greater than a slight adjustment in the terms of the Boundary Convention of 1914 between the United States and Panama, and certainly neither article stands as a precedent for a cession of territory or property by treaty alone. Again here, the principles of treaties of recognition are paramount, but even so, and even though only a very slight amendment in a boundary convention

was at issue, the Department of State specifically acknowledged in testimony before the Senate Committee on Foreign Relations that, in addition to article V, also articles VI and VII of the treaty of 1955 required authorizing legislation. Assistant Secretary of State Holland provided a memorandum to the Senate Committee on Foreign Relations which reads in pertinent part as follows:

> Articles V, VI and VII of the Treaty * * * transfer of certain lands and improvements to Panama—authorizing legislation is required.

This memorandum was supplied to the Committee on Foreign Relations in response to the request of Senator Morse that the Department of State submit a memorandum of all legislation required to carry the treaty of 1955 into effect. The remarks of Senator Morse and the Department of State response are found in "Hearings on the Panama Canal treaties before the Senate Committee on Foreign Relations, executive F, 84th Congress, 1st Session" at pages 60–61.

Since authorizing legislation was subsequently enacted and since the property aspect of the treaty was expressly made subject to such enactment, then it ought to be plain as day that the treaty of 1955, contrary to the misleading implication of the report of the Committee on Foreign Relations, is perhaps the strongest possible historical precedent for the proposition that Congress alone can dispose of U.S. territory or property in Panama.

Interestingly, consistent past practice with respect to public property disposals in the Panama Canal Zone gives further support to the conclusion that a property transfer can validly only occur pursuant to exercise by the Congress of its power to dispose. Thus, in 1942, when The President concluded an executive agreement for the transfer of property, a statutory enactment actually accomplish the transfer. Moreover, at that time, the chairman of the Senate Committee on Foreign Relations, Senator Tom Connally, asserted emphatically:

> Those who are opposing the measure object because the matter is brought before the Senate in the form of a joint resolution. They say it should be in the form of a treaty. Mr. President, I am and have been and in the future shall continue to be ardent in my maintenance of the integrity and the rights of the Senate of the United States in all its proper functions as a branch of the Government; but the matter covered by the joint resolution has to be passed by the Congress sooner or later in some form, for the simple reason that under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. The Constitution itself confers on Congress specific authority to transfer territory or lands belonging to the United States. So, if we had a formal treaty before us and if it should be ratified, it still would be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land; because "the Congress" means both bodies. The House of Representatives has a right to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise.

Additionally, in 1932, the United States sought to build a new legation building on land within the Canal Zone. Since a legation must be on territory of the country to which the legation is accredited, the State Department drafted a bill by which Congress would authorize the Secretary of State to modify the line between Panama and the zone so as to permit the proposed legation to be built on "Panamanian territory." In other words, the Department of State recognized that a statute was required to effect the transfer. And again, in 1937, the act of July 10 authorized the Panama

Railroad Company, an agency of the United States, to sell certain lands and release reversionary interest in those lands (50 Stat. 511, Public Law 75-54). Earlier the President himself was given authority in the Panama Canal Act of 1912 to exchange land with Panama, presumably along boundaries, if the land were thought to be no longer needed for the maintenance, operation, sanitation, or protection of the Panama Canal and the Canal Zone. (See 2 Canal Zone Code p. 2 and the Act of Congress of Aug. 24, 1912, 37 Stat. 605.)

So, Mr. President, in sum, it is crystal clear that each treaty cited by the Committee on Foreign Relations lends no support to the position of the committee and, viewing the matter generously, shows only the apparent hurried manner in which the report of the committee must have been written.

Confirming this matter observation is the decision of the committee also to cite in its report two Indian treaties which for a variety of reasons have virtually nothing to do with this important constitutional issue. The two treaties cited by the Committee on Foreign Relations are: First, the treaty with the Cherokee Nation of December 29, 1835, and second, the treaty with the Chippewa Indians of October 2, 1863.

The treaty with the Cherokee Nation of 1835 presumably came to the attention of the Committee on Foreign Relations in connection with its equally mistaken citation of dicta from Holden against Joy, a case which involved the same treaty. The inappositeness of the dicta from Holden, as well as the citation of the Cherokee Treaty of 1835, is underscored by the facts. These were recited by Prof. Raoul Berger to the Subcommittee on Separation of Powers as follows:

> In May, 1828, and February, 1833, "the United States agreed to possess the Cherokees of seven million acres of land west of the Mississippi." It "was the policy of the United States to induce Indians * * * to surrender their lands and possessions to the United States and emigrate and settle in the territory provided for them in the treaties, " so an exchange of land was provided. But a third treaty, that of December, 1835, proved necessary, whereby the Indians ceded their lands to the United States in consideration of $5,000,000 to be invested in the manner stipulated. The indians considered that the prior treaties, confirmed by the new, did not contain a sufficient quantity of land, so the United States agreed to convey an additional tract in consideration of $500,000 to be deducted from the $5,000,000. This may be viewed either as a purchase and sale or an exchange: "the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them. * * *" And the transaction was authorized by the Act of 1830, which empowered the President to set aside land west of the Mississippi for the reception of such tribes as chose to emigrate, and to "exchange" such lands with any tribe. The 1830 Act served to ratify the Act of 1828, and "ratification is equivalent to original authority." "It is well settled that Congress may * * * "ratify * * * acts which it might have authorized" * * * and give the force of law to official action unauthorized when taken." Although the subsequent 1833 and 1835 treaties differed in some particulars from the authorization, the purpose was the same—"to induce the Indians * * * to emigrate and settle in the country long before set apart for that purpose."

Thus, the Cherokee Treaty of 1835 cited in the report of the Committee on Foreign Relations is a treaty which, if it stands for anything, stands as good precedent for the fact that public property may not be conveyed except under authority of Congress.

It remains to dispose of the second Indian treaty cited in the report of the Committee on Foreign Relations. This treaty with the

Chippewas of 1863 is again a treaty apparently called to the attention of the Committee on Foreign Relations by a casual reading of the judicial authorities, in this instance Jones against Meehan, 175 U.S. 1 (1899), another case which has virtually nothing to do with the power of Congress to dispose. The treaty of 1863 with the Chippewas, which is discussed in detail in Jones against Meehan, was a typical treaty of reservation involving a grant from the Chippewas to the United States. The treaty had "set apart from the tract hereby ceded by the tribe a reservation of 640 acres" for an individual Indian. Thus, while this treaty is, as asserted in the report of the Committee on Foreign Relations, "an example of a treaty with an Indian tribe," it is hardly an example of a conveyance of property belonging to the United States to an Indian without prior authorization by act of Congress. In fact, the only conveyance by treaty to an individual Indian made in the treaty of 1863 is a conveyance from the Indian tribe direct to the individual Indian and not a conveyance from the United States.

Citation of the Chippewa Treaty of 1863 as precedent for disposal of U.S. property by treaty alone is a good example of the pitfalls of attempting to resolve major constitutional issues by a cursory examination of the tortured course of the treaty relations between the United States and the Indian tribes prior to 1872. Mercifully, Congress brought the practice of dealing with the Indians by treaty to a halt in that year by enactment of the Indian Appropriations Act of 1872, which forbade further dealings with Indian tribes by treaties.

Now, Mr. President, this fact leads me to believe that perhaps we ought not to pay too much attention to these Indian treaties one way or another if Congress could, with the stroke of a pen, so to speak, cut out entirely the President's ability to deal with the Indian tribes by treaty and require him to deal with them in some other manner. Certainly, no act of Congress could abolish outright the constitutional power of the President to conclude true international treaties with the advice and consent of the Senate, and the fact that the ability of the President to deal with the Indian tribes by treaty was in fact abolished by act of Congress certainly ought to indicate that these many Indian treaties were not in the first place true treaties made within the scope of the President's powers under article II of the Constitution.

Moreover, Mr. President, the various Indian treaties reserved to the Indians a bewildering variety of types of interest in the lands reserved. But most important to this discussion is that, typically, Indian treaties reserved only the right to the use and occupation of territory already possessed by the Indians (hence, the use of the term "reservation"). Thus, the typical Indian treaty was not in any way a treaty of cession of territory from the United States to the Indians but rather a treaty by which the use only of territory already belonging to the United States was ceded from the Indians to the United States with the Indians reserving out of the grant a collective usufruct analogous to fee title over a given reserved portion.

In any event, regardless of the nature of the grant from, or acknowledgment of the reserved rights of, the Indian tribes or individual Indians, Indian treaties must themselves always be con-

sidered in light of the knowledge that from the very earliest days of European settlement in North America, Indians were regarded not as sovereign independent nations but as "wards of this Nation" or "in a state of pupilage" or "dependent political communities." Thus, for example, in recognition of this dependent political status, the United States always had in Indian lands, at a minimum, the right to exercise the sovereign power of eminent domain.

Past treaty practice, then, Mr. President, in exact contradiction to the impression sought to be created by the Committee on Foreign Relations, strongly supports the construction of the Constitution embodied in the pending amendment. The judicial authorities, in the main, also strongly support this construction. However, I must in this respect state candidly that my review of all of the cases cited to me by the many commentators and scholars who have studied this issue has led me to the conclusion that each case cited is in some fashion distinguisable from the main issue and that no case cited by either proponents or opponents of the pending amendment answers directly in a holding of the court the question, "Can the President, with the advice and consent of the Senate, by treaty alone, cause a disposal of U.S. territory or other property?" The United States has been, in the main, and acquisitive, growing Nation and, therefore, it is not surprising that no court, until now, has been presented with a case or controversy turning on the exclusivity of the power of Congress to dispose of territory or property in relation to the power of the Executive, with the advice and consent of the Senate, to conclude treaties. In candor, it must be admitted that it is now a case of first impression primarily because heretofore there has been perhaps greater respect for the Constitution and additionally the United States has not been, until now, overly inclined to alienate its own territory or property in favor of foreign sovereigns. Nevertheless, several cases do merit discussion either because they tend to illuminate the plenary nature of the power granted to Congress under article IV, section 3, clause 2, or because they have been incorrectly cited as authority for the new theory of concurrent treaty power to dispose of public property.

CASES DEMONSTRATING THE EXCLUSIVITY OF THE POWER OF CONGRESS TO DISPOSE OF THE PUBLIC'S PROPERTY

The primary case showing the extent and exclusivity of the power of Congress to dispose of territory or other property of the United States in *Sioux Tribe of Indians* v. *United States,* 315 U.S. 317 (1942). After noting that fact, however, I hasten to stress that Sioux Tribe does not hold that the power of Congress is exclusive in the specific context of a case involving the treaty power versus the congressional power. The information drawn from the decision in Sioux Tribe is nevertheless not to be considered mere dicta since the case itself did turn on the question whether the power of the President alone acting through executive agreement was concurrent with the congressional power to dispose. Thus the holding in the case does serve to illustrate forcefully the point that the disposal power is an exclusive power of Congress, and the Court did state, rather emphatically, as part of its holding that "the Constitution

places the authority to dispose of public lands exclusively in Congress."

In Sioux Tribe, the Supreme Court addressed the issue of whether Executive orders in 1875 and 1876 reserved a compensable interest in land to the Sioux Indian Tribe. The Court found "* * * that there was no express constitutional or statutory authorization for the conveyance of a compensable interest * * * and that no implied congressional delegation of the power to do so can be spelled out from the evidence of congressional and executive understanding."

The Executive orders involved were found, as might be expected, to have reserved only use of the lands to the Sioux Tribe. The Court ruled that the interest retained by the Indians under the Executive orders could be terminated by the executive or by the Congress without any obligation on the part of the United States.

In the reasoning leading to its decision in that case, the court noted that a treaty or a statute could create a compensable interest in lands in the Indians if those lands were subsequently taken from them by the government. However, while the court did note that a statute would obviously be an expression of congressional will, the court specifically did not on the other hand imply that a treaty could convey public land without an express or implied congressional delegation of authority or without enactment of authorizing legislation to give effect to any proposed treaty terms suggesting a disposition of U.S. property. In fact, the court, to the contrary, implied the exact opposite.

If the lands reserved for the use of the Indians are reserved pursuant to a statute, it is obvious that Congress has given its consent to the disposal. When lands belonging to the United States are transferred by treaty or Executive order, the court reasoned that delegation of congressional authority must be found. The court stated further that such delegation of authority may be explicit or may "* * * be spelled out from long-continued congressional acquiescence in the executive practice."

The importance of the *Sioux Tribe* case, as related to the disposal of property by treaty, lies in the fact that the court seems to have stated rather clearly that lawful disposal by treaty or Executive order could be effected only if the court could find express or implied congressional delegation of the exclusive authority of Congress to dispose of property or territory belonging to the United States. I have been unable to find any such express or implied delegation of power by the Congress insofar as it relates to the disposal of land in the Canal Zone to Panama. The Panama Canal Act of 1912 only grants to the executive branch the authority to acquire or exchange land, not the power to dispose of it.

Moreover, congressional acquiescence with respect to past practice in the Canal Zone has permitted the executive only to make minor boundary adjustments without first obtaining express congressional authority. In any event, the boundary adjustments made have themselves tended to be in the nature of an "exchange" as already authorized by the Panama Canal Act of 1912. The holding in Sioux Tribe, then, does stand as a strong support for the contention that since no express or implied authority to dispose of territory or other property in the Canal Zone can be inferred from the

past enactments of the Congress or from the past practice of the executive branch in transferring property in the Canal Zone, then specific statutory authority must now be obtained before any major property disposition to Panama can be legally accomplished.

In *Wisconsin Central R.R. Co.* v. *Price County,* 133 U.S. 496, the Court stated as part of the holding in the case that article IV "implies an exclusion of all other authority over property," thereby like Sioux Tribe also demonstrating the plenary and exclusive nature of the power of Congress to dispose of public lands or property. While it is true that Wisconsin Central involved the disposal power in the context of congressional power versus state power, nevertheless the case provides again strong evidence that the theory of concurrent disposal power is erroneous. Wisconsin Central is a characteristic of a long line of decisions which reflect the Court's obvious agreement with the general principle enunciated by Justice Story:

> The power of Congress over the public territory is clearly exclusive and universal.

I recognize that the principle enunciated by Story has not yet been applied in a case directly on point, but the principle has nevertheless been applied repeatedly, not in dicta, but in the holdings of many cases where the exclusivity of the power of Congress was essential to the decision.

CASES FROM WHICH DICTA IS DRAWN TO SUPPORT THE THEORY OF CONCURRENT TREATY POWER TO DISPOSE OF THE PUBLIC'S PROPERTY

Proponents of the concurrent treaty power theory have been unable to locate a single case in which the decision in the case turned on the issue of the existence of concurrent power in the President, or in the President with the Senate, to dispose of public property. Instead, we have seen cited a plethora of dicta drawn from cases not involving the treaty power versus the Congressional power to dispose and not even involving the question of the exclusivity of the congressional disposal power in any context.

For ease of review of these sources of dicta, the following is a list of the principal cases upon which the concurrent power theorists have mistakenly relied:

Jones v. *Meehan,* 175 U.S. 1 (1899).
U.S. v. *43 Gallons of Whiskey,* 93 U.S. 188 (1876).
Holden v. *Joy,* 17 Wall. (84 U.S.) 212 (1872).
Francis v. *Francis,* 203 U.S. 233, 239 (1906).
U.S. v. *Percheman,* 32 U.S. (7 Pet.) 511, 88–89 (1833).
Foster v. *Nielson,* 27 U.S. (2 Pet.) 253 (1829).
Geofroy v. *Riggs,* 133 U.S. 258 (1890).
Missouri v. *Holland,* 252 U.S. 416 (1920).
Asakura v. *Seattle,* 265 U.S. 322 (1924).
Reid v. *Covert,* 354 U.S. 1 (1957).
Santovicenza v. *Egan,* 284 U.S. 30 (1931).
Worcester v. *Georgia,* 31 U.S. (6 Pet.) 515 (1832).

The Indian treaty cases, such as Jones against Meehan, supra, and above, typify a line of cases involving Indian land titles wherein a grant of title was made by the tribe to an individual as part of the terms of a treaty with the United States. A careless reading of these cases coupled with a careful extraction of dicta from them can give the erroneous impression that title to lands belonging to

the United States can be transferred to an individual by treaty alone. Thus, proponents of the concurrent power theory, such as, for example, Dean Pollak, have quoted the following dicta from Jones:

> A good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe without an act of Congress.

At first blush, this dicta would seem to indicate that title to the territory or other property belonging to the United States can be transferred by treaty alone. Not so. In fact, this misleading dicta has nothing whatsoever to do with the power conferred on Congress by the people through article IV of the Constitution.

In Jones against Meehan, the treaty in question has "set apart from the tract hereby ceded [by the tribe] a reservation of 640 acres" for an individual Indian, and the issue in the case was what kind of title the Indian took. The court itself, recognizing that article IV was not a question in the case, quoted from an opinion of Attorney General Roger Taney:

> These reservations are excepted out of the grant made by the tribe [to the United States] and *did not therefore pass with it;* consequently, the title remains as it was before the treaty, that is to say lands reserved are still under the original Indian title. (Emphasis added.)

The court in Jones thus continued to hold that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant [by the tribe to an individual] of complete title in fee simple." I do not deem it necessary to go into the court's detailed discussion of the nature of the title reserved, e.g., was it legal or equitable, and other fine points of Indian land law arising from the fact that Indian lands were initially held in common. It should instead be sufficient to set out the court's quotation in Jones from *Doe* v. *Wilson,* 25 How. 457, 463–464 (1859):

> The Pottawatomie nation was the owner of the possessory right of the country ceded, and all the subjects of the nation were joint owners of it. The reservees took by the treaty, directly from the nation, the Indian title.

The fact that title "reserved" to individual Indians does not pass to the United States and thereafter back to the Indians in the many Indian treaty real property cases may be best understood from a close reading of *Francis* v. *Francis,* 203 U.S. 233, 238 (1906), which cites Jones for the proposition that when a treaty makes "a reservation of a specified number of sections of [Indian land], the treaty itself converts the reserved land into individual property." With this understanding, then, of Indian land law, in no fashion can Jones against Meehan or any other treaty reservation case be properly cited as having anything whatsoever to do with the power of Congress to dispose of U.S. property. Not one of these cases involves conveyance of property belonging to the United States.

Holden against Joy is another Indian treaty case which constitutes one of the pillars of the argument of the administration in favor of the elusive, postulated power to convey public property by treaty alone. In truth, Holden does provide perhaps the best dicta which can be cited by proponents of the concurrent power theory inasmuch as it does contain strong language to the effect that a conveyance of property can be made by the President by treaty without congressional authorization. However, even those who

have relied on the case admit that the language quoted is purely dicta and that the statement made had no bearing in the court's decision. Moreover, the cases cited by the court in Holden as authority for its regrettable ex cathedra utterance do not in any way give it support. These cases were each abstracted for the Subcommittee on Separation of Powers by Professor Berger in an appendix to his testimony. Having examined them each in turn, I now share Professor Berger's conclusion that half the cases cited by the court were "altogether irrelevant" and that the rest concerned "reserves" under which no title had passed to the United States and, hence, under which no title could be passed from the United States.

In any event, there is little point in belaboring the dicta in Holden against Joy since even the Attorney General has recognized it to be simply dicta and has stated that:

> The court conceded that the question was immaterial in the case because Congress had actually implemented and ratified that particular treaty.

In fact, when the court in Holden, speaking to the contention that the President and the Senate "could lawfully covenant that a patent should issue to convey lands which belong to the United States without the consent of Congress," stated that "a treaty may convey to a grantee good title to such lands without an act of Congress conferring it," it was making a statement that was wholly unnecessary to the decision reached because Congress had already authorized the conveyance involved, a fact recognized by the court. Unnecessary statements are rarely supported by thorough legal research, and the dicta in Holden is a perfect example of that fact. I also find in the repeated misleading citation of Holden a continuation of the double standard used by proponents of the alleged power to dispose of public property by treaty alone in that these proponents rely entirely on dicta running in their favor to make a shaky case for concurrent power but consistently reject as dicta the many judicial statements that congressional power to dispose is exclusive.

U.S. against Percheman was a private land grant case cited by the Attorney General and other administration spokesmen to show "the court held self-executing certain clauses of the Florida treaty with Spain which relate to the regulation of property rights to newly acquired territory." However, the so-called self-executing clauses in the Florida treaty involved the confirmation of individual property rights based on Spanish land grants. These property rights would have been affirmed as a matter of international law even absent the treaty clauses, and inasmuch as the property rights in question were the property rights of individuals, not the property rights of the United States, the entire case is, therefore, irrelevant to any discussion of the article IV power of Congress. The Percheman case is, in fact, closely analogous to the Indian treaty cases in that it essentially involved a reserve of private individual grants predating the treaty. Title did not pass to the United States and thereafter to the individuals. The fact that the treaty with Spain of 1819 of its own force confirmed the titles of pretreaty individual private landowners of land in the Florida territory ceded to the United States by Spain does not argue for

the legality of a so-called self-executing treaty which would grant title to land already vested in the United States to new posttreaty individual owners.

Similar to Percheman, and equally often cited, is Foster against Neilson, a case which also turned on the validity of pretreaty land grant titles. The court in Foster erroneously thought that the treaty of 1819 required ratification and confirmation of the private titles "by the act of the legislature"; however, the court in Percheman discovered that the Spanish counterpart version of the treaty expressly dispensed with the requirement that the private titles be ratified by act of the legislature, a fact not known at the time of the decision in Foster.

In any event, both of these land grant cases are so far afield and have so little to do with the article IV power of Congress to dispose of U.S. lands as to warrant much less attention than that which has already been shown to them, here and elsewhere.

The administration witnesses also dwelled on Geofroy against Riggs as "strong authority" for the power of the President and Senate to conclude treaties regarding the subject matter within the ambit of the power of Congress. I have studied the case and I am not impressed. While, in some vague sense, Geofroy might be said to represent the principle that the treaty power can extend to the peripheries of congressional power, in fact, the case has not the slightest bearing on the effect of article IV respecting public property because the case has nothing to do either with the disposition of public property or with the regulation of public property. To reiterate, the holding in Geofroy was simply that a citizen of France could take land by descent from a citizen of the United States within the District of Columbia. Therefore, the reason for the repeated citation of this case by the proponents of the concurrent power theory remains a matter essentially baffling to me.

Oddly enough, the case does not even stand for the proposition that a treaty can supersede the provision of article I, section 8, clause 17, of the Constitution which confers on Congress the power of "exclusive legislation in all cases whatsoever" relating to the District of Columbia. Geofroy involves the treaty with France of 1853 which gave to Frenchmen the right of inheritance only in States "whose existing laws permit it." Thus, the court held in Geofroy that the District of Columbia was a State for purposes of the treaty and that, although an act of Congress on March 7, 1888, forbade the ownership of land in the District by aliens, since the act excepted the disposition of land "secured by existing treaty" (an exception which the court held included realty "acquired by inheritance"), the Frenchmen's rights were protected under the act by the provisions of the treaty of 1853. Thus, the treaty at issue in Geofroy does not itself pretend to override contrary local law and, additionally, Congress had consented to the application of the treaty terms to permit inheritance by Frenchmen by means of the express exception set forth in the act of March 7, 1888.

To summarize, Geofroy against Riggs has nothing to do with the power of Congress to dispose of U.S. territory or public property, but in the event it did, it could stand, if for anything, only for the proposition that the treaty power does not invade the power of Congress over the laws of the District of Columbia.

Finally, the administration and others have advanced Missouri against Holland in support of the proposition that a treaty can "empower Congress to enact legislation going beyond its specifically enumerated grants of power." Without becoming unduly concerned at this gross distortion of basic constitutional principles, perhaps it is best simply to state that Missouri against Holland had nothing to do with the disposition or regulation of U.S. territory and that the case involved a treaty with Great Britain for the protection of migratory birds. The court held that "wild birds are not in the possession of anyone and possession is the beginning of ownership"; hence, neither a State nor the United States could assert any property interest in them. Missouri against Holland can, therefore, be of no interest in any serious analysis of the congressional power to dispose of public property.

Mr. President, there are among the cases in the list I previously outlined a number of obviously irrelevant cases; therefore, in order not to unduly lengthen these remarks, I will simply observe that a mass of cases have been cited irresponsibly by administration spokesmen and opponents of the pending amendment in the ongoing debate of the nature of the power of Congress to dispose of public property of the United States. However, for illustration, I will give five examples of noteworthy irrelevance.

First, there is Asakura against Seattle. This fascinating decision turns on an ordinance of the city of Seattle restricting licenses to operate pawnshops to citizens of the United States. Its holding that citizens of Japan could not be denied the equal opportunity also to operate pawnshops does not appear to have any relevance to anything except possibly to the operation of pawnshops.

Next, there is Reid against Covert which was cited by Herbert Hansell, legal adviser to the Secretary of State, as authority for the power to dispose of public property by treaty. The case involves a trial by court martial of the wife of an Army sergeant convicted in England by U.S. Army authorities for the murder of the sergeant. The court held that the Bill of Rights requires a jury trial after indictment. I do not understand why this case was cited.

In his testimony before the Subcommittee on Separation of Powers, Herbert Hansell also cited Santovicenza against Egan in support of the power to dispose by treaty. In Santovicenza, an Italian died in New York, leaving no heirs or next of kin. Italy claimed the property of the deceased under a "most favored nation" treaty clause. The court held that the treaty covered the disposition of the property of aliens dying within the territory of either signatory. Again, I am at a loss to explain why this case was ever cited even in the first instance.

Also cited to support the novel concurrent disposal power theory is Worcester against Georgia. Worcester, a white missionary, was convicted of residing within the Indian territory without a State license. The Supreme Court reversed the conviction. Astoundingly, this case has also been cited as having something to do with the power to dispose of public property; obviously, it does not.

Perhaps because of its intriguing style, U.S. against 43 Gallons of Whisky is also a case frequently cited by concurrent power theorists, but again the application of this case to the issue is tangential at best. The case, as might be expected, involves 43 gallons of

whisky, and it is a case essentially irrelevant of the issue or to the pending amendment.

To summarize the arguments I have made both today and yesterday, I emphasize, Mr. President, that the text of the Constitution itself indicates that the power of Congress to dispose of public property is an exclusive power which cannot be exercised concurrently by the President, with the advice and consent of the Senate, through the treatymaking power. Basic canons of construction dictates that express mention implies exclusivity and that the specific governs and limits the general. Construing properly the plain words of the Constitution thus leads to the final conclusion that the power of Congress to dispose is an exclusive power. This conclusion is bolstered by the history of the Constitutional Convention which shows that the issue of the treaty power versus the power to dispose was very much in the minds of the Framers. Article IV, section 3, clause 2 was adopted to answer in part the argument advanced early in the Convention debates that the Senate with the President could alienate public lands without the consent of the Congress. Past treaty practice in dealing with Panama regarding U.S. property in the Panama Canal Zone also provides strong evidence that no promised disposition of public property can be made to Panama, or to any foreign sovereign, by a treaty except "subject to the enactment of legislation by the Congress." Other treaties which have been cited as disposing of territory without congressional authorization are not treaties of cession but are rather treaties of recognition by which disputed claims to territory are adjusted and through which boundaries have been stabilized.

The judicial authorities are, in the main, inconclusive. However, those cases in which the extent of the power of Congress to dispose is controlling, notably Sioux Tribe of Indians against United States and Wisconsin Central R.R. Co. against Price County do hold that the power of Congress is an exclusive power. These holdings are consistent with Story's remarks in his famous commentaries on the Constitution of the United States:

> The power of Congress over the public territory is clearly exclusive and universal.

Virtually all other cases which have been cited by both sides provide dicta only and ought to be ignored.

Inasmuch as the weight of the evidence does, therefore, indicate that Congress has exclusive power to dispose of U.S. property in the Isthmus of Panama, if such disposition is deemed to be desirable, then a statute authorizing it is required or else the disposition will be void. Treaties, like statues, can be declared unconstitutional. This point is borne out by the following testimony of Prof. Raoul Berger given before the Subcommittee on Separation of Powers:

> Professor BERGER. In my view any attempt of disposition without getting the concurrence of the Congress, including the House, would be void.
>
> Senator HATCH. That is a strong statement.
>
> Professor BERGER. If I am right, if there is no "concurrent jurisdiction" to dispose of property in the executive branch, if that power is exclusively in Congress, then the President oversteps his bounds. That is unconstitutional, and if it is unconstitutional, it is void.

Now, Mr. President, there remains one final matter to clear up before I conclude my remarks. Dean Louis Pollak, of the University of Pennsylvania Law School, has provided an extremely misleading

memorandum which purports to support the theory that a property disposal can legally occur by operation of a treaty. As I pointed out yesterday, Dean Pollak's work is based on an erroneous understanding of the question at issue. In essence, Dean Pollak sets up the "strawman" that proponents of the pending amendment are arguing that a treaty cannot deal with the subject matter of public property disposal. That has never been the contention of the proponents of this amendment, and I hasten to add that no great abilities in legal scholarship are required to demolish rapidly any proposition that asserted the President with the Senate could not conclude a treaty which dealt with a disposal of U.S. public property. No, Mr. President, the issue is not the power of the President, with the advice and consent of the Senate, to make a treaty which contains subject matter related to a disposal of property. The issue is whether the disposal can be effected by treaty without congressional authorization or action.

But let us look at some of the means by which Dean Pollak knocks down this strawman position he has outlined for the proponents of the pending amendment.

First, Dean Pollak states that during the discussion of the Jay Treaty in the early history of our country, John Marshall in the Virginia legislature almost 2 centuries ago supported this brand-new concurrent power-to-dispose theory advanced by the Dean and others by saying—this is John Marshall talking in the Virginia legislature—that the Jay treaty did not in any way violate the Constitution even though others asserted it did because it dealt with matters relating to commerce whereas the Constitution had given power to regulate commerce to Congress. Marshall's position, according to Pollak, was that:

> A treaty is a completely valid and obligatory contract when negotiated by the President and ratified by him with the assent and advice of the Senate, as if sanctioned by the House of Representatives also, under a Constitution requiring such sanction.

Obviously, I do not in any way disagree with this position. Obviously, this is exactly what we are talking about when we emphasize the need for the adoption of the pending amendment. A treaty clearly can obligate the disposal of public property as a matter of international law, yet the disposal cannot legally occur as a matter of domestic law unless Congress sees fit to exercise its power to dispose. Until that power is exercised, any action purporting to transfer title is illegal, unconstitutional, and void. Thus, it is critical in the context of this proposed Panama Canal Treaty that Panama understand on the international plane the provision of our own Constitution here in the United States which forbids any actual transfer, notwithstanding what the treaty may say, without full congressional authorization and action by statute. This fact will remain even if the pending amendment is not adopted. But I digress. My point is that the use of the quotations from the debate of the Jay Treaty typifies the complete failure of Dean Pollak to understand what is at issue.

Pollak also quotes Story as support for the concurrent power theory; in fact, the best indications are that Story would strongly support the construction of the Constitution I find controlling. But Dean Pollak uses Story as a means of demolishing his strawman by

quoting Story's acknowledgment of the clear fact that the treaty power is not limited by the legislative power in terms of the subject matter which may be addressed in treaties; that is, any subject matter which is proper for negotiation between sovereign nations; however, Dean Pollak does not explain that Story also expressed the view that the treaty power was limited in terms of the exercise of specific means by other express powers granted in the Constitution and limited additionally in terms of subject matter by the basic structure of the government. Thus, Story stated that:

> A treaty to change the organization of the government * * * to deprive it of its constitutional powers, would be void.

Hence, as indicated by Professor Berger, Story would be in agreement that a treaty depriving the Congress of a constitutional power would be, at least insofar as it caused such deprivation, entirely void and inoperative. Story's position, Dean Pollak to the contrary, does not stand in opposition to the position of the proponents of this amendment. In fact, Story's statement that "the power of Congress over the public territory is clearly exclusive and universal," coupled with his view that a treaty depriving a constitutional power would be void, gives clear evidence of his proper understanding of the Constitution and of Dean Pollak's wholesale failure to appreciate the question actually involved in this debate.

Again, Dean Pollak—and I might add also my distinguished colleague from Idaho, Senator Church—uses a respected authority from the past as an agent of destruction of the strawman position outlined by the opponents of the pending amendment as the position of the proponents. Dean Pollak in this instance states that Calhoun, speaking as a Congressman, observed that:

> The grant of power to make treaties is couched in the most general terms.

He also quotes, but makes no comment on, Calhoun's statement that:

> Whatever limits are imposed on those general terms granting the power to make treaties ought to be the results of the construction of the instrument [the Constitution].

Calhoun's statement then, accords exactly with the position I have asserted since the beginning of this debate, namely, that the text of the Constitution itself is the best way to determine the limitations on the employment of treaties to accomplish particular results. In line with this thought, Calhoun further stated, and ironically this is even quoted in Dean Pollak's paper, that:

> Most certainly all grants of power under the Constitution must be controlled by that instrument; for, having their existence from it, they must of necessity assume that form which the Constitution has imposed.

He thus says, and this is extremely important, Mr. President:

> No treaty can alter the fabric of our government, nor can it do that which the Constitution has expressly forbade to be done; nor can it do that differently which is directed to be done in a given mode, all other modes prohibited.

Calhoun goes ahead immediately in this argument to cite as an example of a function directed to be accomplished in a given mode and prohibited to be done in all other modes, the power to commence war with another state. Thus, Calhoun understood well that the express grant of power to Congress to declare war specifies a

given mode and thereby excludes all other modes, both by the rule of express mention and the rule that the specific governs the general. Please note, Mr. President, that the power to commence a war with another State is vested in the Congress in exactly the same terms as power to dispose of public property:

> Congress shall have power to declare war—Congress shall have power to dispose of territory or other property belonging to the United States.

In other words, since the mode is specified in both cases, and I might add in many other cases, all other modes not specified are excluded and a treaty made under the general treaty power may not propose to take of itself action in a mode different from that expressly and specifically set forth in the Constitution. This point was understood by Calhoun; I hope Senators will understand it today, Dean Pollak and a host of professors notwithstanding.

Mr. THURMOND. Will the distinguished Senator yield?

Mr. ALLEN. I yield to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the Hatch amendment.

This amendment goes to the heart of a key issue concerning this treaty—the right of the House of Representatives to act under its powers to dispose of U.S. property.

Article IV, section 3, clause 2 of the Constitution of the United States of America provides:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

The framers of the Constitution have once again shown their wisdom and great foresight in requiring the Congress, not just the Senate, not just the House, and not just the President to dispose of U.S. territory.

Mr. President, I support this amendment for the following reasons:

First. The Constitution clearly says that the Congress has power to dispose of U.S. territory.

Second. The House of Representatives will have no vote on whether or not the United States should dispose of an $8 to $10 billion asset unless this amendment is passed.

Third. Prior practice in disposal of territory in Panama supports the proposition that disposal of U.S. territory requires approval by both Houses of Congress.

Fourth. The 1903 treaty was entered into because of powers granted by the Congress—the Spooner Act of 1902.

Fifth. Numerous legal scholars have found that congressional approval is required as regards the Panama Canal Treaty.

Sixth. Precedent for the President to dispose of U.S. territory through treaties will be set if the House is excuded as the executive branch proposes.

Mr. President, I wish to draw the Senators attention to the fact that many of this country's greatest legal scholars have testified that the Constitution requires both Houses of Congress to act to dispose of U.S. territory.

Raoul Berger, former professor at the Harvard Law School and a leading authority on American constitutional law, testified on this subject before the Subcommittee on Separation of Powers of the Committee on the Judiciary. His position is that no property belonging to the United States in the Isthmus of Panama transferred to Panama by treaty alone, but that article IV, section 3(2) of the Constitution requires authorization by the Congress. He went on to say that any treaty purporting to transfer such property would be void, even if ratified.

Professor Berger stated:

I want to make clear that I am for the Panama Canal Treaty as a matter of personal judgment. I am not here in any way to discredit President Carter.

Professor Berger explained the Attorney General's and the State Department's position on this matter by saying:

Long experience has led me to be skeptical of arguments by representatives of the executive branch when they testify with respect to a dispute between Congress and the President, for they are then merely attorneys for a client, the President.

Professor Berger summed up the importance of this issue by testifying—

The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for concurrent jurisdiction of the President in the disposition of U.S. property. Acquiescence in such claims spells progressive attrition of congressional powers, it emboldens the executive to make ever more extravagant claims.

Mr. President, the Senate should insist on respect for constitutional boundaries to warn the Executive against assuming powers reserved for Congress. By doing this we will put foreign nations on notice that treaties for the disposal of U.S. territory must first have the approval of Congress.

Professor Berger went on to say:

In my judgment, the Panama Treaty should contain a provision making it subject to approval of the Congress.

That is exactly what this amendment proposes.

He concluded his testimony by indicating—

Finally, if the President may not by Treaty "bypass" the power of the House to originate revenue—raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the territory and property of the United States.

Another attorney, Mr. George S. Leonard, with considerable background and experience in constitutional matters, also testified before the Senate Subcommittee on Separation of Powers of the Judiciary Committee on this point. He said:

Actually, what we did find was that there have been many rulings by the Courts that such an authority does not exist and that the President's treaty power is limited whenever primary authority has been granted to another branch of Government by the Constitution.

Charles E. Rice, professor of law at the University of Notre Dame Law School, offered still another opinion before the Senate Subcommittee on Separation of Powers. He stated:

Congress power in this area ought to be regarded as exclusive. The American people ought to be deprived of their territory and property only by action of that governmental body most responsive to public opinion. That body is the entire Congress and most especially the House of Representatives.

Mr. President, 235 Members of the House have gone on record in support of a House vote on the disposition of property in the Panama Canal Zone, over 54 percent of that body. The resolution introduced in the House calls for the House, as well as the Senate, to vote yes or no on the transfer of canal property.

I would like to read to the Senate a part of a letter I received from Congressman George Hansen of Idaho. He says:

> Well over 100 members of each political party are co-signers and both pro-treaty and anti-treaty people are included, all of whom see an issue at stake separate from and of even greater concern than the proposed transfer of the Panama Canal. It is so critical that many members are co-sponsors who normally would not become involved, such as Committee Chairmen and other members of party leadership on both sides.

Of course, the House will have to vote on the implementing legislation for these treaties, but that will be after the disposition has already been made. If the administration prevails and this amendment is not adopted, the House will only have the opportunity to vote after the fact, as the United States will already be committed by these treaties.

Mr. President, this amendment is a good amendment. It merely tries to get into the treaty what our Constitution already requires.

Even the treaty proponents cannot call this a killer amendment. As my distinguished colleague from Alabama (Mr. Allen) ably pointed out yesterday, this amendment requires absolutely no action or concession on the part of Panama. The only effect of this amendment is to uphold article IV, section 3, clause 2 of the Constitution of the United States and allow the Congress to vote on whether or not an $8 to $10 billion asset of the United States is surrendered.

Mr. President, this is an extremely important constitutional question facing us in the Senate now. Under the separation of powers doctrine, we have three coequal branches of Government. Each branch has specified duties under the Constitution and neither branch is to intrude on the authority of the other two.

The Constitution explicitly states that the Congress shall have the power to dispose of U.S. territory. It does not say that the President, under his treaty power, shall be able to dispose of U.S. territory. The Supreme Court has said time and time again that express mention signifies implied exclusion. That rule of law appears to me to be applicable here.

I urge my colleagues to think about the precedent being set here. Do we want the President, through his treaty power, to have the authority to dispose of U.S. territory without the consent of Congress? A vote against this amendment is a vote to increase the power of the executive at the expense of the Congress. Let us uphold our Constitution and support this amendment.

Mr. President, I ask unanimous consent that a list of cases supporting my position on this matter be printed in the Record at this point.

There being no objection, the list was ordered to be printed in the Record, as follows:

1. Wisconsin Cent. R. R. Co. v. Price County, 133 U.S. 496 (1890).
2. Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952).
3. 22 Op. Atty. Gen., 544, 545 (1899).
4. Osborne v. United States, 145 F. 2d 892 (9th Cir. 1944).

5. Sioux Tribe of Indians v. United States, 316 U.S. 317 (1942).
6. U.S. v. Nicoll, 27 Fed. Case 15879 (pp. 149–50).
7. The Cherokee Tobacco, 11 Wall. (78 U.S. 616, 620 (1871)).
8. Emblen v. Lincoln Land Co., 184 U.S. 660 (1902).
9. Sierra Club v. Hickel, 433 F. 2d 24 (9 Cir. 1970) Aff'd 405 U.S. 727 (1972).
10. United States v. Fitzgerald, 40 U.S. 785 (1841).
11. Sere v. Pitot, 6 Cir. (10 U.S.) 332 (1910).
12. American Inc. Co. v. Canter, 1 Pet. (26 U.S.) 511 (1828).

Mr. THURMOND. I yield the floor, Mr. President.

Mr. HATCH. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator has 3½ minutes remaining.

Mr. HATCH. I yield the time to the Senator from Maryland.

Mr. SARBANES. Mr. President, before the debate on this amendment concludes, there are a couple of points I wish to make. These points are addressed to assertions made in the opening statement of the distinguished Senator from Utah; assertions which I do not wish simply to leave in the Record as made, because they really do require correction. The first deals with his handling of the testimony of the Attorney General before the Committee on Foreign Relations.

I am going to read the statement that the Senator from Utah made in that regard then I am going to seek to place it in its correct perspective, and have printed in the Record an insert which I think will make the point clear.

The Senator from Utah said:

Significantly, the committee report makes no mention of the argument based on the Framers' intent that was propounded by the Attorney General when he testified before the Foreign Relations Committee. In his prepared statement to the committee on September 29, 1977, Attorney General Bell made reference to four separate events that occurred during the course of debate on the framing and adoption of the Constitution. He thought it significant, for example, that George Mason of Virginia had observed "that the Senate by means of a treaty might alienate territory, etc., without legislative sanction." Mason's actual words, as reported in Farrand, were that:

He was extremely earnest to take this [appropriation] power from the Senate, who he said could already sell the whole Country by means of Treaties. (Farrand, II, 297).

From this, Bell deduced that Mason's remark indicated that the Framers were supportive of the idea that the President should have the power to dispose of property by a self-executing treaty.

Now, what the Senator from Utah has done is set out the Attorney General's quotation from George Mason of Virginia "that the Senate by means of a treaty might alienate territory, et cetera, without legislative sanction."

The Senator from Utah then went on to say:

Mason's actual words as reported in Farrand were that——

He then quotes Mason and goes on to say:

From this—

Meaning the words that he quoted from Mason—

Bell deduced.

The fact is that Mason's actual words were exactly what the Attorney General said Mason's actual words were.

On the same page which the Senator from Utah cites for his quote from Mason appears the following report by Farrand of the records of the Federal Convention:

Colonel Mason did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory, and so forth, without legislative sanction.

What the Attorney General said in his testimony before the Foreign Relations Committee on this very issue, in quoting Mason, followed exactly the reported quotation from Mason. Thus, the Attorney General in his testimony before the committee stated:

Thus Colonel Mason observed, "The Senate by means of a treaty might alienate territory, and so forth, without legislative sanction."

That is exactly the quotation that appears in Farrand at page 297—the same page from which the Senator from Utah quoted another statement by Mason and said, in commenting on the Attorney General's statement, those were the actual words of Mason. In fairness to the Attorney General, I think it important that this point be made.

Mr. President, I ask unanimous consent that page 297 from the records of the Federal Convention of 1787, edited by Max Farrand, volume II, page 297, on which page the quotation from Colonel Mason cited by the Attorney General appears, as well as the quotation of the Senator from Utah, be printed at this point in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE RECORDS OF THE FEDERAL CONVENTION OF 1787, EDITED BY MAX FARRAND, REVISED EDITION IN FOUR VOLUMES: VOLUME II—NEW HAVEN, YALE UNIVERSITY PRESS; LONDON, HUMPHREY WILFORD, OXFORD UNIVERSITY PRESS, 1937

Mr. Strong move(d)[7] to amend (the article so as to read—"Each House shall possess the right of originating all bills, except bills for raising money for the purposes of revenue, or for appropriating the same and for fixing the salaries of the officers of the Govt. which shall originate in the House of Representatives; but the Senate may propose or concur with amendments as in other cases")[8]

Col. Mason. 2ds. the motion. He was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties.

Mr. Ghorum urged the amendments as of great importance. The Senate will first acquire the habit of preparing money bills, and then the practice will grow into an exclusive right of preparing them.

Mr. GOUVERNR. Morris opposed it as unnecessary and inconvenient.

Mr. WILLIAMSON. Some think this restriction on the Senate essential to liberty—others think it of no importance. Why should not the former be indulged, he was for an efficient and stable Govt.: but many would not strengthen the Senate if not restricted in the case of money bills. The friends of the Senate would therefore lose more than they would gain by refusing to gratify the other side. He moved to postpone the subject till the powers of the Senate should be gone over.

Mr. Rutlidge 2ds. the motion.

Mr. Mercer should hereafter be agst. returning to a reconsideration of this section. He contended, (alluding to Mr. Mason's observations) that the Senate ought not to have the power of treaties. This power belonged to the Executive department; adding that Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Commerce with France.

Col. Mason, did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c. without legislative sanction.

Mr. SARBANES. Mr. President, I also want to address the Senator's treatment of a section of the committee report asserting that hundreds of self-executing treaties dealing with such subjects as

[7] The Journal reports a previous motion, see above note 2.
[8] Revised from *Journal*.

foreign commerce, copyrights, patents, and postal services are valid.

I am now going to quote from the committee report, where it deals with the discussion of the concurrent powers for disposing of property, and the use of the treaty power in this regard. In addressing itself to the constitutional text, the committee report stated at pages 65 and 66 of the report, and I am now quoting:

> First, the constitutional text gives no reason to assume that the power to dispose of property may be exercised only by statute, and not by treaty. The disposal-of-property clause is drafted in the same way as the provision conferring enumerated powers upon the Congress (article I, section 8): both say that Congress "shall have power. . . ." Where two substantively similar provisions of the Constitution are in their jurisdictional terms worded identically, and where one of those provisions has been construed as conferring concurrent power, it is not unreasonable to construe the other provision also as conferring concurrent power. It has long been established that article I, section 8 of the Constitution confers concurrent power—that the enumerated powers conferred upon the Congress therein may be exercised both by statute and by treaty. To hold that the enumerated powers are by implication excluded from the treaty power would be to hold that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are invalid.

Now, the Senator from Utah quoted that section of the committee report in his statement. I might add that I think—and we have done that on the floor—that we could greatly develop this part of the report with respect to an analysis of the constitutional text to support the proposition which this section of the report supports. This development, in terms of a textual analysis of article IV and articles I and II of the Constitution and the relationship of the treaty power to the power of Congress has been done earlier in the course of debate on these treaties.

In any event, that section was quoted from the report by the Senator from Utah, including in particular this sentence:

> To hold that the enumerated powers are by implication excluded from the treaty power would be to hold that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are invalid.

Later in his statement, the Senator from Utah, in addressing this section of the committee report, states the following:

> One of the so-called long established examples specifically mentioned by the committee are hundreds of self-executing treaties dealing with postal services. What is the basis for this claim?

He then goes on to cite from Miller, to say that while there have been some treaties dealing with postal services, many such arrangements have not been done by treaty, and raises the point that there are not hundreds of treaties dealing with postal services. Of course, that is not the assertion that was made in the committee report.

The assertion in the committee report was that hundreds of self-executing treaties deal with such subjects as foreign commerce, copyrights, patents, and postal services. Yet, when the Senator from Utah deals with that aspect of the report, he speaks in terms of hundreds of self-executing treaties dealing with postal services. That was not the assertion that was made. The Senator obviously knew the assertion that was made, because he had quoted it himself not much earlier in the debate.

Mr. President, I have just taken a few moments to make these two points because in one instance it was asserted, in effect, that the Attorney General was not properly quoting Mason but merely drawing a deduction from a quotation, when, in fact, he was using a direct quotation; and in the other instance, because after quoting the committee report, which referred to hundreds of treaties, on a number of subjects one of those subject matters was picked out, and the assertion was made that there were not hundreds of treaties on that one subject.

I think it is important that the record be corrected with respect to those two flagrant errors, and I must state that only the limitations of time inhibit us from bringing forth other comparable examples to the Senate.

Mr. CHURCH. Mr. President, the Senator from Utah has spoken at length on behalf of his amendment. As I have listened to the Senator, however, I have often wondered whether he and I were addressing the same issue. The Senator has referred again and again to the impending threat of an unwarranted usurpation of power by the President. He has reminded us of attempts by a succession of Presidents to circumvent the participation of the Senate in foreign relations, and exhorted his colleagues to stand fast against further intrusions by the Executive. The Senator has thus attempted to frame the issue as one involving an assertion of executive power in derogation of that of the Senate. If this were the issue, as I have previously indicated, I would not hesitate to support the Senator. It is not, however.

What is at stake here is the scope of the treaty clause, a power shared by the President and the Senate. The Executive has made no claim that it may enter into agreements disposing of property rights of the United States without the advice and consent of the Senate. It has disavowed such a claim, and rightfully so. It is the Senator from Utah who argues for a limitation of the prerogative of the Senate to participate in foreign relations. He contends that where a power is expressly granted by the Constitution to the Congress, it is ipso facto removed from the scope of the treaty clause. I agree with the Senator that the manner in which the Senate resolves this question will have a profound and far-reaching effect. If the Senator's amendment is adopted, the powers of the Executive will not be diminished, since the Executive is not claiming for itself the power to dispose of property or to exercise any of the enumerated powers of Congress. What will be diminished is the prerogative of the Senate—and the Senate alone—to advise and consent to the conclusion of treaties. The essential premise of the Senator's amendment is that powers expressly granted to Congress may not be exercised under the treaty clause without concurrence of the House of Representatives. If the Senate accepts this premise, it will have acquiesced in a curtailment of its role in foreign affairs as drastic as anything heretofore attempted by any President.

THE "EXCLUSIVITY" OF CONGRESSIONAL POWER

The Senator from Utah has gone to considerable lengths to demonstrate that the power granted by article IV, section 2, clause 3 to dispose of property is an "exclusive" power. Numerous authorities

are cited in support of this contention. Having established this fact, he then contends that proponents of the treaty are attempting to create an exception to this rule of exclusivity. This is a remarkable exercise in circumlocution. It serves to mask the fact that he is the one who is arguing for a vast exception to the universally accepted rule that the treaty clause encompasses all matters which are the proper subject of international agreement *(Asakura* v. *City of Seattle,* 265, U.S. 332 (1924), and that there exists no precedent to support his position.

Without exception, the cases and other precedents cited by the Senator establish one of two points: First, that the States may not interfere with the power of the Federal Government to regulate Federal property; or second, that the Executive, acting alone, may not dispose of or regulate property of the United States. These points are not at issue. In this sense, the property disposal power can be said to be "exclusive."

Let us look closely at the authorities cited by the Senator from Utah.

First he cites Justice Story in his "Commentaries on the Constitution." The section of Story's commentary he cites volume II, section 1328, however, deals not with the exclusivity of the power of the Congress in relation to the treatymaking power, but rather in relation to the power of the States to regulate Federal territories. Indeed, in the same treatise Justice Story discusses the treaty-making power in relation to the enumerated powers of the Congress and notes that—

> The power "to make treaties" is—by the Constitution—general; and of course it embraces all sorts of treaties, for peace or war; for commerce or territory . . . and for any other purposes, which the policy or interests of independent sovereigns may dictate in their intercourse with each other. III J. Story, "Commentaries on the Constitution of the United States" (1843) 355.

Justice Story, in a letter dated April 17, 1938, responded to a request by Governor Everett of Massachusetts for his views in connection with the proposed treaty with Britain regarding the Maine boundary. Story quoted with approval a conversation he had had some years earlier with Chief Justice Marshall:

> He [Marshall] was unequivocally of the opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases * * *

By this limitation Marshall was obviously referring to the cession of the territory of the States. Certainly Justice Story cannot be cited as support for the argument that property rights cannot be transferred by treaty.

The Senator from Utah also cites an 1899 opinion of the Attorney General for the proposition that the power of Congress is exclusive. He fails to note that the opinion had to do with whether the executive could transfer public lands and public property in Puerto Rico to individuals. The Attorney General found that the executive could not do so without statutory authority. Clearly a statute was the exclusive means to dispose of property available in this situation, since treaties cannot be concluded with individuals.

Similarly the Senator's citation of an opinion of Attorney General Stone (34 op. Atty. Gen. 322–323) is not on point. This opinion addressed the question of whether patents could be disposed of to

individuals by the executive alone. It was found that such disposals could not be effected without the consent of Congress. Again, the treaty power did not constitute an alternative to statutory authority inasmuch as treaties cannot be entered into with individuals but only with foreign nations.

The Senator then goes on to cite as authority for his position a series of cases involving attempts by States to regulate Federal property, including *Wisconsin Central R.R. Co.* v. *Price* 133 U.S. 496 (1890), *United States* v. *California,* 332 U.S. 19 (1947), *Gibson* v. *Chouteau, 80* U.S. (13 Wall.) 92 (1872) and *Utah Power and Light Co.* v. *U.S.* 243 U.S. 389 (1916). Nothing in any of these cases is remotely related to the treatymaking power. Rather, all stand for the widely accepted proposition that the power of the Federal Government to legislate with respect to Federal territory is exclusive of such a power in the several States.

The one case cited by the Senator from Utah in support of his argument with respect to exclusivity which has anything to do with the treatymaking power is the case of *Sioux Tribe of Indians* v. *U.S.,* 316 U.S. 317 (1942). As the Senator correctly noted, the Court stated that—

> Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in the lands must be traced to congressional delegation of its authority.

What the Senator fails to address is the Court's view, expressly recognized twice in that opinion—indeed on the same page of that opinion—as to the type of legislative action that could constitute such a "congressional delegation of its authority."

The Court stated unequivocally that Indians must be compensated for land which is granted to them "by the terms of a treaty or statute" 316 U.S. at page 326.

This is an extremely important point. Not only does the statement of the Court stand for the proposition that property rights of the United States may be transferred either by the terms of a treaty or by statute alternatively; it clearly recognizes what the Senator from Utah has attempted to obscure—that the Senate, in exercising its power to approve or disapprove to a treaty, is exercising a legislative function. Again this is not an issue of the power of the executive versus the power of the legislative branch. Rather, it is an issue derived from the attempt of the Senator from Utah and his colleagues to contend that the legislative authority may be exercised only in one manner—namely, by the passage of a statute by simple majority in both Houses of the Congress. In doing so he ignores the other mode of exercising legislative authority clearly and unequivocally established by the Constitution—namely, the power of the Senate by an extraordinary two-thirds majority to approve, or failing such a two-thirds majority, to disapprove, treaties submitted to this body—which upon ratification become the supreme law of the land by virtue of article VI of the Constitution.

The Senator from Utah attempts to extend vastly the scope of the precedents he has cited, which support only the simple proposition that the States and the Executive cannot dispose of property absent legislative authorization. He would have them support the proposition that the grant of express authority to Congress to dispose of property rights not only precludes the exercise of this

authority by the States and the Executive, but removes this power—and by necessary implication all others granted to Congress—from the scope of the treaty clause.

The Senator offers no precedents in support of this long-abandoned reading of the Constitution, and in fact, none exists. As I will discuss later, ample precedents do exist in support of the opposite conclusion: that enumerated powers of Congress—including the power to dispose of property—may also be exercised under the treaty clause unless they are expressly limited to legislative action.

Despite, or perhaps because of, the lack of any applicable precedents, the Senator from Utah attempts to make his point by impugning the accuracy and integrity of the report of the Committee on Foreign Relations and by a tortured reading of the testimony of the Legal Adviser of the Department of State. The Senator, for example, implies that the committee's report distorts the conclusion reached in an 1899 opinion by the Attorney General. I am of course thoroughly familiar with the Committee Report, and I have read the quote from the Attorney General's opinion cited by the Senator. The Senator attempts to create a discrepancy where none exists. As I indicated earlier, the question presented to the Attorney General was whether the Executive, acting alone, could dispose of U.S. property in Puerto Rico. His answer, as the committee report notes, was in the negative. He noted, quite correctly that Congress was empowered to dispose of property rights. As the committee report states, the question of whether the President and the Senate may dispose of property rights under the treaty clause was not the issue presented to the Attorney General, since a treaty was not an option available on the facts of the case. I find the Senator's attack on the veracity of the committee's report both bewildering and regrettable; the opinion stands precisely for the proposition for which it was cited in the report.

I am equally mystified by the Senator's assertion that the Department of State somehow has been inconsistent and has "conceded" the point at issue. The State Department's position has been entirely consistent. On one occasion the Legal Adviser testified that article IV did not make "the power of Congress with respect to the disposition of property" exclusive. On another, he stated that article IV does not make "the legislative power the exclusive method to effect such disposition." On both occasions, Mr. Hansell unequivocally took the position that property rights could be disposed of under the treaty clause, as well as by the Congress. The Senator's attempt to wring an inconsistency and a concession from this slight variation in language reveals the poverty of his analysis.

THE CONSTITUTION DOES NOT PROHIBIT THE TRANSFER OF PROPERTY RIGHTS BY SELF-EXECUTING TREATY

The Senator from Utah notes, quite correctly, that the treaty power is not unlimited. It is well recognized that a treaty may not authorize what the Constitution prohibits, and the Senator correctly cites several cases in support of this proposition. But, as the Senator admits, the Constitution does not expressly prohibit the transfer of property of the United States. Nevertheless, the Senator

"assumes" that the Constitution prohibits the conclusion of treaties on subjects within the enumerated powers of Congress.

With all the due respect, the Senator's assumption cannot change the law. He cites no precedents in support of this asserted prohibition because there are none. On the contrary, numerous treaties have been concluded on subjects within the express legislative power of Congress. We are all familiar with the many treaties of friendship, commerce, and navigation we have entered into with foreign nations. Yet under the theory of the Senator from Utah all these treaties would be invalid since article I, section 8, of the Constitution gives "the Congress" the power "to regulate Commerce with foreign nations."

For example, in the case of *Geofrey* v. *Riggs,* 133 U.S. 258 (1890), the court held that a treaty regulating rights of French citizens to acquire property in the District of Columbia was valid and effective, notwithstanding that article I, section 8, clause 17 of the Constitution grants "the Congress" exclusive legislative authority over the district. Indeed, this is one of the primary cases cited by the Senator in support of his view, and yet the holding of the case is clearly inconsistent with that view. The Supreme Court has never invalidated a treaty, or considered it to be anything less than the "supreme law of the land," on the grounds that it dealt with a subject within the express legislative jurisdiction of the Congress.

In his remarks Monday, and again yesterday, the Senator contended that the treaty before us is not self-executing and thus requires implementing legislation. It is well established, as the Senator has stated, that certain obligations assumed by the United States under a treaty must be implemented by the passage of legislation. The Senator contends, however, that this is also the case where a treaty does not require the United States to perform a particular act but by its terms accomplishes that act. This statement of law is plainly erroneous. The leading case of *Foster* v. *Neilson,* 2 Pet (27 U.S.) 253, 312 (1829) which the Senator cited to support his proposition, establishes a quite different rule. There, the United States agreed that Spanish land grants "shall be ratified and confirmed." Justice Marshall held these words to be promissory in nature. They represented an undertaking to seek ratification by the legislature. Chief Justice Marshall distinguished language of this type from language which operates in the present. As example of the latter, he cites a statement that the grants in question "shall be valid" and "are hereby confirmed". If the latter language had been used, the treaty would have been self-executing, according to Marshall.

All this case holds, then, is that when by its terms a treaty is made contingent on a subsequent legislative action, it is not self-executing. That is a far cry from the proposition for which it is cited. Indeed, in *U.S.* v. *Percheman,* 32 U.S. 51 (1833), Chief Justice Marshall concluded, after further examination of the Spanish and English texts, that the language of this treaty was in fact self-executing and did not require legislation to give it effect.

When we apply the teaching of these cases, it becomes obvious that the present treaty, insofar as it transfers property to Panama, is by its terms self-executing. Article XIII(2) states that—

> The United States of America transfers * * * all right, title and interest the United State may have.

This language speaks in the present. It does not constitute a promise to act in the future. It is manifestly the language of a self-executing treaty.

Let us contrast this with the language of article V of the 1955 treaty with Panama, which was implemented by legislation. That article states:

> The United States agrees that, subject to the enactment of legislation by the Congress, there shall be conveyed.

It is clear that this stipulation for a conveyance was not self-executing. It is equally clear, by contrast, that articles VI and VII of that same treaty were drafted in self-executing language and transferred the property they covered without further legislative action. Indeed, the fact that these articles transferred property rights by their own force was expressly recognized by the Congress in the statute passed to implement article V (71 U.S. Stat. 509 § 102(b)). The conveyance in article XIII of the present treaty is drafted in the same, unequivocal, self-executing language.

The Senator places great weight on Prof. Quincy Wright in his work "The Control of American Foreign Relations" (1922), quoting part of a sentence out of context. While it is correct that Wright draws a distinction between treaties creating obligations on private individuals and/or public authorities, he does so only as a general proposition. Moreover, his statement refers only to those treaties requiring the cession of territory. When he gets to the specific matter of treaties of cession, rather than for cession, Wright states:

> Treaties or arbitration awards may require a cession of territory. Such provisions affecting small tracts of territory in boundary settlements have been considered self-executing. The same view would probably be taken of a large cession if conditions were such that it could be considered constitutional.

This is precisely the opposite point of view from that for which the Senator cited Professor Wright.

The Senator from Utah also attempts to draw support from the Convention of 1815 with Great Britain. He contends that, as a result of the debate on that Convention, "Congress adopted the view that a treaty ceding territory is not self-executing and requires legislative implementation to be effective." In support of this assertion he cites the report of the managers on the part of the House. The managers of the Senate did not include any such statement in their report, but rather stated "that of the treaties made in pursuant of the Constitution, some may not, and others may call for legislative provisions to secure their execution" (27 Annals 159). On the issue directly involved, the House receded from its objection (29 Annals 1059). Thus the incident settled that treaties may be self-executing, although they deal with subjects within the enumerated powers of Congress. (2 Story 609).

The Senator's attempted reliance on a 1907 memorandum approved by the Secretary of State is equally misplaced. That memorandum merely recognizes that under the Constitution certain functions such as the appropriation of funds and the raising of revenues can only be accomplished by legislative action. These functions are "expressly confided"—that is, the Constitution by its

terms expressly limits their performance—to the Congress. Thus, treaties cannot be self-implementing with respect to those functions. This is not true of the power to dispose of property, which by the terms of the Constitution is not expressly limited to the Congress.

In all previous agreements with Panama it would seem that all cessions of property belonging to the United States have been based on Congressional approval.

It may seem so to the Senator, but only because he chooses to ignore a number of instances in which property rights were transferred to Panama by self-executing treaty. Examples of these transfers were included in the committee's report.

Article II of the 1936 treaty of friendship and cooperation (10 Bevans 742) relinquished to Panama a prior grant of rights in perpetuity of the United States to use certain lands and waters outside the Canal Zone. This transfer was effected without implementing legislation or authorization by Congress. Article II of the treaty of 1950 ceded tracts of Canal Zone land adjoining the city of Colon to Panama. Again, no implementing legislation was called for by the treaty or enacted. As I indicated earlier, articles VI and VII of the treaty of 1955 transferred certain real property to Panama. Unlike article V of the same treaty, which by its terms was intended to be non-self-executing, articles VI and VII did not call for and were not implemented by statute. The Senator's history is thus very selective.

It is true that in 1932 and in 1942 congressional authorization was sought for executive agreements transferring property to Panama. It is also irrelevant to the present discussion that authority was sought, since the Executive has not contended that it may dispose of property outside the treaty process without the authorization of Congress. Senator Connally's remarks, which Senator Hatch cites, must be viewed in this context. It is significant that Senator Connally, as chairman of the Foreign Relations Committee, reported out the 1950 treaty. That treaty also transferred property rights to Panama. There was no suggestion in that report that implementing legislation was required to effectuate the property transfers made by that treaty.

Aside from the inadequacy of the Senator's legal analysis, I find particularly disturbing his attack on the report of the Committee on Foreign Relations, and his statement that "the Senate alleges that the committee's report fails to discuss the question of whether this treaty is self-implementing. The question of implementation has been raised only with respect to the transfer of property. The committee took testimony on this subject—the question of whether the concurrence of both Houses of Congress was required for property transfers—from several witnesses, including the Attorney General and the legal adviser of the State Department, and that testimony is included in the committee's hearings.

The Senator devoted a great deal of time in his remarks yesterday and Monday to an attack on the committee report. He impugns the integrity of the committee's analysis of this issue, in an intemperate, and often peevish way. For example, the Senator finds the first sentence of the report, which reads "The Constitutional text gives no reason to assume that the power to dispose of property

may be exercised only by statute, and not by treaty" to be "obviously irrelevant" since the question is whether property could be disposed of by self-executing treaty. Since the treaty before the committee was, by its terms, self-executing, this clearly is the type of treaty to which the report referred. How could the Senator believe that the committee was devoting a large segment of its report to an issue that no one has ever raised? Obviously the issue under discussion was the issue before us—the issue of the transfer of property rights by self-executing treaty. It is also clear that the quoted sentence is correct with respect to self-executing treaties, as the report itself demonstrates in some detail.

The Senator from Utah dwelt at some length on the second and third sentences on the report, which note that power under articles I and IV is granted by identical language, that certain article I powers can admittedly be exercised by self-executing treaty, and that it is therefore not unreasonable to construe article IV as also conferring a concurrent power. The Senator labels this statement "false and misleading," but is unable to answer it. He contends that the logic of the report necessitates the conclusion that all enumerated powers of the Congress may be exercised by the President and the Senate under the treaty clause.

A bit later, however, he acknowledges that the report cites several examples of Congressional powers which may not be exercised by treaty. The report notes that the power to appropriate money or to impose taxes cannot be exercised by treaty because the Constitution specifically limits their exercise to action by both Houses. The Senator then argues that since the committee recognizes that these powers are exclusively legislative and since the courts have held that the property disposal power is "exclusive," the committee has therefore conceded that the property disposal power may not be exercised by treaty.

This contention reveals the most persistent fallacy of the Senator's entire argument. The disposal power has been held to be "exclusive"—exclusive of the powers of the states or of the Executive acting alone. No court has ever held that this power is exclusive of the treaty-making power; on the contrary, the courts have upheld the validity of several self-executing treaties which transferred property rights. Numerous treaties of this type have been concluded. The revenue and taxation powers, on the other hand, are limited by the terms of the Constitution to statutory action. They have never been exercised solely by treaty. This distinction is elemental and obvious. It is amazing that the Senator finds it so difficult to understand.

Similarly, the report notes that the power to declare war, while not expressly limited to legislative action, has always been regarded as so limited. The Senator from Utah contents that the "legislative history of the territorial clause" indicates that this power is solely reserved for legislative action. To what history does the Senator refer? He has cited none. In fact, as I and other Senators have pointed out, the legislative history and judicial construction of this clause supports exactly the opposite conclusion.

INTENT OF THE FRAMERS

The Senator from Utah, in his remarks yesterday, failed to offer any evidence to support his claim that the framers of article IV intended to limit the scope of the treaty clause. His efforts were again limited to irrelevant or inaccurate attempts to disparage the committee report. Typical of these is his labeling of the committee's statement that the framers "rejected all proposals to limit the treaty power" as false because it creates the impression that the treaty power is absolute and unlimited. No such impression could be created in a reasonable mind, particularly since the committee report acknowledges that several limitations exist on the treaty power. The report merely states a fact: that proposals were made to limit the treaty power, and were rejected. The Senator is unable to challenge that fact.

The Senator's criticism of Attorney General Bell's testimony reveals a similar inattention to the facts. The Attorney General testified that Mr. Mason of Virginia had remarked that the treaty power extended to the disposition of property. Relying on the testimony of Professor Berger, the Senator from Utah points out that the cited remark was made before the debate on the property clause. Both the Senator and the Professor are apparently unaware that Mr. Mason made a similar remark in 1788 during the Virginia Convention. At that time, in the course of a discussion of the ability to alienate property by treaty, Mr. Mason stated that "The President and the Senate can make any treaty whatsoever." (3 Elliott 509.)

The Senator dismisses other arguments advanced by Attorney Bell on the basis that Professor Berger disagrees with these arguments. I suppose it must simplify the Senator's task considerably to accept without question the views of one scholar. I should point out, however, that a vast majority of Professor Berger's colleagues reject his view.

Several weeks ago, I introduced a statement by 15 eminent professors of constitutional law supporting the constitutional validity of transfer of property of self-executing treaty. Dean Louis Pollak of the University of Pennsylvania Law School has authored a detailed analysis, entered into the Congressional Record of January 30, 1978, which reaches a similar conclusion. In view of this weight of authority, the Senator's blind adherence to the views of one professor appears questionable.

Perhaps the most significant statement on this subject was made by President Washington in his message to Congress of March 30, 1796, (1 Messages and Papers of the Presidents 195). President Washington Stated:

> Having been a member of the General Convention, and knowing the principles on which the Constitution was formed, I have ever entertained but one opinion on this subject; and from the first establishment of the Government to this moment my conduct has exemplified that opinion—that the power of making treaties is exclusively vested in the President, by and with the advice and consent of the Senate, provided two-thirds of the Senators present concur; and that every treaty so made and promulgated thenceforward became the law of the land.
>
> * * * * * * *
>
> There is also reason to believe that this construction agrees with the opinions entertained by the State conventions when they were deliberating on the Constitution, especially by those who objected to it . . . because in treaties respecting

territorial and certain other rights and claims the concurrence of three-fourths of the whole number of the members of both Houses, respectively, was not made necessary.

President Washington's view accords with that of other framers of the Constitution who addressed this question. The Senator from Utah entertains a contrary view. I agree with George Washington.

JUDICIAL AUTHORITIES

Faced with a body of law which supports the authority of the President and the Senate to dispose of property by treaty, and with the absence of any case holding the contrary, the Senator from Utah finds little direct support for his position. He has again resorted to an attempt to disparage the committee report by raising meaningless distinctions.

He summarily dismisses the committee's citation of a number of cases suggesting that the Constitution does not forbid the transfer of property by treaty. The Senator from Utah charges that the committee avoids all mention of cases which hold that the Constitution forbids cesseions of territory by a self-executing treaty. I can assure my colleague that, were there any cases so holding, they would have been considered by the committee. In fact, there are none.

The Senator from Utah cites the case of *Sioux Tribe of Indians* v. *U.S.*, 316 U.S. 317 (1942) as directly contrary to the committee's conclusion. That case did not involve the validity of a treaty. It held, rather, that the President, by Executive order, may not grant title to property of the United States. That holding, while manifestly correct, is irrelevant to the issue of transfer of property by treaty. It in no way supports the Senator's position. In fact, the Court states—on the very page quoted by the Senator from Utah—that, unlike the case before it, the plantiff Indians would have been entitled to compensation if land had been granted to them "by the terms of a treaty or statute" (316 U.S. at 326). The Court thus expressly recognize the concurrent nature of the property disposal power, the very proposition which the Senator so firmly resists.

I confess that I am unable to fathom the Senator's analysis of *U.S.* v. *43 Gallons of Whiskey,* 93 U.S. 108 (1876). The case is cited by the report in support of the proposition that precedents involving treaties with the Indian tribes are opposite since, as the Court held:

> The power to make treaties with the Indian tribes is * * * co-extensive with that to make treaties with foreign nations.

The Senator from Utah does not challenge this holding but rather engages in an irrelevant and largely inaccurate discussion of the case. Contrary to the Senator's assertion, the case does not involve the regulation of the sale of liquor by act of Congress but by self-executing treaty. Thus, the Court stated that—

> Congress has not done this but the Constitution declares a treaty to be the Supreme law of the land * * * [N]o legislative action is required to put the seventh Article into force. 93 U.S. at 197.

Despite the fact that article 1, section 8, clause 3 of the Constitution expressly grants the Congress the power to regulate commerce with the Indian tribes, the Court in 43 Gallons of Whiskey upheld

the validity of a self-executing treaty on the same subject. The case thus supports the proposition that express legislative powers may be exercise under the treaty clause, and further undermines the Senator's theory of exclusivity.

Contrary to the Senator's suggestion, the validity of cases construing Indian treaties is no way impaired by the Indian Appropriation Act of 1871. That act incorporated all Indian lands as territory of the United States, and terminated the sovereignty of the tribes. The act, rather than nullifying the power of the President to make treaties with the tribes, as the Senator asserts, in fact terminated the capacity of the tribes to enter into treaties.

In the case of *Holden* v. *Joy* 84 U.S. 211 (1872) the Supreme Court states:

> * * * it is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to grantee a good title to such lands without an act of Congress conferring it.

This language obviously speaks precisely to the point at issue here. The Senator from Utah stated that this case is a precedent directly contrary to the committees position. I admire the Senator's tenacity in persevering despite such an unambiguous and dispositive statement by Supreme Court, but I must respectfully question his legal analysis.

The Senator states that the treaty at issue in Holden against Joy was authorized by prior act of Congress. This is flatly incorrect, as the Court noted at page 240 of its opinion:

> Attempt is made in argument to show that the * * * treaty was negotiated by force of the act of Congress, *but it is clear that the proposition cannot be sustained.* 80 U.S. at 240.

The Senator argues that the treaty in question did not involve a transfer of lands of the United States. Again, he is entirely mistaken. In the passage quoted above, the Court states the issue as whether the President and the Senate could "lawfully covenant that a patent should be issued to convey lands which belonged to the United States."

The Senator from Utah has made an equally tenacious and equally futile attempt to explain away the holding of *Jones* v. *Meehan,* 175 U.S. 1 (1899), where the Court states:

> The title to the strip of land in controversy having been granted *by the United States* to the elder chief *by the treaty itself* and having descended, upon his death * * * to his eldest son passed by the lease * * * to the plaintiffs for the term of the lease.

The Senator contends that no property of the United States was granted by the treaty, asserting that the Court's holding was based on a ruling of Attorney General Taney that such treaties passed no title from the United States. In fact, the Court explicity rejected defendant's reliance on Taney's position, which was based on an earlier treaty, and reached the opposite conclusion (175 U.S. at 12). The plain words of its holding indicate that property of the United States was transferred. It is difficult to understand how the Senator from Utah can assert the contrary.

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The Senator's frantic and unsuccessful attempts to distinguish cases approving the validity of the transfer of property by self-executing treaty, while unpersuasive, are understandable in view of his admission that, as the committee report notes:

> The Court has never struck down a treaty for disposing of government property.

The Senator explains this total lack of authority by informing us that no self-executing treaty has ever transferred property to a foreign state. If the Senator's position is based on this misapprehension, perhaps he and I can yet resolve our differences. There have been numerous self-executing treaties which ceded to foreign governments, including Panama, property or territory of the United States.

PRIOR TREATY PRACTICE

I have previously discussed Senator Hatch's contorted reading of the Indian treaties involved in *Holden* v. *Joy* and *Jones* v. *Meehan.* Try as he may, he is unable to avoid the plain holding of these cases on two points. The treaties at issue: First, conveyed land to which the United States had title, despite the fact that they also served to cede Indian land to the United States; and second, were self-executing and were not concluded pursuant to prior congressional authorization.

In addition to these Indian treaties, a number of self-executing treating with foreign nations have ceded property of the United States.

The treaty with Spain of 1819 ceded the Floridas to the United States in exchange for a cession by the United States of its rights and claims to Texas. Article 3 of the treaty is specific:

> The United States hereby *cede* to His Catholic Majesty, all their rights, claims and pretensions to the Territories lying West and South of the above described line.

Congress acted twice to authorize the President to take possession of Florida upon surrender of its claim by Spain. Contrary to the Senator's assertion, nothing in the legislation contained an authorization of the cession of the claims to Texas. That cession was entirely self-executing.

The Senator is wholly inaccurate in characterizing the cession of claims to Texas as "at best the settlement of a boundary dispute." The debates in the House of Representatives show that many Members believed that the treaty indefensibly relinquished a valid right to sovereignty over Texas. President Monroe, in his Annual Message of December 7, 1819, characterized it in that fashion:

> For territory ceded by Spain other territory of great value, to which our claim was believed to be well founded, was ceded by the United States.

The treaties with Great Britain of 1842 and 1846 involved the relinquishment of claims to vast territories. These claims were considered to be very strong, as President Tyler said in his Message of August 11, 1842 (4 Richardson, Messages of the Presidents, 163).

> Both the United States and the States more immediately concerned have entertained no doubt of the validity of American title to all the territory which has been in dispute.

The Supreme Court expressly construed the treaty of 1842 as a cession in *Fort Leavenworth R.R. Co.* v. *Lowe,* 114 U.S. 525 at 541

(1855). The fact that the territory in question was subject to dispute is inconsequential. Nothing in article IV distinguishes between the disposition of disputed and undisputed territory.

THE MEXICAN TREATIES OF 1933, 1963, AND 1970

The Senator from Utah vainly attempts to distinguish these precedents by two irrelevant assertions: First, that the territory ceded to Mexico included land held under private title; and that second, Congress subsequently appropriated money to acquire title from these private owners. The Senator cannot contest the fact that these treaties ceded to Mexico territory of the United States, that is, territory over which the United States had sovereignty. This is clearly a disposal of territory within the meaning of article IV.

It was necessary for Congress to appropriate funds required to acquire the title of private holders whose property was within the territory transferred by the treaty. The transfer of territorial sovereignty was not implemented by legislation, however. This is established conclusively by the fact that each treaty entered into force prior to the passage of any legislation.

The Senator from Utah does not dispute that article IV of the Honduras Treaty of 1971 transferred property without congressional authorization. The treaty is unequivocal. Article IV provides:

> The Government of the United States of America transfers to the Government of Honduras as of the date this Treaty enters into force all land, buildings, equipment and other real and personal property in the Swan Islands to which it holds title, except as agreed pursuant to Article II of this Treaty.

The Senator casts doubt upon this precedent by pointing out that the value of the property transferred was small and that the transfer was not opposed in the Senate. I am at a loss to understand what constitutional significance the Senator ascribes to these facts. The treaty was clearly self-executing. It clearly transferred property of the United States.

The Senator from Utah has understandable difficulty in attempting to distinguish the clear precedent presented by the Japanese Treaty of 1972. The Senator admits, as he must, that substantial property of the United States was transferred. Article 6 of the treaty transferred both real and personal property of the United States to Japan. Under article 3 of the treaty, the United States relinquished its jurisdictional and governmental rights over the islands, which were of indefinite duration.

Conceding that property was transferred, the Senator from Utah feebly suggests that it may have been authorized by prior statute. This suggestion is groundless. The treaty, by its terms, is self-executing. It was so regarded by both the Senate and the President.

The Senator notes that Japan retained residual sovereignty over the islands. This fact is of no importance, since, under the 1903 treaty, Panama also retained residual sovereignty over the Canal Zone.

The Senator from Utah's analysis of prior treaty practice with Panama has been discussed earlier. It is highly selective and ignores transfers by self-executing treaties in 1936 and 1950. His suggestion that self-implementing transfers accomplished in arti-

cles VI and VII of the 1955 treaty were in fact implemented by legislation is simply wrong. Section 102(b) of the act implementing the treaty clearly differentiated between property to be transfered pursuant to aricle V and the property which had already been conveyed by operation of article VI and VII of the treaty.

Throughout his remarks, the Senator from Utah has tried to support his case by attacking the report of the committee, rather than by citing applicable authorities in support of his position. I regret that he has chosen to conduct the debate on this level. Upon examination, the statements made in the report of the Committee on Foreign Relations, and the legal basis on which this treaty has been drafted, have been shown to be well founded. The attacks made on them by the Senator from Utah simply do not hold up.

First, the argument that the disposal power of the Congress is exclusive of the treatymaking power is without legal basis. By proving that the disposal power may not be exercised by the States or the President alone, the Senator proves nothing. None of the cases cited by the Senator deals with disposal by the President by and with the advice and consent of the Senate, that is, by means of a treaty. And that is what we are talking about.

Second, numerous cases hold clearly that the legislative power of Congress and the treatymaking power are normally concurrent powers. No attempt has been made to rebut these cases.

Third, four Supreme Court decisions support the view that article IV, section 3, clause 2 constitutes no limitation on the treatymaking power. The Senator fails to distinguish these cases. The only case advanced by the Senator, the Sioux Indian case, deals with Executive power and expressly recognizes that valid disposals of territory to Indian tribes can be made by treaty or by statute. There is no case which holds that U.S. territory or property cannot be disposed of by the treaty power.

[Mr. Zorinsky assumed the chair.]

Mr. CHURCH. Fourth, 14 treaties concluded by the United States have transferred territory or property of the United States without the need of legislation to authorize the transfer. These treaties were self-executing. The courts have declared unequivocally that this practice is consistent with the constitution.

And finally, the best legal minds in the country express no doubt that the treaty power and the legislative power are concurrent when it comes to the power to transfer U.S. territory or property. The leading authorities on constitutional law and outstanding international law experts are all but unanimous in this view.

What we are talking about here is the treaty power, the President and the Senate acting together. It is a power that has worked well for nearly 200 years. It is a power which the framers deliberately chose not to vest in the House. The Senator from Utah maintains, nonetheless, that the Senate's prerogative must be shared by the House. This challenge to the constitutional role of the Senate must be turned back.

I urge the Senate to reject the amendment now before it.

Mr. President, I yield the remainder of my time to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Idaho (Mr. Church), I am not sure I will need the remainder of the time but I appreciate his generosity.

Mr. President, pending before the Senate is an amendment which would forbid the entry into force of the Panama Canal Treaty—even if duly ratified and promulgated—until action is taken by the House of Representatives and Senate acting together to authorize the transfer of property in the Canal Zone.

A serious issue has been raised here. Supporters of this amendment contend that the Senate, in debating and acting upon the Panama Canal Treaty is, in effect, going through an empty exercise. It is contended that the treatymaking clause of our Constitution, found in article II, does not grant sufficent power to the Senate and President to enter into the treaty before us.

Article II, section 2, clause 2, says that the President—

> Shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur. * * *

There is no ambiguity whatsoever about this provision, which is located, as one would expect it to be, in that article of the Constitution which enumerates, defines, and limits the powers of the executive department of our three-branch government. It is found there because the field of foreign affairs is one which is inherently and peculiarly within the province of the executive branch. That power, that authority in the field of foreign relations is a necessary one because the United States, as a sovereign nation and a greater power, must speak with one voice abroad, although at home we may have our differences as to what should be said.

As Mr. Justice Field stated in *Geofroy* v. *Riggs* (133 U.S. 258 at 267 (1890)):

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument. * * *

Article II limits the treatymaking power of the President by making it conditional upon the consent of two-thirds of the Senate. This restraint is part of the careful system of checks and balances which marks the genius of our government.

No one could feel more strongly than I do that it is the duty and the responsiblity of Congress to represent the people in the field of foreign affairs. I share the concern of those observers who have noted the concentration of power in the executive branch at different periods of our history.

The way to rectify this imbalance, however, is not to devise novel constitutional theories for asserting the role of the legislative branch. The Constitution itself provides the mechanism for restraint upon the executive branch in the field of foreign affairs, as well as in the field of domestic affairs. It clearly and specifically selects the Senate—and the Senate alone—as the proper legislative body to review and restrain Presidential agreements with foreign powers.

This is not the only restraint which the Constitution places upon the treaty power. Certain legislative prerogatives of Congress as a whole are, without a doubt, exclusive to Congress, and cannot be shared. Thus, "no money shall be drawn from the Treasury, but in consequence of appropriations made by law." And, "all bills for

raising revenue shall originate in the House of Representatives." These legislative powers are, by their terms, mandatory and exclusive. The Constitution has made them so. Therefore, treaties may neither impose taxes nor directly appropriate funds.

The so-called property clause of article IV, section 3, clause 2, which states that "The Congress shall have power to dispose of * * * property belonging to the United States" contains no language which excludes concurrent jurisdiction of the treaty power. It can be distinguished, on its face, from exclusive grants of legislative power such as the power to tax, which is an exclusive grant of legislative power; or to draw funds from the Treasury, which is an exclusive grant of legislative power.

I find this construction to be compelling, As noted by Prof. Raoul Berger, a distinguished scholar who does not share my view of the concurrent nature of the treaty power over disposal of U.S. property and I quote from a memorandum of February 1978 from Professor Berger to Senator Clark:

> The starting point of analysis must be the Constitution itself, not what others have said about it.

Mr. President, this is wise counsel. The place to start is with the Constitution. We must look to the document itself, and presume that each part is consistent with all the other parts, until and unless it is shown beyond all reasonable doubt that an exception is to be inferred, or that one clause limits or invalidates another.

By reading article II and article IV as consistent and concurrent grants of authority—on the one hand, to the President and Senate, on the other, to Congress acting as a whole—we maintain the integrity of both provisions. This should always be our goal, for I very much doubt that we can improve upon the design of the Founding Fathers.

Records available from the debates of the Constitutional Convention, as both Senator Sarbanes and Senator Church have accurately shown, lend great weight to this view. First of all, we know that article IV, which grants to Congress the power to dispose of U.S. property or territory, was adopted before the treatymaking clause of article II. The drafting history of the property clause shows no indication of any intent to restrict the scope of the treaty power, and no understanding on the part of the drafters—who went on to debate and adopt article II—that it was a limit on the treaty power.

Thus, during the discussion of the treaty power, the initial debate occurred on whether a majority of the Senate, or more, would be required to consent to treaties. Subsequent to the adoption of the two-thirds rule, the Convention adopted a motion by Mr. Madison which excepted treaties of peace from the two-thirds rule. An amendment was later proposed by Mr. Williamson and Mr. Spaight which would have reestablished the two-thirds rule for a treaty of peace "affecting territorial rights."

Finally, the original provision requiring a two-thirds vote for all treaties was restored.

If—as some would contend—the members of the Convention clearly understood and intended that article IV, which had already been adopted, pre-empted the treaty power with respect to disposi-

tion of property and territory, these suggestions never would have been made. Rather, it seems clear that when the Convention came to discuss and adopt the treaty clause, there was a continuing concern on the part of some Members on the very proposition that treaties could transfer property or territory.

Historical practice since the adoption of the Constitution points toward general acceptance of the concurrent power theory. The thesis advanced by proponents of the pending amendment—namely, that the treaty power is limited by legislative powers granted to Congress elsewhere in the Constitution, and specifically by article IV, section 3, clause 2 with respect to the disposition of property—has long been discarded, long ago been discarded. It was first debated in the Senate in 1795, when the Jay Treaty was before this body. Among the objections raised by the treaty was that it regulated commerce; that the power to regulate commerce was vested in the Congress, and that Congress had not been consulted. Who today would seriously argue that treaties requiring only the consent of the Senate may not regulate commerce between the country and other nations—and yet that is the proposition which the doctrine of exclusive legislative jurisdiction would lead us to adopt.

Now, one of the proponents of that theory, which is a consitituional anachronism, and which the proponents of the treaty here today are attempting to resuscitate and to revive, was Thomas Jefferson. But Jefferson's view was strongly resisted by no less a constitutional authority than John Marshall, later to be Secretary of State, later to be Chief Justice of the Supreme Court. According to Marshall, and I quote therefrom:

> Marshall's opinion was that a "treaty is as completely a valid and obligatory contract when negotiated by a President and ratified by him, with the assent and advice of the Senate, as if sanctioned by the House of Representatives also, under a constitution requiring such sanction"; and he admitted only that the powers of the House in reference to a treaty were limited to granting or refusing appropriations to carry it into effect.

Marshall's view has long been well accepted in practice, and in the eyes of eminent constitutional scholars. In his "Commentaries on the Constitution of the United States," Chief Justice Story noted that—

> The power to make treaties is by the Constitution general: and of course it embraces all sorts of treaties, for peace or war; for commerce or territory, for alliance or succours; * * * and for any other purpose, which the policy or interests of independent sovereigns may dictate in their intercourse with each other.

So, Mr. President, each of these great men found explicit exceptions to the treaty power—such as the power to appropriate funds—and, while they did not always agree on what those exceptions were, they did agree that the simple grant of legislative power to Congress over a subject matter—such as commerce, or navigation, or disposition of property, or regulation of territories—did not exclude concurrent jurisdiction over the same subject matter by virtue of the treatymaking power, Such a view would, surely, have reduced the treaty power to a nullity, rendering the U.S. Government ineffectual in its dealings with foreign nations.

Perhaps the finest exposition of this view is that of John C. Calhoun, speaking as a Congressman some 25 years before he became Secretary of State:

> The grant of power to make treaties is couched in the most general terms. * * * This country is divided into many distinct sovereignties. Exact enumeration here is necessary to prevent the most dangerous consequences. The enumeration of legislative powers in the Constitution has relation then not to the treaty-power, but to the powers of the State. In our relation to the rest of the world the case is reversed. Here the States disappear. Divided within, we present the exterior of undivided sovereignty. The wisdom of the Constitution appears conspicuous. * * * Whatever, then, concerns our foreign relation.

Let me repeat what John C. Calhoun said at that point:

> Whatever, then, concerns our foreign relations; whatever requires the consent of another nation, belongs to the treaty power; can only be regulated by it; and it is competent to regulate all such subjects; provided, and here are its true limits, such regulations are not inconsistent with the Constitution.

Calhoun noted here that a treaty could not alter our form of government, nor do what the Constitution expressly forbids, or "do that differently which is directed to be done in a given mode, and all other modes prohibited." As an example, he cites the mandatory and exclusive language of the Constitution regarding appropriation of funds.

Mr. THURMOND. Mr. President, I wonder if the distinguished Senator will yield?

Mr. ROBERT C. BYRD. Not at this point I have not interrupted the statement of the opponents of the treaties, and I would prefer not to be interrupted at this point. I would be glad to yield later if I have time remaining.

Calhoun's explanation is incisive, complete, reasoned. It is more extensive than I quote here, and is to be found in volume 29 of the Annals of Congress of 1816 on page 530. Calhoun, while defending a broad interpretation of the treaty power—both in terms of the constitutional language, and in terms of practical necessity—finds limits upon that power. These are the limits found in the Constitution itself—express prohibitions, and directions to be a thing in a particular manner which manner also prohibits all other manners of achieving the same end. This is not the case with the disposition of property clause, where the exercise of such power is granted concurrently to the Congress, as well as to the President and Senate.

Mr. President, it would be a constitutional anachronism if the Senate were to decide that its constitutional authority to advise and consent to treaties pursuant to article II is insufficient to transfer U.S. property in the Canal Zone. I would even say that this would be an abject surrender by the Senate to a constitutional anachronism if we were to so decide.

I submit that not a single authoritative case, not a single holding of a higher Federal court, can be found to the contrary. At least I have not been able to find one.

Mr. President, I oppose the Hatch amendment because I believe that, with all due respect to the authors and the supporters of that amendment, it represents a misunderstanding of our Constitution.

We have heard it said that rejection of this amendment would create a precedent. To the contrary; its adoption would set a precedent—a precedent which would gravely impair the ability of the

executive branch to conduct foreign affairs. Its adoption would undermine the constitutional authority of the Senate in its treaty-making capacity. Its adoption would upset the system of checks and balances of our Government, because it stands for the proposition that, wherever the Congress may legislate, the President and Senate can not act by treaty. The adoption of this amendment would not strengthen, but weaken, the separation of powers doctrine—which is not an abstract theory, but a practical, working system which places certain responsibilities, derived directly from the Constitutition, the organic document upon which this Republic rests, squarely on the shoulders of the U.S. Senate. Its adoption would inject the entire Congress into the treatymaking process—a result which, I submit, would not strengthen but would weaken the legislative branch in its control over international agreements.

Mr. President, our ship of state was set sail by men of great wisdom and vision. A mere puff of wind is no sound reason for charting a new course. By this token, a single emotional issue must not be allowed to overshadow a fundamental constitutional concept.

For the plain truth is this: History has already judged the argument put forth by this amendment, and history has found it lacking in merit. History's verdict was a sound verdict and a wise one.

As the debate has shown, there is no case or decision that can provide historical or judicial backbone to the amendment before us today.

In fact, the adoption of this amendment would indeed set a precedent which would gravely impair the ability of the executive branch to conduct foreign affairs. And, while it would chip away at the President's constitutional domain, it would also peel the bark from the Senate's own treatymaking capacity.

I do not believe the Senate wishes to surrender its historic rights and prerogatives, its responsibilities and duties. If we did so we would only weaken the basic framework of the institution we have been asked to serve.

In the course of history, if this amendment were to be adopted, the "yeas and nays" on the Panama Canal treaties—in my opinion—would deserve only a footnote. Only a footnote. The greater implication—and the dangerous one—would be our attempt to rewrite the Constitution.

I understand that 235 Members of the other body have petitioned the Senate to the effect that the House seeks a voice in a particular aspect of this treatymaking process. Well, Mr. President, it is a no-lose proposition to sign such a petition; but it is a no-win proposition to have a showdown on these treaties. I talked with a Member of the House this morning who said, "I would be sick, it would make me sick if the amendment before the Senate were to be adopted."

The separation of powers docrine is not an abstract theory, but a practical, proven, working system. As an anchor of our Constitution, it places certain responsibilities squarely on the shoulders of the U.S. Senate.

I do not believe that the Senate—on this day, or any day—will surrender this constitutional authority or abdicate our responsibility under the Constitution.

Mr. President, this amendment should be defeated. It would do grievous harm to these treaties, to the Constitution, and to the Senate of the United States, which we all serve.

Mr. President, the current president of the American Society of International Law, and eight past presidents of the society, have examined some of the major legal questions related to the Panama Canal treaties.

Among the issues considered by this distinguished group of international lawyers and professors of international law is the question of the constitutionality of the disposition of U.S. property interests by treaty.

These legal authorities have concluded that the President and the Senate have full power to dispose of U.S. property interests in the Canal Zone by treaty.

This viewpoint is the same as that of a group of 15 eminent legal scholars who addressed a letter to the Congress on this subject and concluded that the Constitution "unequivocably permits transfer by treaty of property belonging to the United States."

That letter was printed in the Congressional Record of March 23.

Now, to further support that position, we have a statement from this group of leading authorities on international law. They are in complete agreement: The President and the Senate have full power to dispose of U.S. property interests in the Canal Zone by treaty.

This statement was signed by Walter Sterling Surrey, who is the current president of the American Society of International Law, and by eight of his predecessors, acting in their individual capacities.

Mr. President, I believe that this statement, along with the earlier letter from the group of 15 leading legal scholars, provides strong and significant support for the sound institutional basis upon which we are proceeding—if the treaties are consented to by the requisite two-thirds of those Senators present and voting, as provided under article IV, section 3, the treaties will, of their own force, accomplish the transfer of property to Panama.

Mr. President, I ask unanimous consent that the statement and the list of distinguished signatories be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

SURREY, KARASIK AND MORSE,
Washington, D.C., March 27, 1978.

Hon. ROBERT C. BYRD,
U.S. Senate, The Capitol,
Washington, D.C.

DEAR SENATOR BYRD: I am transmitting herewith the text of a Statement on legal aspects of the Panama Canal Treaties along with a list of past Presidents of the American Society of International Law who have joined me in signing the Statement. The signatories have signed in their individual capacities and not as representatives of the Society or the organizations with which they are currently affiliated.

You may release the Statement to the public in whole or in part as you see fit. Since the issue of the constitutionality of the disposition of U.S. property interests by treaty alone is involved in the current debate, I have excerpted on a separate page the signatories' conclusions on that matter.

Yours sincerely,

WALTER STERLING SURREY.

Panama Canal Statement Signatories

Present and Past Presidents of the American Society of International Law (Years of Office in Parenthesis) Signing in Their Individual Capacities:
Walter Sterling Surrey, Washington, D.C. (1976–[date);
Professor R. R. Baxter, Harvard University Law School (1974–76);
William D. Rogers, Washington, D.C., (1972–74);
Professor Oscar Schachter, Columbia University Law School (1968–70);
John R. Stevenson, New York City (1966–68);
Professor Brunson MacChesney,* Northwestern University Law School (1964–66);
James N. Hyde, New York City (1963–64);
Arthur H. Dean, New York City (1961–62);
Judge Philip C. Jessup, International Court of Justice, retired (1954–55).
(Institutional affiliations shown for purposes of identification only)

Statement

In the national debate concerning ratification of the Panama Canal Treaties, a series of essentially legal questions have arisen with respect to the terms of the proposed Treaties. The authors of this statement, a present and former President of the American Society of International Law and professors of international law, acting in their individual capacities, believe these questions should be objectively addressed.

Under the Panama Canal Treaty, which will be in force until the year 2000, the United States will have the right to protect and defend the Canal from an armed attack or other actions which threaten its security, as well as the right to station, train, and move military forces within the Republic of Panama. Furthermore, since the United States will be charged with the primary responsibility to protect and defend the Canal, it will have unilateral power to decide what constitutes a threat to the security of the Canal requiring action.

Under the Neutrality Treaty, after the year 2000, United States rights to protect the Canal and its neutrality derive from Article IV which declares that the United States and Panama "agree to maintain the regime of neutrality established in the Treaty . . ." Some critics of the Treaties have expressed the view that this language does not adequately and unequivocally state United States rights to protect and defend the Canal. On October 14, 1977, following a meeting between President Carter and President Torrijos, both heads of government released a Statement of Understanding [the "Understanding"] addressing this issue.[1]

The language of the Understanding clearly affirms the right of each of the two countries to "defend the Canal against any threat to the regime of neutrality," which entails "the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal." This language makes clear the United States unilateral right to act. The legal effect of this clarification could derive from an independent legal significance of the Understanding or, as now appears likely, from Senate action incorporating the language of the Understanding as amendments to Articles IV and VI of the Treaty.

Ambassador Linowitz stated at a White House briefing on October 14, 1977, when the Understanding was released, that "there has never been any misunderstanding between President Carter and General Torrijos as to the exact meaning of the language of the Treaties." The understanding is a "statement which says this is what we [Presidents Carter and Torrijos] have both understood the treaties to mean . . ." since both signatories issued the same Understanding, it constitutes a reaffirmance of the parties' intent.

This conclusion may be tested by examining the language of the Treaty itself. The United States and Panama have undertaken a joint obligation to maintain the regime of neutrality in the Treaty. At the same time only Panama shall "maintain military forces, defense sites and military installations" within Panama. Although some argue that this latter language means that the United States could never send troops to Panama, this reading is patently inconsistent with the joint obigations of

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*Signed prior to his recent untimely death.

[1]The Statement of Understanding also dealt with the last sentence of Article VI(1) of the Neutrality Treaty providing that United States and Panamanian vessels of War and auxiliary vessels "will be entitled to transit the Canal expeditiously." The Understanding confirms that this language gives such vessels the right to pass through the Canal "as quickly as possible, without any impediment, with expedited treatment, and in the case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly." All discussion in this statement of the legal effect of the Statement of Understanding applies equally to this Treaty provision.

the parties to preserve the neutrality of the Canal. In fact, the use of the verb "maintain" in Article V indicates that while United States forces are not to remain permanently in Panama, should they be needed to protect the Canal from armed attack or other threat they will have an unquestionable right to enter the country to fullfill Treaty duties.[2] This intent was merely confirmed in the Understanding provision that "any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

The Understanding issued by President Carter and General Torrijos is, in our judgment, a legally authoritative statement by the heads of government of the United States and Panama setting forth each party's confirmation of their intent as reflected in Articles IV and VI of the Neutrality Treaty. Under general principles of treaty law, the Understanding would be used by governments and by national and international tribunals in establishing the legally binding undertakings of the two nations.

Several other important legal questions have been raised about the Treaties. Each of these deserves succinct consideration.

1. Will the United States relinquish its sovereignty with respect to the Panama Canal Zone? Under the terms of the 1903 Treaty, the United States never acquired full and unqualified sovereignty over the Canal Zone. Titular sovereignty remained with Panama, and the United States merely obtained the right to act in the Canal Zone "as if" the United States were sovereign. Thus, never having acquired sovereignty over the Zone, the United States does not cede sovereignty to Panama.

2. Are the rights of the United States to protect the Canal and its neutrality limited by the United Nations Charter, the Charter of the Organization of American States, or the Inter-American Treaty of Reciprocal Assistance? None of these documents limits the United States right set down in the Treaties to use force to protect the Canal. The limitations they impose concern the purpose of such action and are designed to insure the territorial integrity and political independence of Panama against the threat of use of force, occupation or intervention. In other words, the United States could not detach any territory from Panama, or alter the government, and the long-term presence of United States forces could only be justified as a proportionate response to a continuing threat to the Canal.

3. What is the impact of the War Powers Resolution on Article IV of the proposed Neutrality Treaty with Panama, whereby th United States and Panama agree to maintain the regime of neutrality for the Canal? Since the language of the Understanding confirms that under Article IV the two countries shall act "in accordance with their respective constitutional processes," the War Powers Resolution will, therefore, as long as it is law, govern any United States action under Article IV. It follows that the determination of which provision of the War Powers Resolution will govern in a particular situation will depend on the specific nature of any future threat to the neutrality of the Canal.

4. Do the proposed Panama Canal Treaties provide adequate safequards for the users of the Canal, including those from the United States, as to tolls and other matters? A comparison of user safeguards in the 1903 Treaty and those embodied in the Neutrality Treaty reveals not only that no significant user safeguard is withdrawn by the Neutrality Treaty but that in certain important aspects the interests of users are more fully protected under the proposed Treaty than they have been under its predecessor. These include guarantees that the Canal will remain secure and open, that rules and regulations be "just, equitable, *and reasonable,*" and that the tolls be "just, *reasonable,* equitable, and *consistent with the principles of international law*" (new protections italicized).

5. May the United States dispose of property interests belonging to the United States in the Canal Zone by treaty alone or does such disposal require legislation to authorize the transfer? The Constitution grants the President the power to make treaties by and with the advice and consent of the Senate, and these treaties become the supreme law of the land. The Constitution also empowers the Congress to dispose of property belonging to the United States. Nothing in the language of the two clauses limits the treaty power with respect to dispositions of property. Nor is the Congressional power to dispose of property exclusive. The property clause, like most of the Article I clauses granting legislative powers, provides that "Congress shall have the power," without any qualification indicating exclusiveness against the treaty power. Furthermore, it is a well-settled rule that the treaty power extends to all areas within the legislative authority of Congress that are not

[2] The presence of forces any longer than appropriate for that purpose or for any other purpose would violate Article 2(4) of the United Nations Charter and Article 18 of the Charter of the Organization itself which actually incorporates the language of both Articles.

expressly reserved by the Constitution to the exclusive jurisdiction of Congress. Substantial case law, the drafting history of the Constitution and the practice of several states support this proposition. Thus, the President and the Senate have full power to dispose of U.S. property interests in the Canal Zone by treaty without authorizing legislation.

The PRESIDING OFFICER. The Senator from Utah has 3½ minutes.

Mr. HATCH. Mr. President, I yield 1½ minutes of my time to the Senator from South Carolina to ask questions of the majority leader, and the final 2 minutes to the Senator from Massachusetts (Mr. Brooke).

Mr. THURMOND. Mr. President, on March 4, 1975, I introduced Senate Resolution 97, with reference to which my question occurs.

The last paragraph of that resolution urges that—

There be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

I realize that a man has a right to change his mind, but the distinguished and able Senator from West Virginia, the majority leader, was a cosponsor of that resolution. I just wonder what has caused him to change his mind since that time.

Mr. ROBERT C. BYRD. I am glad the Senator asked me that question. I welcome the opportunity to get my answer on record again. That same question was asked me a few days ago, and I am sorry the Senator was not here when I answered it.

I am delighted to say that I believe that at some point a wise man may change his mind. Or may not change it, but he at least keeps his mind open to new facts on which to base a considered judgment.

When I cosponsored that resolution, there were no treaties before this body. They were being negotiated. Today the treaties are before the Senate; there is a detailed report from the Committee on Foreign Relations; there is testimony from the Joint Chiefs of Staff supporting the treaties; there is testimony of other responsible people in this administration who have the duty of planning for the security interests of this country; and former president Gerald Ford supports the treaties.

The PRESIDING OFFICER (Mrs. Humphrey). The Senator's time has expired.

Mr. ROBERT C. BYRD. Madam President, I ask unanimous consent that the Senator from Utah have 2 additional minutes.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

Mr. ROBERT C. BYRD. Madam President, I have the facts which are contained in these reports, in the testimony, which I did not have in 1975.

Mr. THURMOND. Madam President, the time the Senator is using is not coming out of this side, is it?

Mr. ROBERT C. BYRD. Madam President, I am answering the Senator's question.

I have the advantage, now, of current events, of the events that have transpired since I signed that resolution.

Madam President, the Supreme Court of the United States changes its position on constitutional issues. It rethinks, it recon-

siders, it reverses itself. Why should not a Member of the U.S. Senate have the same right? Why should that right not be recognized and respected here—the same right to change one's mind? With additional facts, with the treaties now before us, and with the testimony reflecting the judgments of the Joint Chiefs of Staff, I think that every Senator should retain an open mind, reevaluate the case, reassess it. All those who were signatories of the 1975 resolution should reassess and reevaluate. They might come to the same conclusion that they did then. But this Senator reached a different conclusion—I feel for good and sufficient reason. I am delighted to answer the question.

Mr. THURMOND. Madam President. I can understand why a man has a right to change his mind, and he certainly does, but the facts which concern the Panama Canal are no different today than in 1975. Conditions in Panama have not changed. Especially the constitutional question raised by this amendment has not changed. Thirty-six Senators joined with me on that resolution, not only the able majority leader but others in this body today. Mr. President, I ask unanimous consent that this Senate Resolution No. 97 be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. The time of the Senator has expired.

There being no objection, the resolution was ordered to be printed in the Record, as follows:

S. RES. 97

Whereas United States diplomatic representatives are presently engaged in negotiations with representatives of the de facto Revolutionary Government of Panama, under the declared purpose to surrender to Panama, now or on some future date, United States sovereign rights and treaty obligations, as defined below, to maintain, operate, protect, and otherwise govern the United States-owned canal and its protective frame of the Canal Zone, herein designated as the "canal" and the "zone", respectively, situated within the Isthmus of Panama; and

Whereas title to and ownership of the Canal Zone, under the right "in perpetuity" to exercise sovereign control thereof, were vested absolutely in the United States and recognized to have been so vested in certain solemnly ratified treaties by the United States with Great Britain, Panama, and Colombia, to wit:

(1) The Hay-Pauncefote Treaty of 1901 between the United States and Great Britain, under which the United States adopted the principles of the Convention of Constantinople of 1888 as the rules for operation, regulation, and management of the canal; and

(2) The Hay-Bunau-Varilla Treaty of 1903 between the Republic of Panama and the United Stated, by the terms of which the Republic of Panama granted full sovereign rights, power, and authority in perpetuity to the United States over the zone for the construction, maintenance, operation, sanitation, and protection of the canal to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority; and

(3) The Thomson-Urrutia Treaty of April 6, 1914, proclaimed March 30, 1922, between the Republic of Colombia and the United States, under which the Republic of Colombia recognized that the title to the canal and the Panama Railroad is vested "entirely and absolutely" in the United States, which treaty granted important rights in the use of the canal and railroad to Colombia; and

Whereas the United States, in addition to having so acquired title to and ownership of the Canal Zone by constitutional means, purchased all privately owned land and property in the zone making it the most costly United States territorial possession; and

Whereas the United States since 1904 has continuously occupied and exercised sovereign control over the zone, constructed the canal, and, since 1914, for a period of sixty years, operated the canal in a highly efficient manner without interruption, under the terms of the above-mentioned treaties thereby honoring their obligations, at reasonable toll rates to the ships of all nations without discrimination; and

Whereas the long history of friendly and cooperative relations between the United States and the Republic of Panama are prone to deterioration by the dilution of any United States sovereignty or jurisdiction in the canal and zone; and

Whereas from 1904 through June 30, 1974, the United States made a total investment in the canal, including defense, at a cost to the taxpayers of the United States of over $6,880,370,000; and

Whereas the investment of the United States in the canal includes the sacrifices of many thousands of United States citizens who have worked to construct the canal and keep it operating smoothly and efficiently for the last sixty years; and

Whereas Panama has, under the terms of the 1903 treaty and the 1936 and 1955 revisions thereof, been adequately compensated for the rights it granted to the United States, in such significantly beneficial manner that said compensation and correlated benefits have constituted a major portion of the economy of Panama giving it the highest per capita income in all of Central America; and

Whereas the canal is of vital and imperative importance to hemispheric defense and to the security of the United States and Panama; and

Whereas approximately 70 per centum of canal traffic either originates or terminates in United States ports, making the continued operation of the canal by the United States vital to its economy; and

Whereas the people of the United States, in various ways and means, have exhibited strong support for retention of full and undiluted jurisdiction over the canal and zone, and the Congress ought to insure the supremacy of the will of the people; and

Whereas the present negotiations under a February 7, 1974, statement of "principles of agreement" by United States Secretary of State Henry A. Kissinger and Panamanian Foreign Minister Juan A. Tack constitute a clear and present danger to the hemispheric security and the successful operation of the canal by the United States under its treaty obligations; and

Whereas the present treaty negotiations are being conducted by our diplomatic representatives under a cloak of unwarranted secrecy, thus withholding from our people and their representatives in Congress information vital to the security of the United States and its legitimate economic development; and

Whereas the United States House of Representatives, on February 2, 1960, adopted House Concurrent Resolution 459, Eighty-sixth Congress, reaffirming the sovereignty of the United States over the zone territory by the overwhelming vote of three hundred and eighty-two to twelve, thus demonstrating the firm determination of our people that the United States maintain its indispensable sovereignty and jurisdiction over the canal and the zone; and

Whereas under article IV, section 3, clause 2 of the United States Constitution, the power to dispose of territory or other property of the United States is specifically invested in the Congress, which includes the House of Representatives; and

Whereas the Congress of the United States is invested with constitutional responsibilities to provide for the common defense and general welfare of the United States, to regulate commerce with foreign nations, to raise and support armies and provide and maintain a Navy, to make all needful rules and regulations respecting the territory of the United States, and to make all laws necessary and proper for carrying into execution these and other powers, all of which denote that it is the solemn duty of Congress to safeguard the canal and zone: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that—

(1) the Government of the United States should maintain and protect its sovereign rights and jurisdiction over the canal and zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any of these sovereign rights, power, authority, jurisdiction, territory, or property that are indispensably necessary for the protection and security of the United States and the entire Western Hemisphere; and

(2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, or authority or property, tangible or intangible, except by treaty authorized by the Congress and duly ratified by the United States; and

(3) there be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

Mr. THURMOND. Senator Goldwater has been promised some time.

Mr. GOLDWATER. Madam President, I ask unanimous consent that my remarks appear at this point in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Madam President, I will make only brief closing remarks before the vote in summary of what I said yesterday.

First, I would remind my friends from States with the largest populations that under the theory presented by our State Department 68 Senators representing 34 States containing 60 million citizens can dominate 32 Senators representing 16 States containing 140 million citizens.

If a treaty itself can do the same things as Congress, this means 31 percent of the Nation can overrule the position of 69 percent of the people, without any opportunity for an expression of popular will.

Unless the House of Representatives is allowed to exercise its share of the enumerated powers given to Congress, we may see a new system evolved in America under which the minority controls the majority. This would be totally alien to the design of the framers in establishing a representative government under popular rule.

What are the implications of the novel theory that a treaty can exercise the same powers vested in Congress? If the treaty power is concurrent with the powers of Congress, what end will there be to evasion of the House of Representatives, the body closest to the people?

Congress can declare war. Does this mean a treaty alone, perhaps in the form of a defense alliance, can put the Nation in a war without any separate vote in the whole Congress?

Congress has power to provide for currency. Does this mean a treaty alone can declare the German mark the currency of the United States? Remember, the administration is already seriously considering the issuance of Government bonds in a foreign denomination.

Congress has power to regulate commerce. Does this mean a treaty can embargo all exports of tobacco? Can the Department of HEW carry its antismoking campaign far enough to outlaw the export of tobacco through an international health treaty?

Congress has power to establish courts and make exceptions to the appellate jurisdiction of the Supreme Court. Does this mean a treaty alone can set up international courts with jurisdiction over our citizens, a court which is to be free of review by our Supreme Court?

If a treaty can exercise concurrent powers with Congress, all of these results, absurd now, might happen in the future.

Where is the line drawn? Where will there be an end to the use of treaties to invade the power given to the whole Congress?

The precedent we are asked to set in the Panama Canal Treaty will continue to haunt us through the years. Even if one or two precedents for the transfer of property by treaty may have occurred, they are not of the dimension of the Panama Canal.

And surely the State Department is not contending that a handful of claimed precedents can make valid what the Constitution makes invalid. It is the Constitution that is at issue, not precedents.

If the Constitution requires action by the whole Congress to carry out a treaty which agrees to transfer property, then one or

two dubious precedents cannot change the Constitution. Those precedents are wrong and should not be followed again.

Madam President, the Constitution is clear. The spokesmen, who argued and voted for the Constitution in the several State conventions on adopting it, said over and over that treaties would be limited by the express powers granted to Congress.

If we will study history and see what the framers, instead of arguing from the viewpoint of what our State Department sees as the theory most suitable to carry out the foreign policy of a 20th century President, we will see beyond doubt that the Constitution has always required the passage of legislation by Congress to execute a treaty agreeing to transfer property belonging to the United States.

Madam President, I urge that we approve the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. How much time remains to the proponent of the amendment?

The PRESIDING OFFICER. Two minutes remain.

Mr. HATCH. Will the Senator allow me to proceed for 1 minute?

Mr. ROBERT C. BYRD. I did not mean to prevent the Senator from taking his time.

The PRESIDING OFFICER. The Senator from Massachusetts has been yielded 2 minutes.

Mr. BROOKE. Madam President, perhaps this debate on the Hatch amendment has been the longest on any amendment on the Panama Canal Treaty. I shall seek to balance it by making one of the shortest statements.

Mr. President, the Senator from Utah has made a strong case for the proposition that any disposition of U.S. property stemming from the canal treaties should only occur after the House of Representatives as well as the Senate has consented to such an action.

Proponents of this treaty have also made a case for the opposite view although their case is weaker than that of the Senator from Utah.

I, therefore, intend to support the pending amendment and urge its adoption. Aside from the arguments offered in its favor which I find acceptable, I am even more compelled to vote in favor of it because of my strong belief that there should be no "shorts cuts" in the decisionmaking process related to the Panama Canal treaties. The benefit of the doubt on this matter should clearly be given to a strict adherence to procedures. And this means that the House of Representatives, as an equal partner with the Senate in legislative matters, should assume the responsibility I believe the Constitution places upon it regarding the disposition of U.S. property.

I have heard the arguments of the opponents of this amendment. They argue time after time that the United States in other treaties acted differently. But here we have clear title to the property. There has been no dispute about that whatsoever. So I distinguish this case in Panama from other cases that have been alluded to by the opponents.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BROOKE. Will the Senator yield a half minute?

Mr. HATCH. I ask unanimous consent that the Senator from Massachusetts be allowed to continue for a half minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROOKE. There can be no doubt that the House wants to exercise responsibility regarding this matter and I believe the Senate would be wrong in denying it that opportunity by voting against the pending amendment.

I thank my distinguished colleague from Utah for having offered this amendment. I think it is a sound amendment and should be adopted.

Mr. HELMS. Mr. President, while the pending amendment offered by the distinguished Senator from Utah has been described as a so-called killer amendment, the leadership might well ponder the fact that, if it is indeed, a killer amendment, it is not because of the approval of the amendment calling for a vote of the House of Representatives on the disposal of the Canal Zone.

In fact, the defeat of the Hatch amendment could very well be the killer action.

I wonder, Mr. President, if the able and distinguished majority leader, and the able and distinguished minority leader, and the able and distinguished floor manager of the Panama Canal Treaty, are aware of the actual feelings and convictions of some of the most important Members of the House of Representatives on this issue?

Have they taken into consideration exactly what will be the effect on those able and distinguished Members of the other body should the Senate in its wisdom—or lack of it—deliberately snub that body, and vote to deprive it of its constitutional prerogative in determining whether or not property and territory of the United States shall be disposed of to a foreign power?

On June 26, 1975, the House voted to approve what became known as the Snyder amendment—an amendment which added this language to the 1976 appropriations bill for the Departments of State, Justice, and Commerce, and the judiciary:

> None of the funds appropriated in this title shall be used for the purposes of negotiating the surrender or relinquishment of any U.S. rights in the Panama Canal Zone.

This amendment was softened later that year by a conference committee.

But, Mr. President, here is the point:

One of the major opponents of the Snyder amendment was a most distinguished Member of the House, the chairman of the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee, the Honorable Ralph Metcalfe of Illinois.

Many Members of Congress remember him as the fastest man in the world in the 100- and 200-yard dash events—an Olympic champion. Mr. Metcalfe favors the new Panama Canal treaties.

Well, today Mr. Metcalfe—and others in the House who feel as he does—must be intently awaiting the outcome of our vote on the Hatch amendment.

Let us look at what he said on the floor of the House in opposition to the Snyder amendment on June 26, 1975:

> I raise the constitutional question and point out that the Constitution says the President shall have the right to make a treaty, and that the Senate will ratify it,

and the House will then have its own appropriate action to take. This is not a sense of the House resolution. What we are, in fact, doing right now is trying to make policy, and this is not the proper place for it. It is not the proper time for it. I think we are unjustly interfering in the negotiations that are taking place, and it is going to impair our relationship with other nations * * * Not only that, we do have, as this body, a right to determine what land will be given away. That is our prerogative, if there is any questions raised.

Mr. President, that is not all.

The chairman of the Panama Canal Subcommittee in the House, Mr. Metcalfe, made a major speech on the Panama Canal Treaty issue on May 19, 1977, in which he set forth his views in favor of the projected new treaties.

Again, however, he dwelt at some length on the matter of the disposal of U.S. property in the Canal Zone.

I quote the paragraph with which he closed his remarks on this particular matter:

The House, then, through its committees, including the Committee on Merchant Marine and Fisheries, of which I am a member, and the Panama Canal Subcommittee, which I chair, intends to guard the constitutional prerogatives of the Congress.

Mr. President, the chairman of the Merchant Marine and Fisheries Committee of the House, the Honorable John Murphy of New York, has in recent months testified before two Senate bodies considering the new treaties on the constitutional issue of the disposal of U.S. property. He has taken the identical view which Mr. Metcalfe represents.

Mr. President, the chairman of what is probably the key House committee that will have to consider and report out the legislation necessary to implement the new treaties, has told the Senate Committee on Foreign Relations and the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, that the House must vote on the disposition of the Canal Zone.

Has the leadership taken into consideration the fact that by seeking to deny the House a vote on such disposition, it may very will be forcing the other body to take a position refusing to pass any implementing legislation at all?

Is the leadership aware that the two Democratic chairmen I have spoken of are in a position to refuse to even report out any implementing legislation?

Is the leadership aware that a bill incorporating the State Department's draft legislation for implementing the treaties has already been referred to the Merchant Marine and Fisheries Committee of the House in a joint referral?

Mr. President, a vote against the Hatch amendment may very well result in the death of the Panama Canal Treaty and the neutrality.

I shall vote for it. I should hope that Senators who are protreaty will demonstrate they are also in favor of the U.S. Constitution.

The PRESIDING OFFICER. Under the previous order, the hour of 11 a.m. having arrived, the Senate will now proceed to a vote in relation to amendment No. 92 by the Senator from Utah.

Mr. CHURCH. Madam President, I move to lay the amendment on the table and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator for Idaho. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ZORINSKY (when his name was called). Madam President, I have a live pair with the Senator from Texas (Mr. Bentsen). If he were present and voting, he would vote "aye." If I were permitted to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from Alaska (Mr. Gravel) and the Senator from Hawaii (Mr. Matsunaga) are necessarily absent.

I further announce that the Senator from Texas (Mr. Bentsen) and the Senator from Florida (Mr. Chiles) are absent on official business.

I further announce that, if present and voting, the Senator from Florida (Mr. Chiles) would vote "yea."

The result was announced—yeas 58, nays 37, as follows:

[Rollcall Vote No. 79 Ex.]

YEAS—58

Abourezk	Hart	Morgan
Anderson	Haskell	Moynihan
Baker	Hatfield, Mark O.	Muskie
Bayh	Hathaway	Nelson
Bellmon	Hayakawa	Pearson
Biden	Hodges	Pell
Bumpers	Hollings	Percy
Burdick	Huddleston	Proxmire
Byrd, Robert C.	Humphrey	Randolph
Case	Inouye	Ribicoff
Chafee	Jackson	Riegle
Church	Javits	Sarbanes
Clark	Kennedy	Sasser
Cranston	Leahy	Sparkman
Culver	Long	Stafford
Danforth	Magnuson	Stevenson
Durkin	Mathias	Wiecker
Eagleton	McGovern	Williams
Ford	McIntyre	
Glenn	Metzenbaum	

NAYS—37

Allen	Hansen	Schmitt
Bartlett	Hatch	Schweiker
Brooke	Hatfield, Paul G.	Scott
Byrd, Harry F., Jr.	Heinz	Stennis
Cannon	Helms	Stevens
Curtis	Johnston	Stone
DeConcini	Laxalt	Talmadge
Dole	Lugar	Thurmond
Domenici	McClure	Tower
Eastland	Melcher	Wallop
Garn	Nunn	Young
Goldwater	Packwood	
Griffin	Roth	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Zorinsky, against.

NOT VOTING—4

Bensten	Gravel
Chiles	Matsunaga

So the motion to lay amendment No. 92 on the table was agreed to.

Mr. SARBANES. Madam President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. CHURCH. I move to lay that motion on the table

The motion to lay on the table was agreed to.

AMENDMENT NO. 91

The PRESIDING OFFICER. The question now recurs on the amendment by the Senator from Alabama (Mr. Allen), No. 91, which the clerk will state.

The second assistant legislative clerk read as follows:

The Senator from Alabama (Mr. Allen), for himself, Mr. Hatch and Mr. Helms, proposes and amendment numbered 91:

At the end of Article I, section 3, strike the period and insert a semicolon and insert the following: "*Provided, however,* That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retiree voluntarily, or are discharged for cause.".

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Madam President, first, I ask unanimous consent that the name of the distinguished senior Senator from South Carolina (Mr. Thurmond) be added as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Madam President, this amendment pending before the Senate was laid aside by unanimous consent in order that the distinguished Senator from Utah (Mr. Hatch) might offer an amendment, which was a most important amendment. It was an amendment that would have assured that the Constitution would be followed in the matter of authorizing the disposition of property of the United States. It provided that the provisions of article IV, section 3, clause 2 of the Constitution be observed.

That section provides that the Congress shall have the power to dispose of the property of the United States. It is conceded, Madam President, that the United States has title to the property in the Canal Zone. It would appear that to have that, in order properly and legally and constitutionally to dispose of this property owned by the United States of America, the provision of the Constitution should have been followed.

As a matter of fact, 235 House Members, at least, share that view because they are cosponsors of a resolution that called upon the administration to submit this question—not the treaty—to submit this question of disposing of property of the United States to legislative action by Congress, meaning, of course, the Senate and the House. The Senate has chosen, by tabling this amendment, to disregard this provision of the Constitution.

Madam President, I posed a question earlier today, before the vote, on the matter of the contention by the proponents of the treaty that the President of the United States can negotiate a treaty disposing of property of the United States and such disposition would take effect on the approval of that treaty by a two-thirds vote of the Senate. To show how fallacious that contention would be, I posed a question which would be a necessary implication from holding that the President and the Senate can dispose of property of the United States without congressional action, with respect to property in Panama. By a necessary extension of that doctrine, any property of the United States could be given to a foreign power by treaty entered into between the President and that foreign power and approved in the form of a treaty by the Senate alone.

I pointed out that on the floor of the Senate, not too long ago, a Senator stated that 97 percent of the land in his State was owned by the U.S. Government. If the President and the Senate can give away the land in the Panama Canal Zone which belongs to the United States, could not the President, in a good neighbor gesture, wanting to right the wrong that took place when the United States took over a large portion of the Western States following the war with Mexico—took it over by conquest and then paid, I believe, a small amount of money in reparations for the land, at gun point—could not the President enter into a treaty giving away 97 percent of one of our Western States, which formerly was part of Mexico, and have it submitted to the Senate for approval in the form of a treaty? Of course not. Every man, woman, and child in that State would march on Washington, and rightly so.

Madam President, it is a necessary extension of this theory that the Senate, by tabling this amendment, has seen fit to adopt, if we can give away 500 square miles of U.S. property in the Panama Canal Zone, of inestimable value. A valuation of $10 billion has been placed on this property—the canal and the Canal Zone—but even that figure would not compensate for giving away this property, this tremendous asset.

However, according to the administration, according to the leadership, according to the managers of the treaty, all it takes is a treaty entered into by the President, subsequent approval of that treaty by the Senate, completely disregarding the House of Representatives and its rights and prerogatives under the Constitution, opening the way for litigation with those citizens of the United States who might bring action to contest the validity of this disposition of property.

I am not saying that the treaty should be submitted to the House. That is not the question. The question is the requirement of the Constitution that the disposition of property of the United States must be authorized by act of Congress.

I pointed out several times the provision in the 1955 treaty with Panama, in which, on three separate occasions, where they make conveyance of property, they say "subject to the approval of Congress." But we are departing from that longtime policy, which the Constitution has recognized.

They say that times have changed. The constitutional provision has not changed.

I notice that someone has had a copy of Senate Resolution 97, of the last Congress, placed on the desk of each Senator. That was a resolution submitted in the last Congress by 37 Senators—enough to defeat a treaty—which stated the position of those Senators against a treaty giving away the canal and stating that if any such treaty were entered into before the property of the United States could be disposed of, there had to be express congressional action authorizing it. Eight Senators who some weeks ago voted for the Neutrality Treaty, or the Defense Treaty, were cosponsors of that resolution in the last Congress. Well, perhaps they changed their minds. Perhaps it is because it was in the administration of a President of another party. I do not know what caused them to change their minds.

I am not going to mention their names. The Senators know who they are, and any Senator who wants to see if his name is on the resolution can refer to the resolution, which is on the desk of each Senator. But the names of those eight Senators were on that resolution, saying that they would not be for a treaty giving the canal away and that if such a treaty were entered into before the property could be disposed of, there had to be congressional action. In other words, article IV, section 3, clause 2 of the Constitution would have to be followed.

I would have thought that all eight of those Senators would have voted for the Hatch amendment. It is understandable, Madam President, that Senators might change their minds on the advisability of giving away the canal.

I can understand that. It is entirely possible and frequently happens that Senators do change their mind on an issue. But what logic is there for changing their mind on their view of a constitutional question as to what action it takes to comply with the Constitution?

So these eight Senators who in 1975 said they would not be for such a treaty in 1978 voted for that treaty. I can understand that. But I cannot understand how they as attorneys, for the most part—possibly all eight—could have changed their views on their view of the constitutional issue.

So the Senate has decided that article IV, section 3, clause 2 of the Constitution, giving Congress power to dispose of property of the United States does not have to be followed, that the President negotiating the treaty and the Senate giving its advice and consent to the treaty can dispose of property of the United States without an act of Congress.

I say that issue should have been decided on the basis of following the Constitution, and I think that the victory of those who are pushing these treaties will be somewhat hollow if they win by force of might here in the Senate, force of an overwhelming majority in the Senate—I am hopeful not a two-thirds majority—but they can with this overwhelming majority defeat any amendments, no matter how good, no matter how much needed. They can direct the Members of the Senate monolithically to vote against amendments. So we see the leadership, we see managers of the treaty, and we see the amendments. So we see the leadership, we see the managers of the treaty, and we see the administration stonewalling against amendments no matter how good an amendment is.

These Senators who have said to the House of Representatives, "We are not going to follow this Constitution, we are not going to respect your rights and your prerogatives, we are going to handle this just like we want to because we have the votes here in the Senate and we are going to direct them how to vote," can do it. But I say that their victory is going to be a hollow victory and their victory at the bar of public opinion is going to be somewhat less attractive. Public opinion is of the view that a shortcut was taken on agreeing to these treaties, that the Constitution was ignored. Are they going to have the backing of public opinion in this country for the action that the Senate seems determined to take?

It disregards the necessary and desirable comity that should exist between the two bodies of Congress. It leaves the way open for litigation that would snatch defeat from the jaws of victory on the treaties because if the Supreme Court says the Constitution was not followed in disposing of this property, what value is the treaty? The property, the water, and the land, in effect constitute the treaty. So if the land and the water were illegally and unconstitutionally disposed of you have no treaty. So, by tabling this amendment you leave the treaty open for a legal attack, and you leave the treaty and its validity in a state of doubt. You leave the people of the United States confused as to whether proper procedures were used. You violate rules of comity between the two Houses. Why? Why be afraid of the House of Representatives? Why be afraid of the Senate on a majority vote question, which the legislation would be? I would take a majority vote in both Houses. If you can get a two-thirds vote for the treaty in the Senate is there any doubt that you could get a majority vote in the Senate for legislation authorizing the transfer of this property? Of course not.

The fact that 235 House Members, well over a majority of the Members of the House, have asked that this treaty not go into force until legislation has been enacted by Congress authorizing its disposition does not mean that all 235 of those Members of the House are going to vote against giving the canal away. That means they want their rights and their prerogatives respected, and I have not seen the Senate any less jealous of its rights and prerogatives.

Time was limited on the debate on the other amendment. But I feel, even though it has been stonewalled by the leadership, by the administration, and by the managers of the treaty, the enormity of the bad judgment of the leadership in this matter should be pointed out. I believe that the treaty could be put into force and effect earlier by agreeing to this amendment, removing all question of doubt as to the legality of the process, than by stonewalling against the amendment, disregarding, as I see it, the constitutional provision.

The argument has been made against other amendments. And, by the way, do you know how many amendments we adopted to these two treaties after 2 months of debate? Two. They were the leadership amendments, defective in several areas, as was pointed out here on the floor. They were adopted, because the leadership said "Adopt them," and the Senate adopted them. On all others, they have said "No." These amendments that the leadership proposed and got adopted are so good that they not only make the treaty a good treaty, or the treaties good treaties, they are so good

that no further amendments are desired and no further amendments will be accepted. That is how highly vaunted these leadership amendments were.

I will not take the time of the Senate to point out the defects in the leadership amendments, but they did exist, they were pointed out here on the floor, but they were adopted.

I voted for the leadership amendments, because I hoped that possibly they offered some slight improvement over the provisions of the original treaty—mighty little, greatly defective, but possibly some better than the original treaty. But the Senate has acted, and we will move now to other amendments that seem necessary.

The argument has been made in the past as to many of these amendments that they would not please the Panamanians, they would not be accepted by the Panamanians and, therefore, we should not adopt them; that it might cause the calling of another plebiscite.

Well, if so, what is wrong with that, because we need a compact with the people of Panama rather than just with the dictatorial regime of dictator Torrijos?

But this amendment of the distinguished Senator from Utah (Mr. Hatch), of which I was a cosponsor, was not something putting a burden on Panama or on Torrijos. It merely underscored the required constitutional process for agreeing to the transfer and disposition of property of the United States in the Canal Zone.

So what burden would that have placed on Torrijos? None whatsoever. So they could not make the argument that this amendment would have somehow adversely affected, cast doubt on, the dignity of the people of Panama and the dictatorial regime in Panama. This is merely saying that the United States shall follow the constitutional processes in disposing of this property.

Well, Mr. President, it does not take any argument to defeat constructive amendments that are offered here on the floor of the Senate. It does not take any argument on the part of the leadership, on the part of the managers of the treaty, to defeat amendments. All the managers of the treaties have to say, as Senators troop in to vote, and as the issue is: "Shall the amendment be tabled?"—all they have to say is, pass the word, "This is an 'aye' vote," and proceed to vote "aye," in many cases not even knowing what the amendment is, but knowing what the leadership vote is. That is all it takes.

So, Madam President, are we abdicating our role, the role that the U.S. Senate is supposed to have in our constitutional process? We are supposed to advise the President on this treaty he sent up here. We do not give that advice by writing a letter and saying, "Well, Mr. President, we believe the treaty is defective in a number of points and wish you would check into it and renegotiate this treaty."

We give that advice in the form of amendments to the treaty, in the form of shaping the treaty, by the amendment process.

It took the negotiators some 13 years to agree on this treaty. Can we be assured that after 13 years of negotiation they have come up with a letter-perfect treaty?

Well, the fact that they were revising it right down to the very last moment indicates it is not letter perfect, yet the Senate is

asked to reject every amendment that is offered even to the extent of rejecting an amendment that merely called for following the Constitution.

Oh, very well, let us proceed to the pending amendment which, as I say, was the amendment that was pending and which was discussed somewhat prior to the putting in of the Hatch amendment, which was thought to have possibly some chance of being approved, especially in view of the fact that eight Senators who voted the treaty some weeks ago, the Neutrality Treaty, were coauthors of the resolution that said that before this property in Panama could be disposed of there should be legislative authorization, a statute passed by the House and Senate. But I was disappointed in what took place in that regard.

Now, this amendment to article I adds a new section at the end of section 3. It makes this statement:

Provided, however, That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.

Well, we lean over so far backward to see that we do not offend Panama or the Panamanian dictator, that we are unable to refrain from offending the House of Representatives, 235 of whose number have asked that a statute be passed before this treaty goes into effect—we do not mind offending the House, we do not mind offending the American taxpayer, we do not mind offending people who want to see the canal strongly defended, and now let us see if we do not mind seeing U.S. citizens, who are employees of the Panama Canal Company—we are going to see whether we mind offending them and whether we are going to approve kicking them out of their jobs down there with the Panama Canal Company.

The way this thing operates, Madam President, the canal is operated not by the U.S. Government as such but by an agency or commission of the United States, a U.S. commission called the Panama Canal Company.

Now, under the treaties, the Panama Canal Company will cease to exist and all of it assets will be transferred to the Panama Canal Commission, changing the word "Company" to "Commission." That is still going to be a U.S. commission, and all of the property that is under the control of the Panama Canal Company is transferred, starting with the year 2000 to Panama, but prior to that time it is transferred to the Panama Canal Commission. Just a change of name. But ultimately, the commission must transfer it to Panama, without lien and without debt.

However, the treaty provides that as to U.S. citizens working for the Panama Canal Company, when they start working for the Panama Canal Commission—and inquiry revealed the other day that there are now 2,065 U.S. citizens working for the Panama Canal Company—under the treaty, in 5 years the Panama Canal Commission is obligated to see to it that 20 percent of those, somewhat over 400, are no longer in the employ of the Panama Canal Commission. So, within 5 years from now, we have got to get rid, either by attrition, resignation, or whatever, of 400 U.S. citizens who are working for the Panama Canal Company and who would be transferred over to the Panama Canal Commission.

The distinguished Senator from Maryland (Mr. Sarbanes) the other day—and I will take his figure as correct, though I think possible it is a little high—said that 80 percent, already, of the employees of the Panama Canal Company are Panamanians, which would leave 2 percent who are non-Panamanian. So our 2,065 have got to be reduced by 20 percent in 5 years. It is right here in the treaty.

I thought Madam President, that we were supposed to have control of the canal for the next 22 years. What kind of control is that? It is just rapidly weeding out employees who are citizens of the United States.

And that is not all, Madam President. The treaty says that the Panama Canal Commission has got to adopt a policy that generally—and I think the word "generally" would imply that there would be few exceptions—that generally, they have got to have a possibility that if a non-Panamanian is employed on the canal, it has got to be, because that person has some special skill that is not available in Panama.

How often do you think you would find somebody like that? Two or three a year? So no new Americans are going to be employed during this 22 years that we are supposed to have control of the canal. No Americans employed unless they have a special skill not available in Panama. The treaty says that shall be the general policy of the commission.

What kind of control is that? We already have 80 percent Panamanians, the 20 percent Americans that we have has to be reduced by 20 percent in 5 years, and no more new Americans can be employed unless they have a special skill not available in Panama. That is said to be the general policy which must be adopted by the commission.

Not only that, Madam President: This commission that is to run the canal—it takes over, I believe, immediately on the approval of the treaties and the ratification process and winning the litegation that is bound to ensue—then the commission operates the canal. It is still supposed to be an American commission. Do you know who the members of that commission are going to be? Well, they are going to have five Americans on the commission, and they are going to have four Panamanians—none of them approved by the Senate, and the treaty says Panama shall furnish the United States with a list of the four Panamanians, and they are to be appointed; no security check, no character check, no criminal record check; they are to be appointed, with none of them confirmed by the Senate.

Let us see about that. I do not know what the view of the five Americans is going to be. If there is one there who has some sort of bleeding heart with respect to Panama, and the fact that we mistreated them back in 1903, as has been stated here on the Senate floor, he might take the position of Panama right from the start; then you would have 5 to 4 favoring Panama and Panamanian interests. Well, so be it.

Then nothing is said, I do not believe— I could be wrong, but I do not believe anything is said about what is going to constitute a quorum for doing business of this commission. If they had the four Panamanians there and three Americans, they could transact busi-

ness and the Panamanian interests would be taken care of, but not the U.S. interests. Everything is stacked in Panama's favor, even to the extent of freezing out all Americans who are now employed there.

Should we not be concerned about the American citizens who have worked on the Panama Canal? Are they entitled to be considered? Why should we require that 400 of them be eliminated in 5 years? Why should we do that? I do not see any logic to it, myself.

So what does this amendment do? It is simple. It says:

Provided, however. That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.

Well, I do not see why the U.S. citizens cannot keep on doing their jobs. We talk about waiting 22 years; how are we waiting 22 years, when we already have 80 percent Panamanian employees and are going to get the rest of them? We are not waiting 22 years; we are operating that canal, if these treaties are agreed to and ratified, we are going to be operating that canal for the benefit of Panama—and Economic Minister Barletta, of Panama, says Panama is going to be drawing $100 million a year out of the operation. And, of course, Uncle Sam is the guarantor of the amount that Panama is going to get.

So the whole nature of the operation is going to be changed. The United States operates it as a nonprofit enterprise, altruistically for the benefit of the shipping for the entire world. We have not even paid for the canal yet. We still owe $319 million on it. That will be wiped out under the treaties and under the process of operation.

I am still wondering about the statement that we are going to keep the canal for 22 years. The treaty provides that starting in 1990 the administrator of the canal must be a Panamanian. That is jumping the gun by 10 years, it would seem to me. All the while, this U.S. commission, with five Americans on it and four Panamanians, is supposed to be operating the canal. But they will not have been approved by the Senate. We do not know who they will be. We will have not voice in who they might choose, whether they will be men of business judgment. This is a big business down there, operating the canal. There is no requirement there, no security check, no character check. That is the way it will be handled during this 22-year period before we actually withdraw our troops and turn the canal over to Panama entirely.

I submit, Madam President, that we are turning the canal over to Panama right away, if we are going to freeze out all Americans who are working there.

All this amendment would do, Madam President, is to give just a little bit of sense of security to the American citizens who are working for the Panama Canal Company. It lets them continue working there in their present positions until they reach retirement age, until they retire voluntarily, or until they are discharged for cause. Why can we not deal fairly with America and with American citizens? Let us wait the 22 years the treaty is supposed to provide before we kick all the Americans out from down there.

I understand there are Americans who have worked there for years and their sons are coming on, working there. It is a way of life for these people. They should not be penalized just because they are working on the Panama Canal, which is an American enterprise any way we look at it. They should not be penalized. Somebody has to do the work. Because they have chosen to go to the Canal Zone and to work for an American enterprise they should not be penalized by arranging for their early departure from their employment. That is what it would amount to.

What about others who want to become employees of the Panama Canal Commission? Unless they have a special skill not available to Panama, they need not apply. I would not be surprised to see signs on the employment office there at the Panama Canal Commission that "Americans need not apply" during this 22-year period, in which we are supposed to continue the control of the canal. What kind of control is that? "Americans need not apply." In fine print, there would be, "Unless you have some special skill not available in Panama."

We ought to be looking after our own people, to my way of thinking. Maybe that is old hat. Maybe that is old fashioned. Maybe we need to look after the whole world ahead of our own people, but I cannot bring myself to feel that way about it.

I hope the managers of the treaty will accept this amendment. I do not see why it would offend Panamanians. They already have 80 percent of the employees. This amendment says nothing about future employees. This would let them continue to have the policy of not hiring Americans in the future. But, Madam President, it just seems a little strange to me that an American commission, which is set up under this treaty, would be mandated under this treaty not to hire Americans. Is that reasonable? That is what the treaty says. I am not making it up.

Let us see what it says in article X, section 3, paragraph (a), reading from the wording of the treaty:

The United States of America shall establish an employment policy for the Panama Canal Commission—

That is the successor of the Panama Canal Company.

that shall generally limit—

And I use that word—

the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

Here is a U.S. commission at the employment office posting a sign, "Americans need not apply, unless you have a special skill not available in Panama."

What kind of policy is that for us to be accepting? Think of everybody, respect everybody's wishes, everybody's feelings, but the American taxpayer, the American citizen, the American who wants to see the canal defended in the best manner possible. Do not consider their wishes; consider the Panamanian wishes and the wishes of the Panamanian dictator and the dictatorial regime in Panama.

That is part of the trend in this country, Madam President. That is why I hate to see these treaties agreed to by the Senate. There is

a trend underway in this country to give away our very substance, to retire from the obligations and responsibilities of being a great world power, to retreat every time we meet resistance, and to say, "Well, sabotage, this that, and the other, we need the treaties."

[Mr. Hart assumed the chair.]

Mr. ALLEN. I believe this vote on these treaties is going to be a test of our will to survive. If we give in here, what is next? Guantanamo. I do not believe the ink will be dry for very long before Mr. Castro asks for his part of the pie. That is the surrender of our great naval base at Guantanamo.

Mr. President, as I say, this amendment does not seek to cancel this policy saying Americans cannot be employed. Another amendment will be offered at that point. What this does say is that these 2,065 American citizens who are employed by the Panama Canal Company, and who constitute only about 20 or 25 percent of the labor force down there, may be allowed to continue their employment.

Why should we add 2,000 people to the unemployment rolls? Let them work out their useful years working for the canal. I am sure they have a lot of sentiment attached to their work.

Do we consider them? Where are the labor unions in his fight? Why do they not speak up for employees down there? I assume they are members of labor organizations. Why do they not fight for the rights of their people?

I do not know what prevents them from doing that. I should think, if they were interested in their members, they would prevail upon some of their friends in the Senate to vote for an amendment of this sort.

I hope the leadership will accept the amendment. I do not see why the leadership would discriminate against American citizens who are employed by the canal. We talk about legislating against discrimination on account of age, race, or sex. Why do we not legislate against discrimination, because people are Americans?

That is what is involved here. We are discriminating against American citizens. We are saying that the American citizens who are employed there are on the way out and 20 percent of them have to hit the gate in 5 years, and no new ones can be employed unless they have a special skill. And we talk about nondiscrimination.

This is worse than discrimination that exists just as a course of dealings or a course of conduct out in business or industry or in the professions. That is just a practice that has grown up and taken place. In discrimination out in those areas of the private sector, there are no statutes—or, if that is not correct, there are few statutes—that would discriminate against them.

Why are we writing into a treaty that has the same force and effect, if properly agreed to, as our Constitution itself? Why are we writing into this sacred document provisions discriminating against American citizens? I am going to be waiting for an answer in just a few moments, because I am going to yield the floor.

I hope that the distinguished Senator from Idaho (Mr. Church) might look with favor on this amendment. He is frequently on the floor talking about not discriminating against the aged, and I certainly agree with him on that point. He does not want to discrimi-

nate on account of race, and I agree with him on that point. He does not want discrimination because of sex. Why, then, should he want discrimination because people are Americans? That is the issue of this amendment.

Mr. President, I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficent second? There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. ALLEN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ALLEN. I want it to go live.

The PRESIDING OFFICER. Objection is heard.

The second assistant legislative clerk resumed the call of the roll and the following Senators entered the Chamber and answered to their names:

[Quorum No. 8 Ex.]

Abourezk	Hansen	Muskie
Allen	Hart	Nelson
Anderson	Haskell	Nunn
Baker	Hatch	Packwood
Bartlett	Hatfield, Mark O.	Pearson
Bayh	Hatfield, Paul G.	Pell
Bellmon	Hathaway	Percy
Biden	Hayakawa	Proxmire
Brooke	Heinz	Randolph
Bumpers	Helms	Ribicoff
Burdick	Hodges	Riegle
Byrd, Harry F., Jr.	Hollings	Roth
Byrd, Robert C.	Huddleston	Sarbanes
Cannon	Humphrey	Sasser
Case	Inouye	Schmidt
Chafee	Jackson	Schweiker
Church	Javits	Scott
Clark	Johnston	Sparkman
Cranston	Kennedy	Stafford
Culver	Laxalt	Stennis
Curtis	Leahy	Stevens
Danforth	Long	Stevenson
DeConcini	Lugar	Stone
Dole	Magnuson	Talmadge
Domenici	Mathias	Thurmond
Durkin	Matsunaga	Tower
Eagleton	McClure	Wallop
Eastland	McGovern	Weicker
Ford	McIntyre	Williams
Garn	Melcher	Young
Glenn	Metzenbaum	Zorinsky
Goldwater	Morgan	
Griffin	Moynihan	

The PRESIDING OFFICER (Mr. Anderson). A quorum is present.

Mr. SCOTT. Mr. President, I rise in support of the amendment by the distinguished Senator from Alabama and other Senators.

It merely provides that all citizens of the United States who are now employees of the Panama Canal Company be permitted to

continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.

It seems reasonable that this amendment be adopted. On the surface it might appear that it would not be necessary to have an amendment such as this, but when you look at article X of the proposed treaty, you find that U.S. citizens are discriminated against.

Article X is entitled:

EMPLOYMENT WITH THE PANAMA CANAL COMMISSION

It states:

In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations.

This is putting the onus upon the United States to discriminate against its own citizens, because the United States, according to the proposed treaty, shall be operating the canal for the duration of the treaty.

Then we read, down in the second paragraph:

The regulations shall establish a system of preference—

It is not saying equality. It says:

The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission.

First they say that it is the United States that is going to establish regulations, and then that the regulations shall establish a system of preference for Panamanians.

We hear so much about equality in this country, that we have to have freedom from any bias, because of sex, because of age, because of race, because of religion and then we have something here in a treaty where a new agency would be established, administered by the U.S. Government, that would be an agency of the United States, which would provide a preference for foreign nationals.

That is what the distinguished Senator from Alabama is attempting to eliminate, so that citizens of our country can continue to be employed.

In order to understand this fully, though, I believe we have to look further into article X:

The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established; for foreign enterprises under the law of the Republic of Panama.

I do not know what the law of the Republic of Panama is with regard to foreign enterprise, but in a sense this is a U.S. agency, and apparently the language is referring to it as the same as a foreign enterprise but it says in one place we have to have a preference for Panamanians and in another place that we have to comply with Panamanian law, even though it is an agency of the United States.

Then we look further at section 3(a):

The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel

outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

In other words, if you can find Panamanians to do the work, then you cannot have U.S. citizens doing the work. You cannot go outside Panama to recruit people, and I assume that would mean you could not get people from the United States if you can find those in Panama who can do the job during the period of this treaty.

We read further, under subsection (b):

The United States of America will establish training programs for Panamanian employees.

It does not say anything about any training programs for U.S. employees of the Canal Company, but we shall have programs to train Panamanians.

Then, under subsection (c):

Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

In other words, we are going to decrease the ratio of American employees and increase the ratio of Panamanian employees.

We look further down, to section 5:

The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty.

Periodic rotation. Well, somebody who is working on the locks of a canal, someone who is working for the Panama Canal Company, as it is now called, would be rotated every 5 years.

It does continue on and says that:

It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

This would be something that would have to be determined by the government body made up of both Americans and Panamanians; but the idea is that someone who is working there in something that is not recognized as being irreplaceable would have to be rotated every 5 years.

It might take an individual 5 years to learn to do his job well, and then he would be rotated, whereas if he is a Panamanian he would not be covered, because it says "non-Panamanian employees." If he is an American he would be covered; so, again, this is discrimination against Americans in the treaty that we have before us.

Then we go on to the paragraph numbered 7:

Persons employed by the Panama Canal Company or Canal Zone Government—

These are the names that presently apply to the Canal Zone. It says that these people who are employed by the present governing bodies of the Canal Zone—

prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to

the maximum extent feasible, in other appropriate jobs with the Government of the United States.

Here it makes no distinction between Panamanians and American citizens. When we are talking about rights, then they include the Panamanians with the Americans, but when it is on the negative side, it is only the U.S. employees who are discriminated against.

In other appropriate jobs with the Government of the United States in accordance with the United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama.

Well, again, if they are Panamanians, we find them a job locally. If it is going to be a job with the U.S. Government, where will it be? It could be at the American Embassy. They have Panamanian employees at the American Embassy. We have a number of foreign aid programs in Panama. It is said that more foreign aid is given to the Republic of Panama by the United States on a per capita basis than any other country in the world. So apparently there are U.S. Government agencies which employ Panamanian citizens. But we would have foreign aid in Panama administered by Panamanians. It is bad enough when it is administered by U.S. citizens, but Panamanians having control over the expenditure of American foreign aid funds for the benefit of their own country just seems to me to be indefensible.

For such persons who are not United States nationals, placement efforts will be confined to the United States Government activities located within the Republic of Panama.

Then we look down further and it says:

Employee unions shall have the right to affiliate with international labor organizations.

I do not believe that is true of American Civil Service employees here in the United States. Again we should make an exception to our domestic laws.

Then under numbered paragraph 10—and I think this is the most costly, by far, of any of the other provisions—it says:

The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them: (a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

The treaty would exist from the time of its ratification until the end of the century, as a general statement, but during that period of time, for a substantial period in it, employees would be entitled to early retirement.

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by lay.

Mr. President, it is my understanding or my recollection of the law with regard to early retirement that a person who is separated from his job involuntarily, without fault of his own, if he has worked for a minimum of 25 years, can be retired on an immediate annuity, with a reduction if he is under 60 years of age based upon

his age. But this is an exceptional situation. It is not granted very often here in the United States.

However, this provision of the treaty says that we are determining that early retirement shall be available to anyone who is employed by the Panama Canal Company. We will provide appropriate early optional retirement. We will determine that conditions exist which invoke applicable American laws with regard to early retirement. So people could retire with 25 years' service, regardless of their age. They could retire with 20 years of service, if they reached the age of 55. This is my understanding of the present law.

The writers of this treaty are not satisfied even with this liberal provision, so they add another section, (b), and indicate that the United states will seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided by law.

Well, for the people in the executive branch of Government, as my colleagues know, the retirement is based on the average pay that the employee receives for the highest 3 years of his Government service. It is calculated on the basis of 1.5 percent for the first 5 years of his employment, 1¾ percent for the second 5 years, and 2 percent for the remainder of the time that he is employed. But this is not satisfactory to the people who have prepared this treaty. They would seek special legislation to provide more liberal benefits to, and calculation of, retirement annuities than is currently provided by law.

Mr. President, as Members of the Senate know, I am opposed to this entire treaty. I hope we will be able to gain just a few additional votes. Thirty-two Senators voted against the Neutrality Treaty. "Neutrality" has a good ring, but this is the Panama Canal Treaty. This is the giveaway treaty. We are talking about an American property giveaway and then paying somebody to take it. It does not have the same connotation as neutrality, but I believe the American people are sick and tired of giving away our national resources.

In this instance, we are talking about a Canal Zone with a replacement value of $9.8 billion. We would pay, between the time of ratification and the time of termination, somewhat over $2 billion to Panama as an incentive for them to accept this roughly $10 billion asset of the United States. To me, the whole treaty just does not make sense, especially so when we consider that it is a vital artery of commerce, something that was envisioned since it was learned that there was an isthmus, a narrow neck, between the two continents that would save, if a canal could be constructed, a great length of time that otherwise would be consumed in going around the Continent of South America.

A member of my staff indicated that even now, consideration is being given to a pipeline across Nicaragua to save on the transportation of oil. Of course, if this treaty is adopted, the United States cannot participate in matters of that kind.;

Mr. President, I hope that the amendment by the distinguished Senator from Alabama will be adopted, that citizens of the United States that are employed by the present Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, until they retire voluntarily, or until they are discharged for cause.

Mr. President, I yield the floor.

Mr. CHURCH. The amendment of the Senator from Alabama addresses article I of the treaty. In fact, it really should address article X of the treaty, the article dealing with employment with the Panama Canal Commission. During the course of the past 2 hours, every part of article X has been attacked by various Senators, but not one of them has described the purpose of that article. That purpose, Mr. President, is to establish a set of employment policies which will implement an effective and orderly transfer of the operations of the Panama Canal from the purely American control of the existing Panama Canal Company to purely Panamanian control when this treaty expires at the end of the century.

The mechanism for effecting that orderly transition is the Panama Canal Commission, which will operate the canal during the interim period. The commission will be controlled by a board of directors; the United States will hold five seats on that board and the Panamanians four. Thus, control of the commission will remain in American hands during the 22 years of the life of the treaty.

The distinguished Senator from Alabama asked whether it might be possible for the Panamanian minority on the board actually to transact business if all five American board members were not present. Thus, he asked whether it was possible, under certain circumstances, for the Panamanians to outvote the Americans.

These details concerning the actual rules of procedure by which the board would operate are not properly the subject matter of the treaty. Rather, they are properly the subject matter of the enabling legislation, which Congress later will consider, and which we already have before us. Section 206 from that proposed legislation deals with the subject of a quorum for the board of directors in the following language:

> Subsection (c) of Section 63 of Title 2 of the Panama Canal Code would be amended to provide that a quorum for transaction of business of the Board of Directors of the Commission shall consist of a majority of the directors, of which a majority of those present are citizens of the United States.

First, let me answer the argument that, somehow, the Panamanian membership of the board might outnumber the Americans for purposes of transacting the business of the Commission. Given the purpose of article X; namely, to effect an orderly transition, I think it important to understand that at the present time about 80 percent of the employees of the Panama Canal Company are Panamanians. The Panamanian employees, for the most part, occupy the lower positions, those requiring the least skills and commanding the least pay. During recent years, our own Panama Canal Co. has recognized the injustice of operating a canal which is the principal asset of Panama without giving Panamanian citizens a fairer opportunity to participate in its actual operation.

So, long before those treaties came to the Senate, we were undertaking not only to employ larger numbers of Panamanians, but also to slowly work them into the more skilled positions so that they might have fair opportunity to earn a living within their own country.

These treaties in effect continue that policy. They do so on an established timetable which contemplates that the commission itself will go out of existence at the end of the century, at which

time the Panamanians should be fully prepared to assure responsibility for operating the canal.

Now, the Senator from Alabama says that article X discriminates against American citizens, that somehow we are, in effect, putting an employment sign up which says, "Americans not wanted," unless special skills, not available in Panama, are required.

I suggest, Mr. President, that just the opposite is true. How could we possibly serve the interests of Americans working for the Panama Canal Commission if we retain them in all of the positions they now occupy, in their present numbers, from now until the end of the century and then, suddenly, terminate them?

Is the way to serve their interests to put them all out of work on the last day of the treaty and then attempt to fill those positions which require a high degree of professionalism and skill with Panamanians who are unprepared to assume these responsibilities and not capable of doing the work?

The Senator's argument, if one were really to accept it, is a prescription for chaos; and, certainly, a prescription that would work against the best interests of the American employees.

Now, given this general objective, let us turn to article X and see how the provisions of that article actually carry out our national purpose.

Remember now, it is the Panama Canal Commission, an agency of the Government of the United States, which will operate the canal during the interim period and employ all of those engaged in that work.

So, section 1 of article X reads:

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

Well, I do not know what exception anyone could take to that. It is an American agency, the U.S. Government that shall set the terms and conditions of employment, and our only responsibility is to inform the Government of Panama what our decisions might be.

Section 2:

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

All this section says is that to effect an orderly transition, the Commission will endeavor to fill vacancies, as they occur, with Panamanians who possess the necessary skills for the positions in question.

A natural and sensible proposal. That is the purpose of the interim period.

I find it hard to understand that the same Senators who were saying just 2 or 3 weeks ago that the Panamanians were quite incapable of operating the Panama Canal should now be the ones who are objecting to the very provisions which will make their

training over the next 22 years possible, and which will enable them to fill these positions one by one as they qualify for them and as vacancies occur.

The second part of the section relates to our endeavor to insure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama. It does not represent a serious burden.

As I mentioned earlier, some 80 percent of the employees today are already Panamanians. Under the laws of Panama, either 80 percent or 85 percent of the employees of foreign enterprises operating in Panama are required to be Panamanian. The exact percentage depends upon the character of the position. For one type of employees we appear to have already reached these goals. For the other type, this establishes the goal of moving from 80 percent Panamanian to 85 percent, a goal consistent with our effort to move more Panamanians into positions of responsibility and to train and equip them to manage the operation of the canal.

Part (b) of section 2 reads:

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

Who could object to that? Certainly, no one honestly concerned about the well-being of American employees, because this provision says that the positions the commission shall establish shall not be of a lesser stature or be less favorable to the employee than the positions that now exist.

In other words, there will be no downgrading of positions, and this, obviously, is intended primarily to protect the interests of both American and Panamanian employees of the present canal company.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

Well, of course. The whole purpose of the enterprise is to effect an orderly transition over the next 22 years which will enable the Panamanians to take full charge as competently trained people, when the time comes to transfer the canal to Panamanian ownership.

Therefore, in pursuit of that objective, which obviously serves the interests of the United States since we do not want chaos in Panama when the transition finally takes place, we should follow a policy of filling vacancies with qualified Panamanians whenever possible.

Part (b) of section 3 reads:

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

Notice that all these policies are premised upon positions becoming available in the years ahead. Clearly, our negotiators were

always mindful of the needs of American and Panamanian employees who presently occupy positions with the Panama Canal Company. But we shall endeavor, through the commission, to train Panamanian nationals to qualify them to assume positions as vacancies occur, consistent with our objective for an orderly transition over the next 22 years.

Subsection (c) of section 3 of article X reads:

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

Here, a goal is established—to move us toward a larger employment of Panamanians during the next 5 years. But the question is, what risk does this goal represent to present employees of the Panama Canal Company?

Figures given to me, which have been obtained the last few minutes, show that there are presently 3,354 American citizens working either for the Panama Canal Company or for the Government of the Panama Canal Zone. Of this number, 62 percent—2,084—are 50 years of age or over, and 28 percent are 55 years of age or over.

It is evident that within the next 5 years in the normal course of attrition and retirement, we can effect the goal of increasing the employment of Panamanians as set forth in subsection (c) of section 3, without menacing the job of any American citizen. Thus, this provision should not be a source of worry for anyone concerned—and I am concerned, as we all should be—for the fair treatment of American employees.

Subsection (d) reads:

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

That simply says that the two governments will exchange information concerning job openings and the qualifications of Panamanians that might fill those vacancies—all consistent with our national purpose.

Section 4:

The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

Here, again, the provision is consistent with the objective. We will recognize the licenses issued under Panamanian law, provided that those licenses are sufficient to meet the requirements of the positions. If they are not sufficient, then, of course, additional requirements may be established by the commission.

Section 5:

The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty.

Here, again, the objective is to transfer the operation of the Panama, step by step, into the hands of qualified Panamanians, under the general direction of the American controlled commission. A policy of rotation is consistent with that objective. But it should be remembered that this policy applies only to new employees hired after the treaty takes effect and the rotation requirement is not imposed upon present emplyees of the Panama Canal Company.

Section 6 reads:

With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

That is self-explanatory. It obviously works to protect the rights of both present employees and future employees, and I should think no Senator could take exception to it.

Section 7 reads:

Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States, in accordance with United States Civil Service regulations.

I think that is an exemplary provision. It says that in the event certain positions are eliminated by virtue of the treaty taking effect, any American citizen whose job is eliminated will have priority claim upon the Government of the United States for another job; every effort will be made to take care of any American whose job might be eliminated by virtue of the implementation of the treaty.

Then the section goes on to read:

For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama.

I heard this objected to as somehow being discriminatory. But obviously it is a reasonable provision. If jobs are eliminated that are now held by Panamanian citizens, then the Government of the United States undertakes to do its best to find them another position in Panama.

It would be unreasonable to require the United States to try to find positions in our civil service in the United States for Panamanian citizens. That should be apparent to everyone.

The section continues:

Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for

which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty.

What is wrong with that? Anyone who says that he is concerned about fairness for present employees obviously would want the Government of Panama to make such a commitment.

The section continues:

Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

Again that is a provision obviously designed to take care of employees whose positions might be eliminated and to establish a commitment by the Government of Panama to do its best to find them appropriate positions.

Section 8 of article X reads:

The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

That obviously is a provision that protects the interests of our own Government and at the same time assists the Republic of Panama in assuming its new responsibilities under the treaty.

Section 9(a) of article X reads:

The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargining established by the United States of America after consultation with employee unions.

This merely means that the present right of employees to negotiate with the Panama Canal Co. will continue to be honored by the Panama Canal Commission, another provision obviously designed to accommodate the needs of the employees.

Section 10 of article X reads:

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annunities and apply such law for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Now, here, Mr. President, our negotiators have taken a long step beyond what might normally be expected to insure that no injustice is done to any American employee who does not wish to remain in Panama for the period of the treaty.

Our negotiations have taken into consideration the fact that the rules of the game are being changed. They realized there are American citizens who went to the Panama Canal Zone expecting to work for the canal company all of their lives. They realized those Americans might have expected that the United States would retain full authority and jurisdiction over the Canal Zone during their lifetimes and that these treaties are something they might not have anticipated. So, they calculated that the needs of these employees would be accounted for by a generous retirement program, including the right to early retirement. And section 10 of article 10 provides all that, even the extent of specifically stating that if it is necessary to change the law to especially accommodate these Americans then the United States shall do so.

[Mr. Moynihan assumed the chair.]

Mr. CHURCH. I have not heard any Senator object to those provisions on the grounds that there was an adverse impact on American employees. I heard the Senator from Virginia complain that this was a special benefit in excess of the ordinary retirement benefits available to other employees of the Government. He seemed to switch ground. He started out by speaking ostensibly on behalf of the employees and ended up attacking this provision.

Clearly, it is fair to make special provisions for American citizens who went to Panama, expecting no change in the status quo, as that they will not be unjustly affected by the changes brought about by the new treaty.

So, Mr. President, I think that article X has been negotiated to provide a mechanism that will enable us to turn over the operation and control of the Panama Canal to the Panamanians at the end of the century, confident that we have prepared them to do the work, confident that the canal will then be competently managed and kept open as a neutral and peaceful waterway. All of which serves the manifest interests of the United States.

It is a sensible provision of the treaty and it has been well drafted to accomplish its purposes. On the other hand, the proposed amendment would in effect seek to incorporate in the treaty a guarantee that all United States citizen employees of the existing Panama Canal Company shall continue in their positions with its successor agency, the Panama Canal Commission.

The proposed amendment is both unnecessary and unworkable. Under the treaty, subject only to the general principles set forth therein, all of which I have now described and explained, the United States will retain authority over relations with employees. Thus, the benefits and guarantees to be provided commission employees are a matter within the legislative jurisdiction of the United States. If we are going to establish any other special provisions not addressed by the treaty, the way to do it is in the enabling legislation. The way not to do it, is to tie our hands by writing them into an international agreement as an amendment of this kind.

As matters now stand the United States is in a position to provide extensive protection to its employees, and the administration will propose to do so as indicated in the draft implementing legislation which has been provided to all Members of the Senate. Indeed, the treaty itself recognizes that existing employees should

be encouraged to remain in the employ of the Commission and that, to the extent that the discontinuance or transfer of certain activities of the present company would affect their present jobs, persons displaced from their present positions will be placed in other U.S. Government jobs to the maximum extent feasible. Both the treaty and draft implementing legislation provide additional benefits and protections to employees, including an optional early retirement program and job placement assistance. The Congress will, of course, have continuing jurisdiction to legislate such additional benefits as it may deem appropriate.

Not only would it be inappropriate to make job guarantees for U.S. citizens a matter of international agreement; the specific guarantees set forth in the proposed amendment are unworkable. For example, certain activities performed by the present Panama Canal Company will be transferred to the Republic of Panama at the entry into force of the treaty. The proposed amendment, however, would appear to require that these employees remain with the Commission even though the Commission would have no work for them to do. Not only is such a scheme administratively wasteful; it could result in difficulties in meeting our commitment under article X(3)(c) to reduce the number of U.S. nationals currently employed by the company who will be employed in the future by the Commission. The transfers of functions contemplated by the treaty and normal attrition would allow us to readily meet this commitment without jeopardizing the present employees whatever.

In sum, the proposed amendment is unnecessary, administratively unworkable, and contrary to U.S. interests in maintaining maximum American legislative discretion over the management of the canal and employee relations.

On that basis, Mr. President, I strongly oppose this amendment, and I propose to move to table it. But I see that the distinguished Senator from Alabama is here on the floor and if he wishes to speak again for the amendment I would oblige him and withhold the motion until such time as he has completed his remarks.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I appreciate the indulgence of the distinguished Senator from Idaho.

Mr. President, I would rather not speak under the sufferance of the distingushed Senator from Idaho and, for that reason, I will temporarily withdraw my amendment when it will not be subject to the threat of tabling, and I do withdraw my amendment and ask for recognition in my own right.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

Mr. ALLEN. Mr. President, the distinguished Senator from Idaho, of course, has the right to move to table my amendment. He was very kind and courteous to offer to allow me to speak at this time with respect to the amendment, but I do not wish to speak at the sufferance of the distinguished Senator from Idaho even though that sufferance was very graciously and courteously accorded to me. So at the appropriate time I will reoffer my amendment and discuss the article and my proposed amendment at that time.

Mr. President, the distinguished Senator from Idaho, in discussing my amendment and in discussing the provisions of article X,

stated that it had been alleged, I assume by the Senator from Alabama, that the provisions of the treaty discriminate against Americans, and the distinguished Senator from Idaho said quite the contrary, it does not discriminate against Americans. So let us examine the provisions of the treaty—and, by the way, the distinguished Senator from Idaho suggested that if we are dissatisfied with the provisions of the treaty we should not seek to amend the treaty, but we ought to try to amend the legislation that will follow the treaty.

Well, of course, the Senator must realize that as against the express provisions of the treaty you could not pass legislation. So the only way we can remove this discrimination is to address amendments to the provisions of the treaty, not some implementing legislation that may or may not be enacted or that may or may not be enacted as introduced.

So if we are going to try to change this discriminatory provision we have to address amendments to the treaty. The treaty is what has the discriminatory provisions in it, not the implementing legislation. So I assume then we are going to seriously consider the mechanism for seeking to rectify this discriminatory provision.

Now, if the Senate will accept the logic of the distinguished Senator from Idaho (Mr. Church) in saying that these provisions do not discriminate against Americans and, on the contrary, they are there for their benefit, well, the Senate will accept anything. Let us see what the provisions say which we are trying to remedy:

> Within 5 years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company—

And all understand, I am sure, that the Panama Canal Company now operates the canal, which is to be succeeded by the Panama Canal Commission on the entry into force of these treaties, both are supposed to be agencies of the U.S. Government, but the Commission apparently is going to be operating for the benefit of Panama and Panamanians with respect to the employment of American citizens—

> Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

How does that help American citizens? How is that other than discriminatory against American citizens? You have a certain number—I cited earlier in the day the fact that the Panama Canal Company told me that they had 2,065 U.S. citizens working for the Panama Canal Company, and the figure a moment ago quoted by the distinguished Senator from Idaho was 2,084, a difference of some 19, but he pointed out there were for the Panama Canal Zone government and the Panama Canal Company 3,354 employees in all, so this would say, this treaty provision would say, taking the 3,354 as the number, 20 percent less than that must be the number of Americans employed 5 years from now. Well, that is 670—they have got to show the gate, so to speak, to 670 U.S. citizens. Does that operate in favor of American citizens? If 670 have to go in the next 5 years, how does that protect citizens of the United States?

Is that discriminatory or nondiscriminatory? It is quite obvious that it is discrimination against U.S. employees. That is written into the treaty.

They say, "Well, if you don't like what is in the treaty, don't amend the treaty—oh, no, don't do that—amend this legislation that may or may not be enacted."

As I say, you cannot put into an act something that is inconsistent with the provisions of a treaty. A treaty operates at a higher level. That is a contract that has been agreed to between two governments. Obviously unilateral action by Congress in enacting legislation could not vary the terms of the treaty.

So if we followed the advice of the distinguished Senator from Idaho, and waited until this supposed legislation comes along to try to protect the citizens of the United States, we would certainly be closing the barn door after the horse had escaped, after writing into the treaty a provision that we have got to get rid of 670 American employees in 5 years, and then try to rectify that by sticking an amendment on to some legislation that is said to be on its way. That does not seem to be operating in favor of U.S. citizens. For 670 have to go in 5 years.

All right; the distinguished Senator from Idaho took up every single section and every single paragraph of this lengthy article X, to explain it and to show how great this was for the U.S. employees. "Oh, it is fine; it is of great benefit."

The only thing in this whole article for the benefit of the U.S. employee is that he is encouraged to leave, and the distinguished Senator from Idaho was bragging on these great provisions that are in there; if he decides to leave early, if he decides to retire voluntarily, he gets all of these benefits. But nothing is done to encourage them to stay there.

"Oh," he says, "a great number"—I think he quoted 85 percent, or some such figure, are 55 or 60 years of age, and, therefore, they are going to be gone anyway, and this mandatory figure of 20 percent leaving in 5 years is not going to hurt anybody, because they are going to leave anyway.

Then why have it in there? And why would there be anything wrong with the pending amendment, which merely says, for the protection of the U.S. citizens who work for the Panama Canal Company, that they will be able to live out their employment with the company; they will be able to continue working until retirement age? From what the distinguished Senator from Idaho says, that is really nearby for a large percentage of the employees. They can stay on in their work until retirement age, or until they voluntarily retire, or until they are discharged for cause.

If attrition is going to get them anyway, why put a requirement in here that 20 percent have to go in 5 years? Mr. President, it would seem that this would be a most innocuous amendment, to allow U.S. citizens to continue working.

"Oh," he says, "they will want to transfer somewhere else; there won't be any work for them."

Well, there is work for them now. If there is not work for them now, they ought to discharge them. But they are working there now, and this provision would not go into effect until the treaty goes into effect; so if they have got some people down there they do

not need, they could move them now and they would come out from under the protection of this amendment.

I do not believe they have any excess employees there. If so, they ought to make adjustments now. But why should not American citizens working for an American company, the Panama Canal Company, and being permitted to continue to work for the Panama Canal Commission, an American commission—why should they not be allowed to continue working? Why should Panama, during this 22-year period that we are supposed to retain control of the canal, not be satisfied with 80 percent of the employees, having added to that such vacancies in employment as might be caused by normal attrition?

Because they have another paragraph in this treaty—and all of this is done for the benefit of the U.S. citizen, according to the distinguished Senator from Idaho; it does not discriminate against him, it is in his favor, they would have us believe.

Let us look at this other paragraph. Right here in the treaty, where it ought to be amended, not by some legislation down the road:

The United States of America—

That is these United States, mandated to take action against U.S. citizens. Let us see if that is right.

The United States of America—

Says the treaty—

shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

How does that help American citizens? They cannot even get a job with the Commission if some Panamanian has equivalent skills. A U.S. citizen can be employed only if he has a special skill—and I do not know what that would be—a special skill that is not available among Panamanians. So that would just about close the door to employment of American citizens.

Mr. CURTIS. Mr. President, will the Senator yield?

Mr. ALLEN. I yield to the distinguished Senator from Nebraska.

Mr. CURTIS. Who is to decide whether a Panamanian citizen up for consideration has the necessary skills?

Mr. ALLEN. The treaty does not say. I am sure the Commission would make the first determination, but if it is not satisfactory to the Panamanians, I am sure they would protest, if they were being mistreated under the provisions of the treaty.

Mr. CURTIS. What would happen if the Panamanians presented themselves and said, "We are qualified and we want to take over all of the top managerial positions"?

Mr. ALLEN. If there was a vacancy, and if one of these positions fell within this 20 percent who have to go in 5 years, if the Panamanians had that particular skill—and we know they contend they can do anything, they can perform any job with the Commission—they would have the right over the U.S. citizen.

What I object to is we have all sorts of laws forbidding discrimination because of age, sex, nationality, religion—all sorts of laws forbidding that—and yet our negotiators write into this treaty, and

the leadership and the managers of the treaty seek to uphold, these provisions which not only do not prohibit discrimination against U.S. citizens, but provide for discrimination against U.S. citizens. That is what I cannot understand.

Mr. CURTIS. If the distinguished Senator will yield further, has there been anything about the management of the Panama Canal in the past which has disqualified the United States as operator of the canal insofar as the commerce of the whole world is concerned?

Mr. ALLEN. There has been no complaint whatsoever that I have ever heard of, and I assume no complaint by the Panamanians about Panamanians having jobs, because 80 percent of the jobs in the Panama Canal Company are held by Panamanians. Only 20 percent are U.S. citizens. The treaty tries to freeze them out. It does not add any additional jobs to the number. They are frozen in at the 3,345, or 2,065, depending upon which way we look at it, and no U.S. citizens will be added even though we are supposed to have control of the canal for 22 years.

What the Senator from Alabama does not understand is why a U.S. citizen could not go there at age 50 and work until age 65, well within this 22-year period. But, no, a U.S. citizen cannot get employment by the commission in the operation of the canal unless he has some special skill which the Panamanians do not have. The Senator knows the Panamanians will say they have all skills which are necessary for the operation of the canal. Possibly they do.

Mr. CURTIS. If my friend will yield further, I would like to point out that sometimes we fail to realize just how much the United States has invested in time, attention, and management, as well as in terms of dollars in making this international canal, this waterway which joins the Atlantic and Pacific, available to the whole world.

Just last week I was reading concerning negotiations of the Clayton-Bulwer treaty 125 years ago, in 1853, or thereabouts. At that time there was discussion about an interocean canal in Central America. The negotiations in reference to that treaty were for the purpose of settling the claims of Great Britain and the United States which would make possible further planning, negotiations, and discussions on the part of the United States.

This is so diametrically opposed and different from the idle charge of colonialism.

A colonial power, when they take over another territory, removes the valuable resources. We have not taken any resources away from Panama. We have brought forth the greatest resource that that area of the world could have by providing a canal to serve the whole world, and also which has brought the highest per capita income to the citizens of Panama of any country in Central America. I thank my distinguished friend for yielding.

Mr. ALLEN. I thank the distinguished Senator from Nebraska for his fine comments, and commenting on the Clayton-Bulwer Treaty between the United States and Great Britain. It did provide that in the event a canal should be built, it would be open to all nations, and it would serve for the benefits of the shipping of the entire world.

That is the way the United States has operated the Panama Canal. It has been operated on a nonprofit basis. Under these

treaties, the United States, supposedly, for 22 years, will operate it for the benefit of Panama, and under which Panama will receive, according to the economics minister of Panama, some $100 million per year.

The whole nature of the operation is to change.

What I am objecting to in connection with this amendment is that the terms of the treaty discriminate against the U.S. citizens who are presently working for the canal. I say canal, meaning the Panama Canal Company, to be succeeded by the Panama Canal Commission. They are being discriminated against because 20 percent of them have to go in 5 years, and there will be no additions to this number of U.S. citizens who hold jobs working for the canal unless they have some special skill not had by Panamanians. It would be hard to figure what that particular skill would be. Obviously, there are some two, three, or four positions in the entire operation.

So they are going to fix it where there can be practically no new employees who are Americans, and the employees who are there have to be reduced in number by 20 percent in 5 years. That is said to be for the benefit of the employees.

As I said, if anybody will accept that logic, they will believe anything.

Let us read this provision about employment of Americans at the canal.

The United States of America—

And this seems to be degrading to me, Mr. President, in talking about some of the amendments we have offered being unacceptable to Panama because they would serve to degrade them, they would be an offense against their national dignity. But here is the United States, as I see it, humiliated in this treaty by mandating that it shall put into effect a policy which discriminates against American citizens in obtaining employment with the Panama Canal Commission.

Let us see if that is a fair statement in the light of the actual provision.

The United States of America shall establish an employment policy—

What is it?

for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

The United States is mandated to put in that employment policy for the Panama Canal Commission.

How does that translate out? Why, it is just like saying the United States shall require the Panama Canal Commission to put up a sign at the employment office: "Under the Panama Canal Treaty, Americans"—and I say that in the sense of a citizen of the United States—"Americans need not apply for employment with the Panama Canal Commission."

An agency of the U.S. Government not going to employ American citizens—how ridiculous can you get? A commission of the U.S. Government unable to employ American citizens. I do not know what the EEOC might think about that, I say to my distinguished

friend from Nebraska, but it seems to me that that is a definite discrimination, written directly into this treaty, to require an agency of the U.S. Government to apply a policy of discriminating against American citizens. There it is. Read it yourself.

We are told, we, do not offer an amendment to that; that will amend the treaty. Amend this bill that is going to come forward.

As I pointed out, a bill cannot change a provision of the treaty, as we all know.

We legislate against the private sector and, I believe, according to the rules of the Senate now, even Members of the Senate are mandated not to discriminate in employment in any way. The private sector is required not to discriminate because of race; not to discriminate because of nationality; not to discriminate because of religion, age, or sex, or any other reason.

(Mr. Bayh assumed the chair.)

Mr. ALLEN. If we found the Panama Commission discriminating against Panamanians, we would not like it. But it is all right for this treaty to discriminate against American citizens.

Those employees down there are members of national unions. I do not know why they have been abandoned by their unions. I have not heard the unions speak out against this discrimination against their members down there. I do not know whether it is part of a larger policy having to do with legislation pending before the Congress. But I have not received any letters from labor organizations protesting against this discrimination against the Panama Canal employees who, I understand, are unionized.

Why is this provision here? To ease out the American employee; a U.S. commission being required to discriminate against American employees. Well, it is not much of a U.S. commission if it is mandated to discriminate against American employees.

Oh, they say, it is all for the best interests of the employee. Well, it will cut his throat. I do not see how that can be helping him a great deal. That is what it does.

An American citizen of advanced age, such as was cited by the distinguished Senator from Idaho (Mr. Church), might have a son or two sons who might want to follow their father in employment by the Panama Canal Commission. He might have a sentimental interest in that type of work. But unless he has some special skill, he need not drop by the employment office. The treaty says:

> Nothing doing; you are an American citizen; therefore, you cannot have employment at the Panama Canal Commission unless you have a special skill.

Is that fair to American citizens? If we are talking about the year 2000, when Panama takes over the canal, fine; yes, let them do what they wish.

Mr. Church says something about, well, it is better to do it this way than to let them go on down 22 years from now and get chopped off, everybody at one time. Well, he blows hot and cold. On the one hand, he says, if we cut them all off 22 years from now, it will cause chaos. Then his other statement, so inconsistent with that, is that attrition will solve the matter, anyhow.

On the one hand, he says all of them will be there, in effect, for 22 years, and when they are all terminated, it will cause chaos; on the other hand, he is saying, let attrition handle it. It will take

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care of it, anyhow. Which theory of the proponents are we supposed to believe?

I do not like the idea of mandating the departure of 20 percent of the employees. If attrition is 10 percent, fine. If it is 30 percent, all right. But do not mandate the separation of 20 percent of the American employees and do not set up an employment policy that mandates a U.S. agency to discriminate against Americans. That is what the treaty does.

What about the amendment? It is simple, but it does provide a little protection for American employees now employed at the canal:

Provided, however, that all citizens of the United States who are now employees of the Panama Canal Company—

That is the agency now in existence there—

shall be permitted to continue their positions with the Panama Canal Commission—

Indefinitely? Without any limitation? No. Listen to the limitation:

until they reach retirement age.

The distinguished Senator from Idaho (Mr. Church) is saying that a large percentage—I think he said 85 percent—are over 55. If I am not mistaken, he said they are over 60. But at least about 85 percent of them were in their middle 50's or early 60's. So this would not cause any chaos there, it would seem.

It says, "until they reach retirement age or retire voluntarily or are discharged for cause."

Discharged for cause? He says some of them are going to be transferred over to the Government; therefore, there is no need for them there. Well, that is cause, if they do not have work for them. They can be discharged. But the idea of insisting on reducing the number by 20 percent in the face of the facts that would show that attrition would gradually remove every one of the employees except very young employees by the time this treaty ends—Mr. President, it seems to me that this is an amendment that should be accepted. Without this amendment, U.S. citizens who are employees of the canal are discriminated against and U.S. citizens who are not employees of the canal but who want to be are discriminated against. So, in this day and age—they say, oh, this is a different age from when this 1903 treaty was entered into. They obviously overlooked the 1955 treaty, which more or less ratified and confirmed what was done in 1903. They prefer to talk about the 1903 treaty.

(Mr. Moynihan assumed the chair.)

Mr. ALLEN. Mr. President, as I was suggesting, they say we are in a new age now, different from the situation that existed back in 1903. No longer do we have colonialism around the world, according to the proponents of the treaty. A new day has dawned.

Well I do not believe a new day has dawned to the extent that we are going to write into a treaty sections that do not prohibit discrimination, which is very properly the order of the day now, but which have sections that provide for discrimination.

The order of the day is to pass legislation forbidding discrimination, discrimination against those who are handicapped, discrimina-

tion because of sex, age, color, nationality, religion. By departing from that trend, Mr. President, this treaty provides for discrimination against American citizens.

That is one of the things I have pointed out throughout this entire debate, that these treaties do not try to avoid offending those who want to keep the Panama Canal, those who feel that the treaties do not provide adequate defense of the canal, those who feel that the canal is unfair to the American taxpayer.

We do not mind, according to the action of the Senate earlier, offending the House of Representatives by not allowing or not conditioning the going into force of this treaty upon an act of Congress authorizing the disposition of the property of the United States in the Panama Canal Zone. We do not mind offending Americans and, apparently, we do not mind offending the employees of the Panama Canal Commission who are American citizens. But we sure do mind the possibility of offending Panama.

Mr. President, this amendment would afford some measure of protection to American citizens who are employed in the work of the canal.

Later on, when we reach article VIII, an amendment will be offered that would eliminate the section providing that no American citizen can be employed unless he has a special skill the Panamanians do not have.

I am going to try to eliminate that, as well.

But this amendment that was pending and which I withdrew for tactical reasons to keep it from being tabled a moment ago and shutting off debate, all this amendment does—and it will be reoffered after sufficient debate has been had on the amendment—is that it gives some little measure of protection to American citizens working for the canal.

I do not believe the Senate wants to deprive these American citizens of this small measure of protection. Otherwise, any employee down there, any and every one of them, will be asking himself as they fill this quota of 670 to be separated, "Am I one of them? Will I be one of the 20 percent?"

Why cause that concern to the American citizens who are working for the canal?

The distinguished Senator from Idaho (Mr. Church) says, "Well, attrition is going to take care of them."

Well, if attrition is going to take care of them, why does he need this section saying that 20 percent must go? Why have that Sword of Damocles over every one of the employees, wondering whether it is going to drop on him?

That is what we provide here. The Sword of Damocles suspended by a hair, hanging over the head of every American citizen employed by the canal. "Will I be one of the 20 percent that has to go?"

No one would know whether he would be one destined to go, or not.

The amendment that we have would provide that American citizens now employed, and it is just 20 percent of the whole labor force, an American citizen now employed with the canal can continue working until the retirement age, until voluntary retirement, or until discharged for cause.

I hope the Senate will agree to this amendment or, if the motion is made to table the amendment, I hope the Senate will vote against the motion to table.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska (Mr. Curtis).

Mr. CURTIS. Mr. President, I want to commend the distinguished Senator from Alabama for his part in the debate on these two Panama Canal Treaties. He has not only been most faithful in his attendance at the debate, but he has been studious and thorough and he has raised many very penetrating questions.

All of this is for the good of our country. We cannot arrive at the right answer to problems by just turning our back on the facts involved.

Many people fear for our country when they know that an important treaty is underway, that when amendments are offered little attention is paid to the debate, and the overpowering forces are brought in only to table the amendment without considering it on its merits.

Mr. President, such a course is not good legislating. It is not the symbol of statemanship.

I commend the distinguished Senator from Alabama for raising this debate to a high level, for going into the facts and the propositions and the problems so that the Senate might know as well as the American public.

Mr. President, we cannot view this proposal to give up the Panama Canal as an isolated incident.

It is not just one action in which the United States, for some reason or other, believes it is good to give up something. It is not surprising that utterances are of the whole world scene. It has to be viewed in the light of our foreign policy, in the light of our defense program. We cannot shut our eyes to the trend in the United States for us to retreat in South Korea. Everybody knows that is to back off and advance the cause of communisim as a result.

We cannot separate this question of running away from a world responsibility to operate the Panama Canal from the proposal not to go ahead with the neutron bomb. We cannot separate this proposal from the decision not to have the B–1 bomber. This is all part and parcel of a worldwide retreat from responsibility which would encourage the forces of evil around the world.

Mr. President, it is not surprising that the American people feel very deeply on the question of the Panama Canal. It is not surprising that utterances are made that reveal a high state of emotion about this matter. It is not surprising that some of the rhetoric might exceed that which others approve at all times. But that is the fact.

Yesterday, I received in the mail a statement written by a distinguished American. He served in Congress for a long time. He held important positions in the House of Representatives. He comes from an old and distinguished family in the United States.

The writer of this article is now 90 years old. I refer to the Honorable Hamilton Fish, whose present address is 655 Park Avenue, New York, N.Y. 10021.

Mr. President, here is a gentleman who served his country as a soldier, served in the U.S. Congress, has been an avid student of American history all through the years, of American foreign policy, of our defense program. He is now in his 90th year. I am going to read what Mr. Fish says. He says,

A vote for the canal treaty aids and abets the Soviet Union and world communism.

Then he goes on to make his case:

Pro-treaty Senators may try to slice it and cover it up temporarily to deceive and fool our country. The American people however, are far too intelligent to misrepresented or bamboozled by partisan politics or playing chicken with the Soviet Union, the very silent member of the Communist axis. By Election Day, the American people will know that the surrender of the canal to a pro-Communist dictator in Panama, a buddy of Castro, the catspaw of the Soviet Union, is playing into the hands and arms of the top Moscow Communists who hate the United States and seek to destroy us, by their 400 nuclear armed submarines and more powerful nuclear weapons.

If pro-treaty Senators don't know this, then they should resign and not wait to be defeated. There is one main issue involved in the surrender of the canal in this nuclear age to a pro-Communist dictator and that is the security of the United States and the lives of the American people. This is totally a non-partisan issue as it involves the existence of the United States and the lives of over 200 million Americans.

It is not a contest of liberals against conservatives, but Americans who stand for our own security against appeasers, unilateral internationalists, one-worlders, peace at any price, and pacifists. I believe in the full freedom of speech for all appeasers and supporters of the canal treaty. But I would be derelict to my own experience and knowledge, as Chairman of the First Congressional Committee, to investigate Communist principles, plans, purposes and policies, to surround and destroy the United States, to remain silent. It would amount to a form of betrayal and near treason in this nuclear age.

Sixteen years ago it was different, when we forced the Soviet Union to take back from Cuba, the big nuclear weapons the Communists had deployed against us. Then we had a 5 to 1 nuclear superiority. Now the Soviet Union has a 2 to 1 superiority in almost every category of nuclear weapons and 5 to 1 in nuclear explosive power. In addition, they have 400 nuclear armed submarines against our 150 and over twice as many navy warships.

Some pro-treaty Senator may ask—why I am, at 90 years of age, so outspoken. The answer is crystal clear—because I love America, and because I know even if some pro-treaty Senators ignore or do not realize that Lenin, the only god of the Godless Communists, whom all of them worshipped, said: "You must encircle the United States and if they do not surrender, destroy them." This is the religious, policial and foreign policy of the Soviet Union. If we surrender the canal to a pro-Communist dictator in Panama, word will be flashed directly to the totally silent partner at Moscow, of the Panama-Cuban-Soviet axis. Before the ink is dry on the treaty, orders will be issued to the top Soviet navy admiral to start sending the beginning of a nuclear armada of submarines and missile ships to fortified bases in Cuba with instructions to make them the strongest submarine fortress in the world.

Once the encirclement is completed, we will soon become a second-class nation unable to transport our troopships to Europe or Panama. This is only part of the tragic abomination and desolation involved in the Panama treaty which I pray to God will not be ratified. With 200 Soviet submarines based on supply harbors in Cuba, and nearby islands, the Communist armada would dominate not only the Caribbean and Gulf of Mexico, but every important harbor on our Atlantic and Pacific coasts.

The responsibility of aiding and abetting Communism, rests with the pro-treaty Senators who are hiding behind President Carter's appointees on the General Staff, who knew they were politically surrounded and were wise enough to follow sound, military tactics, to retreat in order to fight another day. Every Senator should realize if President Carter had not repudiated his public campiagn promise that he opposed giving away the canal, partially or completely, the General Staff would have then agreed with him.

Let the pro-treaty Senators answer the public statement of four former Chiefs of Naval Operations (the highest most obtainable in the U.S. Navy) that declared "loss

of the Panama Canal * * * would contribute to the encirclement of the U.S. by hostile naval forces and threaten our ability to survive". None of these men are appointees of President Carter.

Abraham Lincoln said: "To sin by silence when you should protest makes cowards of men". The American people are not cowards and have a right and a duty to protest when their own security is involved. Let the protreaty Senators publicly answer the statement of the four leading retired Admirals to 95 percent of our army, navy, air force and marine officers, also to 95 percent of the Veterans of Foreign Wars and 90 percent of the American Legionnaires.

Mr. CHAFEE. Mr. President, will the Senator yield for a question?

Mr. CURTIS. I am happy to yield for a question.

Mr. CHAFEE. I have been listening carefully to this excellent statement that the Senator has been reading from the distinguished former Congressman from New York, Congressman Fish. But I wish to point out a couple of exceptions that I might take to his statement.

He refers to the four former Chiefs of Naval Operations. But, of course, first, I point out that the just previous Chief of Naval Operations has, of course, not remained silent. He has come forward in support of these treaties. That is Admiral Zumwalt.

But I think the key point I wish to make is that it is one thing for men who do not have the responsibility, who are retired, who are gone from the day-to-day problems that have to be solved and do not have the responsibility, to make statements. But the men who have the responsibility, namely, every single member of the Joint Chiefs, the heads of the Marine Corps, Army, Navy, and Air Force plus the chairman, have all come out in support of this treaty.

I just do not think we can overlook that.

Another point I wish to raise with the distinguished Senator's comments is that he sees this as a pattern, all tied in with withdrawal from South Korea, the retreat from South Vietnam, supposedly our giving up the neutron bomb, or possibly even getting out of Guantanamo Bay, or any of those movements.

I cannot speak for the remainder of Senators who are for this treaty, but certainly I in no way feel committed that by voting for this treaty, therefore, I am going to vote for withdrawal of forces from South Korea, for doing something about Guantanamo Bay, or getting rid of the neutron bomb. Nor has the President come down yet on a position on the neutron bomb.

But I just think it is incorrect to make a statement tying all these together in a package.

True, we got out of South Vietnam, but I do not think the Senator would say we should have stayed there under the circumstances, and there was the administration that both of us supported very strongly that provided for us getting out of South Vietnam.

So I say to the public, all who are listening, that those who are in favor of this treaty are in no way for a retreat from America's responsibilities around the world. We take each case on its own.

As for the neutron bomb, let us look at it when the time comes.

But by voting for this treaty we are not going to vote to give up the neutron bomb.

I thank the Senator, and I appreciate him giving me the opportunity to ask these questions and make this statement.

Mr. CURTIS. Mr. President, I thank my distinguished friend, and I say in reply that I do not question the motives, the intentions, or the patriotism of any Senator.

I do feel that regardless of our intentions or our position on any individual item in our defense program or foreign policy we cannot escape from giving attention to the overall effect of what is proposed here in our foreign policy and that we cannot separate them as much as we would like. It is part of what is taking place.

I respect my distinguished friend in his statement about the naval officers now on duty. I think it is a fact so well known that, in terms of the courtroom, we can take judicial notice of the principle that military men on duty are under wraps, they cannot be policymakers, they are by their very training committed to accepting whatever the policy is and making the best of it.

I think that it is true to a considerable extent that after these distinguished defenders of our country retire they no longer have a feeling that they are under wraps, and they are free to speak their beliefs.

Mr. President, continuing the statement of former Congressman Fish, and I am referring to it in full because I believe it is worthy of consideration:

Abraham Lincoln said: "To sin by silence when you should protest makes cowards of men". The American people are not cowards and have a right and a duty to protest when their own security is involved. Let the protreaty Senators publicly answer the statement of the four leading retired Admirals to 95 percent of our army, navy, air force and marine officers, also to 95 percent of the Veterans of Foreign Wars and 90 percent of the American Legionnaires, some of whom did not fight overseas, and hold the same views. If these four distinguished American Admirals are wrong, I will surrender my World War I decorations won on the battlefields of France.

He then goes on to say:

I am a life-long Republican and proud of it; after 25 years service in the Congress, ten years as ranking minority member of the House Foreign Affairs Committee and four years as ranking Republican member of the Rules Committee, and never defeated by a Democrat.

I have no right, except as an American, to advise Democrats how to vote, but many of them must sink or swim, survive or perish, on the canal issue, along with President Carter and his vanishing influence in the Democratic Party.

But I have a very definite right to urge all Republican Senators not to follow President Carter down the slippery and treacherous path from which there is no return, to aid and abet our Communist enemies in encircling and destroying our country and our people. If the canal treaty is ratified, God forbid, it will light such a flame of bitterness and anger, that it will not be extinguished until numerous Republican and Democratic pro-treaty Senators will be defeated by their own constituents who have been led astray by double talk and double worded campaign oratory. They naturally are opposed to playing chicken with our Communist enemies who seek to liquidate the American people by encircling us if the Panama treaty is ratified.

The neutrality vote was nothing but a gesture, useless and meaningless. The final vote on the surrender of the canal, is an abject surrender to a pro-Communist dictator and his Communist allies. By Election Day, the American people will know the whole truth, and also what happens in Panama if the treaty is ratified.

I have just returned from a month's trip to Arizona and California where I only met one person who was for the canal treaties and she came from New York. But the Republicans in New York are 80 percent against the canal treaties and half of them are madder than aroused hornets and will not vote for any Republican protreaty Senators, appeasing or aiding our Communist enemies in spite of the big banks and some of the media. The Republican voters are already sharpening their political axes as they are naturally interested in their own security and survival.

I go on to quote Mr. Fish's words:

The political guillotine will fall of both Republican and Democratic pro-treaty Senators, who follow Carter into opening the way for our avowed enemies to encircle and liquidate the American people. All Americans have a right to protest for the right to survive and I gladly join with Democrats, Republican, Liberals and Conservatives, in behalf of their rights to security against encirclement of themselves, the United States, our freedoms and human rights, against Communist dictatorships everywhere.

Pro-treaty Senators have written me that there are only 600 Communists in Panama. True, or false, it makes no difference. Six hundred armed Communists seized the Kerensky Government in Russia in 1917. But these Senators fail to tell their constituents, that there are 300 Communist Cubans and 200 Communists from Russia, mostly KGB secret service spies, in Panama today.

If the treaty is ratified, God forbid, again and again, they will be replaced by thousands of Communists, including hundreds of army, navy, air force officers and engineers, from the Soviet Union and Cuba. Again, if I am wrong, I will regretfully give away my Croix de Guerre and Silver Star, won on the battlefields of France, fighting for freedom and democracy, just the opposite to the pro-Communist dictatorship in Panama. I hope that every Senator will read this final warning of the hornet's nest they are creating in their own states at the insistence of President Carter, with his 36 percent rating in the last Harris poll. Carter's popularity is still ebbing like the American dollar and his credibility for the ruinous inflation, the decline of the stockmarket and the loss of public confidence, does not make him a knight in shining political armor, to cause misguided Republican Senators to follow him down into the dismal swamp of despair and defeat.

The only possible reason might be that they would be committing political suicide to help drive a few more nails into President Carter's political coffin if the treaty is ratified, which will obviously help elect Republicans throughout the nation.

I am not a prophet or the son of a prophet but even the Biblical prophets warned the existing government of its ruinous policies and used very strong words in their denunciation. It does not take much courage or strong guts, to tell the truth in trying to safeguard the nation and its survival.

The statement of President Carter to coerce Israel in order to provide a PLO homeland west of the Jordan River within sight of Jerusalem, is like placing a Communist rattlesnake in your own backyard. That is precisely what President Carter is trying to do in Panama. This final warning to all patriotic Senators will be given extensive circulation in every state where there is an election of a pro-treaty Senator, no matter the cost. The American people are entitled to know the truth. If there is any unfounded statements, they will be omitted. The real issue is the truth and our own security and the survival of the American people.

That is the end of the statement of the Honorable Hamilton Fish, former Congressman, soldier and patriot, now 90 years of age.

(Mr. Leahy assumed the chair.)

Mr. CURTIS. Mr. President, perhaps there are some who justifiably feel that the words I have just read of former Congressman Fish are a bit strong, that they are more critical than they ought to be. They may be correct.

The point is it is a viewpoint that is worthy of consideration. If honorable American people believe that our country is in danger by reason of this step proposed in reference to the Panama Canal, thank heavens we live in a country where they can speak out and say so.

I remind you of what I said at the beginning of my remarks, that Panama and the proposal for us to give away the canal is not an isolated incident. It is not in a vacuum, severed and apart from the rest of all the things around the world. It has to be viewed in the light of the retreat in South Korea; it has to be viewed in the light of how we became entangled in Vietnam; it has to be viewed in the light of our overanxiousness to unilaterally disarm; it has to be viewed in the light of the administration's position to not go forward with the B–1 bomber; it has to be viewed in the light of our

Government's attitude toward important weapons such as the neutron bomb.

In that light it becomes a part of our foreign policy, a part of our global policy. Is it a retreat? The answer is obvious.

I also ask the question when have liberty and freedom been served by retreat? When has the world been assured of peace through appeasement? Are we to form our policy because a handful of radicals say "Boo, there is going to be trouble if you don't surrender the Panama Canal"? Or do we have a responsibility to look at the facts, to examine the record and see whether our operation of the Panama Canal has been honorable?

I have heard no argument to the contrary.

We should also examine the facts and find out if the United States has operated the Panama Canal for the benefit of the whole world. Have we kept true to our commitment that we would operate the Panama Canal at cost so the nations of the world could carry on their commerce?

Oh, the Panama Canal was not built by America as a money-making proposition. That canal was not built for the purpose of controlling the commerce of the world and saying, "This country can pass, another one cannot." It was built after decades of planning to serve the commerce of the world, to permit goods to flow from the Atlantic to the Pacific, from the Pacific to the Atlantic, and in time of need for us to transport our ships and troops through the canal in order that we could defend our own country.

So many Americans point with pride at the Cuban confrontation of a few years ago and the position America took, and the backdown on the part of the Communists. One of the reasons why that was successful was because of the great number of warships that passed through the Panama Canal.

Do you think if we surrendered this canal a decade or two from now we would have the same opportunity if a controversy arose with Cuba and with Russia? The answer is obvious.

I think that this treaty ought to go back to the negotiating table. We ought to go as far as we can in meeting just demands of the Panamanians.

It is very evident that the cost of government at all levels in every place has gone very high. That no doubt is true in reference to Panama. So, as one Senator, I would welcome an opportunity, without surrendering the canal, to be more generous financially with Panama.

It is also very likely that we do not need all of the land in the Panama Canal Zone for the operation of the canal. Those of us who visited down there know that the population is growing, their industry and jobs are growing. They have built many buildings, and I am sure they can use a little more land. I, for one, would welcome a chance to give back to them any land that is not needed in connection with the canal or is not likely to be needed.

But on the question of surrendering the canal—and that is the issue we face in this treaty—we are faced with a question that involves our foreign policy, our defense policy, our responsibility as a leader in the world, our responsibility to all the other nations of the world to make it possible for the commerce to move through.

We owe a responsibility to continue a sound and efficient operation of that canal.

Oh, Mr. President, if there are reasons for giving up this canal, why can we not hear them in this debate? How would the commerce of the world be improved by our giving up this canal? How would the defense of our country be enhanced by giving up the canal? How would the thrust of world communism be restrained by our giving up the canal?

If there are such reasons, why are they hidden under a bushel? Mr. President, the more charge that not to do it is colonialism does not stand up. We have been most generous with Panama. We have made Panama the most prosperous nation in Central America. The very presence of the canal there, with the maintenance by the United States, enhances their economy a great deal.

Mr. President, Americans have never had a desire to force their way of life on other people. Americans are not guilty of trying to bring converts to the American way of life by means of the sword. On the other hand, all through the centuries, Americans have felt that we should use our moral strength to protect liberty around the world. We seek individual liberty for ourselves and for all mankind, because all men should have it. We should forever be an exponent of liberty.

If we are to enter into a treaty with Panama concerning the canal, in the interests of liberty we ought to insist that an election be held, and that the Panamanian citizens be allowed to choose a governement of their choosing not of ours but of their choosing, to negotiate for them.

Mr. President, General Torrijos was never elected head of the Panamanian Government. He seized control with a gun. The last elected president was banished. He cannot even come forth and express his opinion about this treaty. They have not had an election in that country since 1968. Oh, where oh where is the American principle of standing for human rights?

One of the most important rights is the right to vote. That is the right by which, when we exercise it, we can obtain other rights. It is through the vote that citizens can make their wishes known. If they have the right to vote, they can expect those who hold office to act responsibly. If they do not have the right to vote, how can they hold anybody responsible? How can they change their government when they disagree with the way it is being run?

I declare unto you that there is no right to vote in Panama. If you think I am in error, cite me the time when they have held an election in the last 10 years. There is no right to vote if you do not have any elections.

Mr. President, the issue of the Panama Canal is of interest to all the people of the world. It is especially of interest to all the nations that conduct commerce. It is of special significance to all people who have the privilege of enjoying liberty.

If we want to take a step in reference to the future of the Panama Canal, why do we not insist that they hold an election in Panama and elect a government that speaks for the people?

Oh, Mr. President, it will be argued that many governments not elected have entered into treaties, and they have been binding. I am not talking about the legalities of a document; I am talking

about human liberty. Either we are for it or we are not. If we are not for human liberty, we should insist that those Governments with which we deal be governments chosen by the people—unless, of course, they are hostile governments and our dealings are motivated by a different reason.

Mr. President, I have had prepared and caused to be printed an amendment. It happens to be amendment No. 63. It provides that before this treaty takes effect, neither the treaty concerning permanent neutrality or the treaty concerning operation of the Panama Canal shall enter into effect until signed by a chief of state of the Republic of Panama who is duly elected by a public election, supervised by observers dispatched by the United Nations, and involving candidates of more than one party.

Oh, I know that will be branded as nonsense. It will be branded as butting into other people's affairs. Not at all. It does not provide that they shall elect somebody acceptable to us. All it provides is that before we deal with them, the people of Panama will have to choose someone. If that be heresy, it will have to be heresy, but I believe that that is a good American principle, that elections ought to be held, that citizens ought to have the right to choose their own leaders, that they ought to have the right to hold their leaders accountable; and if we are proposing to take this step of ratifying this treaty for the benefit of Panama, let us deal with a duly elected representative government of the people of Panama.

Mr. President, the statement seems unchallenged that Panama's Torrijos has spent a lot of money, that he spends more money than he takes in, that he has accumulated a lot of debts, and that it takes 40 percent of his budget to pay the interest on his debts, that he is desperate for funds. If he does not have any funds, how is he going to pay his creditors?

I make no charge of any dishonest, unworthy, or inappropriate action of any American bank or any other American corporation operating in Panama. But I say this, that the proponents of this treaty, especially those who served on the committee in charge, should come forth with a full disclosure of the Panamanian debts to American institutions; tell us how much is owed; when it is due; what the prospects of paying are, if the treaty is not ratified, and what are the prospects of paying those debts if the treaty is ratified.

I make no charge whatever, but I say this Senate and the American people are entitled to that information. If it comes out that American financial institutions do not have a stake in the ratification of this treaty, the American people ought to know it. If the reverse is true, they ought to know it. whatever the facts are, they could act accordingly and they could better interpret this treaty and the efforts for it.

Mr. President, I wish to propound a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state the inquiry.

Mr. CURTIS. Are we under controlled time?

The PRESIDING OFFICER. We are not. There are no amendments pending. The Senator from Alabama withdrew the amendment which was previously pending.

Mr. CURTIS. Is there a rule of germanness so far as debate is concerned at this hour?

The PRESIDING OFFICER. The 3 hours under the Pastore rule have expired.

Mr. CURTIS. Mr. President, I shall then proceed to very briefly discuss another subject because it is timely. I expect to use no more than 4 or 5 minutes to do so. I know I have a right to do it, but I make that explanation in the interest of orderly debate and in seeking the indulgence of my colleagues.

The PRESIDING OFFICER. The Senator is recognized.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

AMENDMENT NO. 91

Mr. ALLEN. At this time, Mr. President, I call up my amendment and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. Allen), for himself, Mr. Hatch, and Mr. Helms, proposes amendment No. 91.

At the end of Article I, section 3, strike the period and insert a semicolon and insert the following: "*Provided, however,* That all citizens of the United States who are now employees of the Panama Canal Company shall be permitted to continue their positions with the Panama Canal Commission until they reach retirement age, retire voluntarily, or are discharged for cause.".

Mr. ALLEN. Mr. President, this amendment has been fully discussed. It is an amendment that will prevent discrimination against the citizens of the United States who are employees of the Panama Canal Company. I believe that the amendment is needed to knock out the provisions of the treaty that do discriminate against U.S. citizens who are employees of the Panama Canal Company in that they require, over the next 5 years, a reduction of the number of U.S. citizens working for the Canal Company of 20 percent. In other words, it would be some 600 employees who are U.S. citizens who must be terminated within the next 5 years.

Another section of the same article, which will be addressed later, but which is analogous to this provision of the treaty, provides that the United States of America must establish an employment policy for the Panama Canal Commission, which succeeds the Panama Canal Company, that would provide that no U.S. citizen can be employed with the Panama Canal Commission unless he has skills that are not available among Panamanians. It definitely establishes an anti-American discrimination in the treaty. At a time when we legislate against discrimination of all sorts—discrimination as to race, religion, nationality, age, sex—why is it that in the treaty, we discriminate against American employees? I think that it is certainly unwise to mandate that an American commission, which the Panama Canal Commission will be, must establish this arbitrary policy discriminating against citizens of the United States.

The amendment merely provides that any person who is now employed by the Panama Canal Company can retain his employment with the Panama Canal Commission when the transfer is made and that he can continue working for the commission until

he retires of reaching the mandatory retirement age, or if he retires voluntarily, or if he is discharged for cause. So it does prevent the arbitary discharge or the arbitary termination of the employment of U.S. citizens who are presently employed on the canal.

I have no further argument to make. I have argued the matter at several different times. At this time, I am ready to vote on the amendment.

Mr. CHURCH. Mr. President, I thank the Senator very much for clearing the way for a vote on this amendment. He is quite right, the matter has been discussed at length.

I would hope that the Senate would lay the amendment on the table, but before making that motion, I wish to yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Idaho (Mr. Church).

The PRESIDING OFFICER. The Senator from West Virginia.

UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, under the agreement which was reached some several days ago, as a matter of fact prior to the Easter nonlegislative period, the distinguished minority leader (Mr. Baker) and the distinguished Senator from North Carolina (Mr. Helms) and I, were authorized under that agreement and directed to meet at 3 o'clock p.m. today to determine, if possible, an earlier date than the date of April 26, which had been included as the latest date for a final vote on the treaty in the earlier unanimous-consent agreement.

Those three Senators have met and we had a very frank discussion, a congenial one, and I am about to propound the request which emanates from that meeting and from the discussions among Senators who were proponents and who were opponents of the treaty prior to the meeting.

But before promulgating the request, I want to express my personal gratitude to Senator Helms and to Senator Laxalt.

Senator Laxalt has been one of the leaders in opposing the treaty. He has fought a very respectable, dignified and worthy battle thus far.

I also express my appreciation to the distinguished Senator from Alabama (Mr. Allen) who has proven himself, as always, to be a very resourceful and able protagonist or antagonist, whatever the situation may be in which he finds himself.

I express my own personal gratitude to the distinguished minority leader who has used his good influences on his side of the aisle with both the proponents and the opponents of the treaty in an effort to reach some kind of a preliminary agreement which we would propose to the Senate for its unanimous consent, hopefully.

But before I do that, I also express appreciation to the distinguished Senator from Idaho (Mr. Church) and to the distinguished Senator from Maryland (Mr. Sarbanes) for the cooperation that they have demonstrated throughout in an effort to reach an agreement that will be acceptable to the Senate and one which will expedite the action in a reasonable fashion on the treaty.

Now, here is the request which I now make on behalf of myself and the distinguished minority leader, and I believe I can state with the approval of the distinguished Senator from North Carolina, and again, I want to express my gratitude.

I ask unanimous consent that with relation to the pending business before the Senate, Executive N, Calendar No. 2, of the 95th Congress, 1st session, the so-called Panama Canal Treaty, that the Senate complete its consideration of the treaty as in Committee of the Whole no later than the close of the session on Thursday, April 13.

Mr. HELMS. No, the 18th.

Mr. BAKER. This is the Committee of the Whole.

Mr. HELMS. I see.

Mr. ROBERT C. BYRD. And that amendments made as in the Committee of the Whole shall be considered as having been concurred in by the Senate and no further amendments to the treaty, debate, or motions with respect thereto, will be in order. Provided further, that the Senate proceed to the resolution of ratification on the Panama Canal Treaty when it resumes consideration of the treaty on Friday, April 14, 1978, and that the vote on the resolution of ratification on the Panama Canal Treaty occur at the hour of 6 p.m., on Tuesday, April 18, 1978.

Provided further, that at 12 noon on Friday, April 7, 1978, the Senator from Oklahoma (Mr. Bartlett) be recognized to call up an amendment to article 13 of the Panama Canal Treaty, and that debate on the amendment be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from Oklahoma (Mr. Bartlett) and the Senator from Idaho (Mr. Church).

Provided further, That at an hour no later than the hour of 10 a.m. on April 12, the distinguished Senator from Alaska (Mr. Stevens) be recognized to call up an amendment to article XIV of the Panama Canal Treaty, and that debate on the Stevens amendment be limited to 3 hours to be equally divided and controlled, respectively, between the Senator from Alaska (Mr. Stevens) and the Senator from Idaho (Mr. Church).

The PRESIDING OFFICER (Mr. Nunn). The Senator from Tennessee.

Mr. BAKER. Mr. President, reserving the right to object and I will not object, I wish to join the majority leader in expressing my appreciation to those principally involved in working out the details of this unanimous-consent request and participating in the negotiations that led up to it.

There have been times in the course of this debate when there was speculation in the press and on the floor that the debate might extend ad infinitum and, indeed, we might be faced with a filibuster.

We have not been faced with a filibuster, and I wish to express my gratitude and appreciation to the opponents of the treaty for conducting themselves, I believe, in a highly responsible way and in seeing there was detailed and appropriate debate and discussion of these issues, but without prolonging the debate or unduly delaying the exercise of the expression of the will of the Senate.

I would especially like to express my appreciation to the distinguished Senator from Nevada (Mr. Laxalt) who has acted in many ways as one of the leaders of the opposition, who has often ex-

pressed his desire to see this matter brought to a conclusion at an appropriate time; to the distinguished Senator from Alabama (Mr. Allen) who has clearly shown his willingness to consider the termination of this debate in an orderly way and who, indeed, was the first to suggest the procedure, I believe, that we are now following, and I think it has worked very well at this point; the Senator from North Carolina (Mr. Helms) who has not only been an energetic opponent of the treaties, but a responsible adversary, and to whom I wish to express my appreciation not only for his good offices in bringing us to this point at our meeting at 3 o'clock today, but in his negotiations with Senators who are in opposition to the treaty in bringing this to the point where we could propose this request.

I know the Senator from North Carolina wanted to set this time for April 20 and that he, indeed, proposed that time in a meeting, and, for a variety of reasons that I will not elaborate on here, the convenience of a number of Senators would be greatly enhanced if we moved the time from the 20th to the 18th. I simply wish to acknowledge that it was an accommodation by the Senator from North Carolina and those for whom he spoke that his initial request for April 20 was revised to permit us to propound this request for April 18.

Mr. President, I express my appreciation to the distinguished Republican whip for agreeing that we proceed in this manner, notwithstanding that we had to provide for a special arrangement for him to call up his amendment to article XIV, which he kindly agreed for us to do. Otherwise, it would not have been possible to arrive at this agreement.

In a word, it is clear that a great number of Senators have put a great amount of work and effort, in an accommodating spirit, to bring us to this point. I think it sheds great credit on the entire Senate that we are in a position where it appears that we may be able to terminate the debate on this important, emotional, and volatile matter in an orderly and appropriate way, and I do not object. I join the majority leader in his request.

Mr. ROBERT C. BYRD. Before the Senator does that, will the Senator yield?

Mr. BAKER. I yield.

Mr. ROBERT C. BYRD. I inadvertently failed to mention the fact, as the distinguished minority leader has pointed out, that the distinguished Senator from North Carolina (Mr. Helms) advanced the date of the 20th and argued for it strongly. But in light of the fact that certain Senators would be inconvenienced greatly if we did not vote on the 18th, the Senator, in his usual understanding and cooperative fashion, agreed to go along with the 18th. I am glad the minority leader mentioned that.

Mr. HELMS. I thank the Senator.

Mr. ALLEN. Mr. President, reserving the right to object, I thank the distinguished majority leader and the distinguished minority leader for their characteristically generous and complimentary remarks about the Senator from Alabama.

I had not been advised of the shift from the 20th to the 18th. I will not raise any point as to that, if the distinguished Senator from North Carolina has agreed to it, as I understand he has.

I would like assurance on one thing. I think this is understood, but it has not been stated explicitly. It is understood that we will remain on a one-track system—that is, remain on the Panama Canal Treaty—unless by unanimous consent some emergency matter is set ahead of it.

Mr. ROBERT C. BYRD. If this order is entered into, the Senator has my assurance.

Mr. ALLEN. I thank the Senator. That would be by unanimous consent—any shifting?

Mr. ROBERT C. BYRD. It would be.

Mr. ALLEN. I am not quite sure from the propounding of the unanimous-consent request——

Mr. ROBERT C. BYRD. Permit me to amend that: Barring an unforeseen emergency, which I know the Senator will understand. I will have to qualify it.

Mr. ALLEN. Of course, if we used up a substantial portion of this intervening time, adjustment could be made in the ultimate time for voting. Is that correct?

Mr. ROBERT C. BYRD. The Senate could enter into a new——

Mr. ALLEN. For example, if the energy package or a similar emergency measure should be set before the Senate—the farm bill, for example—if that takes up any substantial amount of time, would that have the effect of moving the final vote backward, then?

Mr. ROBERT C. BYRD. I would want to say yes to the Senator. In either of those events, either of those two items, I would hope it would be taken up only by unanimous consent, in which case it would be up to the Senator. He would retain his rights to retain as the price of that consent that the time for the vote on the treaty be delayed by as much time.

Mr. ALLEN. It would not require unanimous consent to bring up such a matter.

Mr. ROBERT C. BYRD. I understand that, but I am saying that I hope that if either of those contingencies arises, I will seek to bring it up only by unanimous consent.

Mr. ALLEN. That is certainly all the assurance I need. I appreciate the attitude of the distinguished majority leader.

I have not seen a draft of the unanimous-consent request. I understood the distinguished majority leader to say that there would be no amendments in the Committee of the Whole after the 13th.

Mr. ROBERT C. BYRD. No amendments to the treaty after the close of business on the 13th.

Mr. ALLEN. No amendments to the treaty. What about the time-honored custom of allowing amendments to be presented, though not debated, after the time for the vote? Would that be protected?

Mr. ROBERT C. BYRD. That would be followed, which would mean that we might have to go beyond midnight in order to accommodate Senators who have amendments that had not been called up prior to the close of business. We would just have to delay the close of business on Thursday.

Mr. ALLEN. What would be done then between the 13th and the 18th, a 5-day period? What would occupy the Senate then?

Mr. ROBERT C. BYRD. There are only 3 days the Senate normally would be in session—Friday, Monday, and Tuesday—out of those 5 days, and we would be on the resolution of ratification.

Mr. ALLEN. There is no limitation, then, on the number of amendments that could be offered to the resolution of ratification?

Mr. ROBERT C. BYRD. No. When we reach the hour of 6 p.m. on Tuesday, the 18th, if there are amendments to the resolution that have not been called up and Senators wish to call them up, they may do so, without debate.

Mr. ALLEN. I might comment that the managers of the treaty have been extremely accommodating when we get to the item of the resolution of ratification. They have been generous about allowing amendments to this resolution but not quite so generous in allowing amendments to the treaties. It would lead one to believe that possibly not too much store is set by the value of an amendment to the resolution of ratification, though it has been used to placate and to encourage the support of some Senators, I believe. Is that correct? [Laughter.]

I thank the Senator. I have no objection.

Mr. ROBERT C. BYRD. I thank the Senator for not requiring an answer to that $64 question.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President, reserving the right to object, I wonder if I might pose a question to the distinguished majority leader.

I have read very quickly the unanimous-consent request. I do not have any reason to delay the final vote. I understand that there may be as many as 19 amendments between the time this agreement is entered into and the 13th of April, which would be a week from tomorrow. Will there be some effort to make certain that everyone who has amendments that they deem to have some merit will have some time to debate those amendments? Once we are locked into a time agreement, someone can come along and take 3 days, and the other Senators might end up with 5 minutes.

The Senator from Kansas has four or five amendments, two of which I probably will call up; but I do not want to enter into some agreement and lose 2 days or 8 days, whether it is the 20th, the 26th, or the 18th, and find myself in a clump at the end, just offering an amendment and getting a vote on it.

Mr. ROBERT C. BYRD. I can appreciate the situation the Senator addresses, and conceivably it could arise. But let me assure the Senator—and I believe I can do this, with the two managers on this side of the aisle present—that every effort will be made, if desirable, to develop a sequence for amendments, a time to vote on them, or a time to vote in relation to them. I would be eager to work with the Senator from Kansas on that, because we have been put on notice that he has several amendments, and perhaps some arrangement can be worked out which will fully protect the Senator from Kansas.

Mr. DOLE. The Senator from Kansas would be willing to enter into very reasonable time agreements, just some opportunity to discuss a couple of reservations—that will come later—but a couple of amendments I hope to call up, possibly as early as next Monday.

I know that other Senators have amendments. There may be as many as 19 amendments. If we take an hour or hour and a half, we each will have an equal opportunity to discuss the amendments.

Second, once we are locked in, we lose what proper leverage we might have in getting up and down votes on our amendments. Once we agree that we are going to vote on the 18th, the 20th, or the 26th, we cannot properly suggest that we might discuss the amendment at length, unless we are offered an up and down vote, because we have fixed a time. Would there be any disposition on the part of the managers to protect up and down votes on amendments?

Mr. ROBERT C. BYRD. Mr. President, I first point out, I say to the distinguished Senator, that the agreement itself I do not think would be a factor in the decision of the managers, and I do not pretend to speak for them—they are going to speak for themselves—as to whether to utilize tabling motions or not. And I assume that there will be some amendments which will be voted on up or down. But this agreement would not waive the rights of Senators to move to table. But may I assure the Senator again that he has been very forthright and very forthcoming in his offering of amendments. He has not attempted to unduly delay action on those amendments. He has made his case, and he has been willing to let the Senate make its decision thereon, and I respect him for that. I am sure that the managers on this side will shortly address themselves to the problem and will want to work with him in protecting his rights to call up his amendments and have adequate time to debate them.

But as to the tabling motions, I would have to say that I do not believe it would be wise on this occasion to set a precedent to the effect that there will be no motions to table in order to get an agreement because if we do that once then future agreements can hold us to the same kind of requests which would be waiving the rights of Senators, and I hope the distinguished Senator will see the reasoning behind the statement I just made.

Mr. DOLE. Then, also, I understand under the unanimous-consent agreement the distinguished Senator from Oklahoma, Senator Bartlett, will be recognized on Friday, Arpil 7, to offer an amendment to article XIII. Offering that amendment to that article in no way prejudices any other Senator from offering an amendment at a later time to article XIII.

Mr. ROBERT C. BYRD. No.

Mr. DOLE. Finally, with reference to a point raised by the distinguished Senator from Alabama, the conference committee has agreed on an outstanding compromise to the farm legislation which we would like to bring to the floor maybe on Monday, and as one interested party we would hope that might be taken up. We would be willing to come in early so that it would not interfere with the Panama Canal Treaty debate. But there is that at any time, if we agree to this at least, to bring up emergency-type legislation.

Mr. ROBERT C. BYRD. Yes, I would hope we could have a time limit on the conference report, and I believe the distinguished Senator again has always been very helpful and cooperative in working out time agreements on legislation that comes out of the committees.

Mr. DOLE. I think the distinguished chairman, Senator Talmadge, suggested a total of 2 hours.

Mr. ROBERT C. BYRD. If we can work out some kind of time agreement like that and come in early enough that it would not impinge on the rights of Senators and the desires of Senators in connection with the Panama Canal Treaty and if we can get an agreement like that, then there will be no problem.

Mr. BAKER. Mr. President, will the Senator yield to me on that point just for a minute?

Mr. DOLE. Yes.

Mr. BAKER. Consistently throughout this debate I indicated I would object to any procedure that would have the effect of putting us on a two-track system. Once or twice we have taken care of matters of extraordinary importance and, of course, the farm situation is a matter of extraordinary importance. So as far as I am concerned I would not object to an arrangement that would permit or limit the time in advance of turning to the consideration of the treaty on a particular day such as on next Monday.

I would very much hope we could get a fairly short time limitation on it and the 2 hours that the Senator from Georgia (Mr. Talmadge) suggests sounds to me like an excellent time. So if we can get 2 hours, say, at the beginning of the day on Monday, that would not breach my commitment I made to other Senators that I would not agree to turning to other matters until we had finished with the consideration of the Panama Canal Treaty.

I thank the Senator for yielding.

Mr. DOLE. Mr. President, further reserving the right to object, the distinguished majority leader——

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to say this in addition, while conference reports are privileged matters and ordinarily would not require a time agreement and could be called up at any time, we are in executive session, so a conference report could not be called up in executive session, and both the minority leader and I would, I think, feel compelled to require unanimous-consent agreement on such matter before we consented to bring it up.

Mr. DOLE. Further, with reference to the amendment to article XIII—I guess I did not ask a complete question—that again would not preclude an amendment at a later time to article XI, or article X, or article XII?

Mr. ROBERT C. BYRD. No. Once we go through the amendments in sequence at the end, whatever the time is that is set forth in this agreement, at the end any Senator may go back and offer an amendment to any article, even though the time has expired, but he could get a vote on his amendment.

Mr. DOLE. And is it possible at this time to enter into some agreement that the Senator from Kansas might be recognized on Monday to call up amendment No. 10?

Mr. ROBERT C. BYRD. There is no problem. If the Senator would like me to do that in this request we could do so.

Mr. DOLE. To article XII.

Mr. ROBERT C. BYRD. To which article?

Mr. DOLE. No. Article XII, amendment No. 10.

Mr. ROBERT C. BYRD. On Monday?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. At no later than a certain hour?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. No later than 1 p.m. Monday?

Mr. DOLE. Yes.

Mr. ROBERT C. BYRD. Mr. President, I include that request.

Mr. ALLEN. Mr. President, reserving the right to object, if the distinguished Senator from Kansas is recognized as to article X, does that mean that if we are on article III we would leapfrog the intervening articles and go to article X and not go back to the other articles until we finish the last article?

Mr. ROBERT C. BYRD. No, it would not mean that at all. It would mean just for the purposes of that one order the Senator from Kansas would be recognized at no later than that hour to offer his amendment to article X. Upon the disposition of that amendment——

Mr. ALLEN. We go back to wherever we were; is that correct?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. I thank the Senator.

Mr. DOLE. The article XII amendment?

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Is there objection?

Mr. DECONCINI. Mr. President, reserving my right to object, I am sorry, I say to the majority leader, but will he go over that one more time for us westerners who think slowly?

Mr. ROBERT C. BYRD. Does the Senator mean my response to Senator Allen?

Mr. DECONCINI. No. The time agreement just agreed to or about to be agreed to with the Senator from Kansas.

Mr. ROBERT C. BYRD. With respect to the Senator from Kansas, he would have an amendment to article X, I believe it is, and if the order is agreed to, regardless of what article we may be on next Monday, at no later than 1 p.m. the Senator from Kansas will be recognized to call up his amendment to article X.

Mr. DOLE. Not article X. Amendment No. 10.

Mr. BAKER. Amendment No. 10.

Mr. CHURCH. Amendment No. 10.

Mr. ROBERT C. BYRD. Amendment No. 10 to article XII, and there shall be a time limitation on that amendment of 2 hours to be equally divided in accordance with the usual form. Upon the disposition of that amendment, then the Senate will automatically revert to the status quo.

Mr. DECONCINI. Where does the farm bill fit into this?

Mr. ROBERT C. BYRD. The farm bill does not fit in unless there is a conference report that comes back here with an agreement on it.

Mr. DECONCINI. Prior?

Mr. ROBERT C. BYRD. Yes, an agreement on a conference report.

Mr. DECONCINI. Yes.

Mr. ROBERT C. BYRD. Eventually, I guess, there will be a place to fit it in.

Mr. DECONCINI. I thank the majority leader.

Mr. ROBERT C. BYRD. But that will require unanimous consent.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I thank all Senators, and I especially again pay my tribute to Senators who have helped so much in bringing about this agreement.

Mr. CHURCH. Addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, I now move to table the amendment of the Senator from Alabama and call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. ROBERT C. BYRD. Mr. President, I want to make sure now that we did include the Senator from Kansas in the order and that there be a 2-hour time limitation on his amendment No. 10 to article XII no later than 1 p.m. next Monday.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The question is on agreeing to the motion to lay on the table the amendment of the Senator from Alabama. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Delaware (Mr. Biden), the Senator from Alaska (Mr. Gravel), the Senator from Mississippi (Mr. Stennis), and the Senator from Washington (Mr. Magnuson) are necessarily absent.

I further announce that the Senator from Texas (Mr. Bentsen) and the Senator from Florida (Mr. Chiles) are absent on official business.

I further announce that, if present and voting, the Senator from Washington (Mr. Magnuson) would vote "yea."

Mr. STEVENS. I announce that the Senator from North Dakota (Mr. Young) is necessarily absent.

The result was announced—yeas 56, nays 36, as follows:

[Rollcall Vote No. 80 Ex.]

YEAS—56

Anderson	Hatfield, Paul G.	Morgan
Baker	Hathaway	Moynihan
Bayh	Hayakawa	Muskie
Bellmon	Heinz	Nelson
Bumpers	Hodges	Packwood
Byrd, Robert C.	Hollings	Pearson
Case	Huddleston	Pell
Chafee	Humphrey	Percy
Church	Inouye	Proxmire
Clark	Jackson	Ribicoff
Cranston	Javits	Riegle
Culver	Kennedy	Sarbanes
Danforth	Leahy	Sasser
Durkin	Long	Sparkman
Eagleton	Mathias	Stafford
Glenn	Matsunaga	Stevenson
Hart	McGovern	Weicker
Haskell	McIntyre	Williams
Hatfield, Mark O.	Metzenbaum	

NAYS—36

Allen	Garn	Randolph
Bartlett	Goldwater	Roth
Brooke	Griffin	Schmitt
Burdick	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
Cannon	Helms	Stevens
Curtis	Johnston	Stone
DeConcini	Laxalt	Talmadge
Dole	Lugar	Thurmond
Domenici	McClure	Tower
Eastland	Melcher	Wallop
Ford	Nunn	Zorinsky

NOT VOTING—8

Abourezk	Chiles	Stennis
Bentsen	Gravel	Young
Biden	Magnuson	

So the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. ROBERT C. BYRD. Mr. President, will the Senator from Vermont yield?

Mr. STAFFORD. I ask unanimous consent that I may yield without losing my right to the floor.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Vermont has the floor. Will Senators please take their seats?

Mr. ROBERT C. BYRD. Mr. President——

The PRESIDING OFFICER. The Senate is still not in order. The Senate will be in order.

The Senator from Vermont.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Vermont has yielded to me with the understanding that he not lose his right to the floor.

I merely take the floor at this time to ascertain whether or not there is another amendment to be called up and voted on today, so that the Senate may have that information.

I see no indication that there will be an amendment called up and voted on today; therefore, I take the liberty of announcing that there will be no more rollcall votes today.

COOPERATION WITH PANAMA

Mr. PELL. Mr. President, from time to time during the debates on the proposed Pamana Canal treaties, questions have arisen about the ability of Panama to operate the canal on its own and about Panama's desire to do what is necessary to keep the canal maintained and operating properly. Essentially, these concerns boil down to whether Panama really shares our judgment about the

importance of the canal and whether Panama really intends or is able to cooperate fully with the United States in insuring the efficient and neutral operation of the canal.

In this connection, it may be helpful to look at some past examples of United States-Panamanian cooperation. While several specific cases could be cited, I would like to highlight one particular example that offers considerable encouragement regarding the future of the canal. The example I have in mind is the Gorgas Memorial Laboratory located at Balboa Heights in the Canal Zone.

I recently communicated with the present director of the Laboratory, Dr. Abram S. Benenson, and I would like to share with my colleagues the following pertinent extract from Dr. Benenson's letter to me dated March 14, 1978:

The President of the Republic of Panama suggested in 1921 the establishment of a "Gorgas Institute" to commemorate Maj. General William Crawford Gorgas, the man who made it possible to build the canal without the tragic loss of human lives experienced by the French and who then served as Surgeon-General, U.S. Army, throughout World War I. Accordingly the Gorgas Memorial Institute of Tropical and Preventive Medicine was incorporated in the U.S. and, with offices in Washington, D.C., has provided to this date the policy and financial supervision over the activities of the Institute in Panama.

A functional laboratory in Panama was made possible by passage of H.R. 8128 by First Session, Seventieth Congress, which authorized a permanent appropriation of funds for the maintenance and operation "of a laboratory to be known as the Gorgas Memorial Laboratory." This bill was approved by President Coolidge on May 7, 1928. In April 1929, the Gorgas Memorial Laboratory began its operation in Panama City on land and in a building which had been donated by the Panamanian Government for this purpose. We now enter our 50th year of continuous research on tropical diseases carried out by American and Panamanian personnel, and have achieved the reputation of being one of the strongest research laboratories in Latin America.

For the first 20 years of its operation, the scientific personnel were American, supported by Panamanian technicians. With time, Panamanian scientists began to develop, some from our own technical personnel, some of whom were aided by the laboratory to obtain professional qualifications in the United States. Since 1947, Panamanian scientists have worked side by side with those from the United States. today the laboratory has a professional staff of 27 of whom 10 are Panamanian nationals; of the nine research departments, four are headed by Panamanian scientists. Our administrative and supporting staff, totaling 106, are Panamianian; we function under Panamanian laws and the Panamanian Labor Code, save for special legislation exempting this laboratory and the non-Panamanian scientists from import duties and exempting the laboratory from those requirements of the Labor Code which involve union activity.

Since 1929 there have been five directors of the laboratory. My predecessor as director is a Panamanian who received his training in the United States during the 1940's, joined the laboratory and developed into one of the outstanding arbovirus experts of the world. His expertise was recognized by his selection in 1977 for the Richard Moreland Taylor Award in Arbovirology. the first non-US citizen and the first who did his work outside of the United States to receive this high honor.

I do think that the record of this organization shows that US and Panamanian personnel dedicated to a common goal will strive as partners toward that end, regardless whether the directorship is held by a Panamanian or a US national. Success is dependent on mutual respect and understanding of the differences in customs and traditions.

After having served as director for the past 10 months, I find myself increasingly enthusiatic over what this US-Panamanian group will accomplish. We have expanded our staff this past year, and are seeking additional funds to more fully exploit the opportunities. We have every reason to expect continued and increasing Panamanian participation over the next 50 years.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Are we now on the treaty?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair.

Mr. President, the remarks I am about to make have the purpose of setting the record straight, dating back to a rather lengthy discussion that occurred on this floor during the debate on the Neutrality Treaty.

I offer these remarks so that they will appear in the Record, and therefore, be available to any one who may want to reach the facts involved in a discourse by my good friend and able colleague, the distinguished Senator from Alaska (Mr. Gravel).

It was early in March, as I recall, Mr. President, that Senator Gravel spoke at some length on this floor relating to the world's total shipping tonnage, especially oil shipping tonnage, that, according to him, cannot transit the Panama Canal.

The able Senator stated that 44 percent of bulk cargo tonnage cannot use the Panama Canal.

At that time, Mr. President, in the friendliest sort of way, the Senator from North Carolina challenged the point the able Senator from Alaska was attempting to make, and there were others in this Chamber who similarly made comments in rebuttal to the Senator's point. Going into this matter at some length, as I say, I think the record should be set straight.

In his remarks, the able Senator from Alaska put the oil shipping tonnage at 76.5 percent, which he described as a "stunning figure." Then he went on to say that "37 percent of all the tankers cannot go through the Panama Canal but that 37 percent represents 76.5 percent of the tonnage of oil carriers in the world."

"We are here debating," the Senator exclaimed, "and literally ripping our guts out, ripping the national fabric with, I think, our false emotion over something that has changed on us and we are not even aware of the change."

The able Senator, on March 1, produced charts, which were placed around the Chamger, indicating a projection of figures meant to demonstrate that the Panama Canal is becoming more and more obsolete.

He cited as his source "a research house that handles brokerage for the world's maritime fleet * * * a charter company out of Oslo, a firm called Fearnley and Egers Chartering Co."

The distinguished Senator said his figures were developed in the last 30 days.

The Senator used as a basis for his argument President Johnson's Interoceanic Commission projections on transits and tonnage through the Panama Canal. He showed us that the projections were in error on transits but essentially correct when it came to tonnage.

From this the Senator concluded that tonnage is what counts, not ship transits through the canal, and he went on from there. Well, this Senator from North Carolina agrees with the Senator that it is tonnage that counts. But he insists that it is cargo tonnage specifically intended to transit the canal, not all the cargo afloat on the high seas going somewhere else.

Well, from this point on the distinguished Senator from Alaska took a course of argument that went farther and farther from the mark and, unfortunately for his cause, proved nothing.

He sought to support his cause—ratification of the treaties—by stating that the increasing capacity of world maritime tonnage construction demonstrates the rapidly increasing obsolescence of the Isthmian waterway.

Mr. President, let me respectfully explain the method followed by the distinguished Senator from Alaska and then show how he was wrong in his conclusions.

He said he wanted to show what has taken place from 1961 to the present regarding construction of bulk carriers in the world. I quote the Senator's formula in his own words:

> We count the vessels that are on the seas, we measure their weight and just ask ourselves how many of them could go through the Panama Canal.
>
> Then when we get a figure and percentage, we can determine the rate of obsolescence of the canal, and now it is 57 percent obsolete in world maritime terms.

Then, Mr. President, my distinguished colleague from Alaska gave in quick succession this set of figures and his conclusion. I am quoting the Senator again. I might say parenthetically, Mr. President, that he was using a chart at that point. He proceeded to say:

> I took one-third of what had happened, and I am pointing to this line of decline. In 1966, 89.59 percent of the world tonnage was able to use the canal.
>
> In 1977, 42.20 percent of the world tonnage was able to use the canal. In 1986, only projecting one-third of past experience, 29.24 percent of the tonnage will be able to use the canal. In the year 2000, 7.64 percent of the world tonnage will be able to use the canal.
>
> As a lay person—and I am not a great statistician—but, as a lay person, I would say if that projection, very conservatively made, would hold true, that by the time we, as we would say, "Give back the canal to the people of Panama," that we would give them back a sucked dry lemon.

Mr. President, the Senator from Alaska gave us the names of other sources, official and private, which would back up his figures. He cited the U.S. Maritime Administration, and "Drury of London," which he stated he visited.

The distinguished Senator said, when he had copies of his charts passed out on the floor, that there was a possibility that some of his colleagues might want to dispute his presentation. He said very sincerely, I am certain, these words:

> * * * I hope they will study it, because if I am presenting something which is in error it should be exposed. These data are very, very important to these deliberations. If these data are wrong I think I should be called on the carpet for that.

Well, I am not calling my good friend from Alaska on the carpet, but I do feel obliged, even at this late date, to set the Record straight.

In any case, a bit later on, my distinguished colleague, obviously completely convinced by the conclusion he drew from his statistics, declared:

> I really would encourage the national conservative community that has chosen to make this issue of Panama their cause celebre, and I challenge them, to dispute these figures because the computations are not difficult * * *
>
> To me, it is almost unbelievable, but once the figures are there, we have to just accept them.

Well, Mr. President, obviously some of our colleagues not only accepted the figures of the Senator from Alaska, but also his con-

clusion as to the indicated proof of the canal's growing obsolescence. The distinguished Senator from Idaho (Mr. Church) declared:

> But no one, I think, could argue with the proposition that the figures themselves, if accurate, are stunning.

And Senator Church went on to take to task those of us opposed to these treaties in the following words:

> Now, this has led the opponents of the treaty to say something I never expected to hear them say: "Let us not give this white elephant to the Panamanians; it would not be fair. Let us keep it for ourselves."

To which, Mr. President, the Senator from Alaska, who had presented the argument for the waterway's obsolescence, replied, "Maybe we could put it in the Smithsonian." And there was great laughter in the Chamber.

Mr. President, that is why the Senator from North Carolina is speaking this evening, at 5:30, not because any Senators are present or many people are in the galleries, and certainly not because the news media will cover this in any way, but just so there will be a record showing that the able Senator from Alaska (Mr. Gravel) missed his mark completely.

The Senator from North Carolina disputes the presentation of the Senator from Alaska. I suggest that what is "stunning," to use Senator Gravel's words, is not only the set of figures which the Senator from Alaska presented to us, after chasing them down in Oslo, Norway, and London, England, and Washington, D.C. What is stunning is that any figures on maritime construction tonnage can be used in an erroneous formula that has no basis to lead U.S. Senators and the American people to believe that the Panama Canal is an obsolescent white elephant and that by the year 2000 it will be, as Senator Gravel characterized it, a "sucked dry lemon."

Maybe it is equally stunning that any of my distinguished colleagues could be impressed by such an argument.

With all due respect to my colleague I must say that the Senator's formula is just about as worthless as those of any alchemist who ever sought to turn lead into gold.

The able Senator is very concerned and correctly so that oil from his State of Alaska gets to the refineries in the lower 48 as rapidly as possible. Royalties to his State government are in inverse proportion to the costs involved in that delivery.

Suffice it to say at this point, Alaska would profit more if very large and ultra large cargo carriers—the oil carrying supertanker VLCC's and ULCC's—could transit the Panama Canal. Certainly the current method of lightering the Valdez VLCC's west of Panama and hauling the Alaskan oil through the canal in smaller tankers to gulf and east coast ports is more expensive and directly diminishes royalties to Alaska.

But I believe this Alaskan-oriented concern of the good Senator from that State has obscured his understanding of another fact of maritime shipping life namely, that except for Alaskan oil, only a very small portion of the world's oil passes through the Panama Canal.

Only a small percentage, Mr. President, of the world's shipping tonnage has any need to transit the Panama Canal, because of the simple facts of geography and economics.

The Senator from Alaska obviously overlooked one overwhelmingly important factor in determining what I believed to be his erroneous formula for calculating the obsolescence of the Panama Canal.

That factor, Mr. President, of course, is the matter of trade routes.

Inasmuch as the able Senator from Alaska admits that the majority of maritime shipping tonnage other than oil tankers can transit the Panama canal, I shall, in my remarks in refutation of his argument that the canal is growing more and more obsolete, emphasize the circumstances of seaborne oil shipping tonnage.

Senator Gravel, to put it frankly, failed to take this matter of trade routes into consideration.

He is within the ball park on the figure of 76.5 percent of the world's tanker shipping tonnage that cannot transit the Panama Canal.

By the way, Mr. President, the Senator from North Carolina did not go to Oslo or to London for my material, but I just went right across the street to the Library of Congress and its Congressional Research Service, and I also checked with MARAD and the American Petroleum Institute right here in Washington, D.C., and I have in hand a copy of an oil route map which I will be glad to make available to any Senator who is sufficiently interested in studying the map.

As this map clearly demonstrates, the oil routes of the world simply do not utilize the Panama Canal. In fact, they do not even utilize the Suez Canal. Each route of seaborne oil movements is determined very simply by the location of a producing field at the point of origin and a refinery at the point of destination.

I do not need to point out to the distinguished occupant of the Chair that man did not decide where oil is to be found in this world. God put the oil in certain regions, and man has built refineries in certain places, and oil routes on the high seas follow the major routes as shown on a map from Exxon's spring, 1975 issue in its house organ, "Lamp."

The map was reprinted from the Oil and Gas Journal which is published in Tulsa, Okla., and I believe I am correct in saying that its data is from year's end 1974. I am delighted to have this map, which is available to any Senator who asked for it.

Mr. SARBANES. Mr. President, will the Senator yield for just a question?

Mr. HELMS. Yes.

Mr. SARBANES. I just want to know if the map contains the routes in 1975. The point the Senator is making is an interesting one.

Mr. HELMS. I am glad to furnish the map.

Mr. SARBANES. He did make reference to Suez. I want to get the date because obviously the Suez route was broken when the Suez Canal was closed, although that does not affect the thrust of the point he is trying to make with respect to the Panama Canal. If I could get the date it would be helpful because I think Suez as long as it was open was an important route for the movement of oil.

Mr. HELMS. The date is year end 1974.

Mr. SARBANES. Yes. All right.

I thank the Senator.

Mr. HELMS. I will be delighted if one of the pages will hand the Senator this map. He may find it of interest while I proceed.

I thank the Senator for his question.

As I believe the Senator will agree, this map is worth perhaps many thousands of words on this subject because an examination of the map provides a clear picture that the major oil sources, the Arabian Gulf, North and West Africa producing areas are on the other side of the world from the United States, so it is obvious that direct routes going east or west from that part of the globe do not require use of the Panama Canal. We do not see a single route on this map through that waterway, the Panama Canal, because the quantity through the canal is so small.

The oil people would like to use the Suez Canal, but it is not possible for the ULCC's and VLCC's to transit the Suez Canal when these vessels are loaded. Some of them can pass through in ballast, but not with a payload. At its narrowest, the Suez Canal is almost five times as wide as the Panama Canal locks, and, of course, the Suez has no locks whatever to restrict tanker size.

So, that was the source of my difficuty in understanding the point of the Senator from Alaska that day about a month ago, and that is the reason I found it strange that in the erroneous argument for the Panama Canal's obsolescence no mention was made of the Suez Canal having the similar inability in transit the supertankers.

I may be burdening the subject, Mr. President, but I ask the indulgence of Senators.

Venezuela once was the major source of U.S. imported crude. But as the route map shows clearly, that oil, too, does not need the Panama Canal to get to the United States.

Upon inquiry, the Maritime Administration informed me the major routes of the supertankers plying the high seas are the following. And I believe this pretty well conforms to the information contained in the map which I just shared with the able Senator from Maryland.

In any case, from the Arabian Gulf to the United Kingdom and the European Continent; from the Arabian Gulf to the East, Japan, and so forth, from the Arabian Gulf to the Caribbean and East Coast of South America; from West Africa to the same three destination areas above; and from the Mediterranean to Brazil, and so forth, North Africa is a source region.

The Caribbean to U.S. gulf coast is not now considered a major route.

Of course, the route from Alaska has only opened up in the past few months. While it might be considered to be becoming a major route, it in no way changes the oil flow routes elsewhere. It could begin to affect quantities coming to the States from elsewhere when North Slope production helps to meet our energy needs more adequately, but not the routes themselves.

The point is that, again, the major world routes traveled by the supertankers do not pass through the Panama Canal. So the entire exercise pertaining to the "stunning,"—and I use the word used by the able Senator from Alaska—76.5 percent of the world's oil ship-

ping tonnage that cannot transit the canal simply has no bearing on the Panama Canal and its alleged obsolescence.

Alaskan oil shipping tonnage must be considered separately, but as long as North Slope oil is consumed exclusively by the United States, it will not make the slightest change in the routes plied by supertankers delivering from other sources to destinations outside the United States.

Mr. President, a second fact depicted on this route map of oil movements by sea is the quantity of oil carried to various refinery destinations. Those quantities are indicated by the width of the route paths.

This tonnage, cargo tonnage—the actual amount of oil hauled—is what really matters.

Mr. President, I ask unanimous consent to have placed in the Record at this point a table which shows quantities of oil moved across the seas in thousands of barrels per day. The table gives substantially what the map demonstrates.

There being no objection, the table was ordered to be printed in the Record, as follows:

ESTIMATED MAIN SEABORNE OIL MOVEMENTS

To / From—	Western Europe	North America		Japan	Other Far East	South America		Africa [3]	Others	Total world
		East coast [1]	West coast			East coast [2]	West coast			
Middle East:										
Gulf	8,860	1,420	260	3,700	2,120	1,100	20	620	260	18,360
East Mediterranean [4]										
Africa:										
North	1,420	480	20	60	20	180			40	2,220
West	940	860	20	60		220		40		2,140
Latin America:										
Caribbean	440	3,560	60			60	20			4,140
West coast			60			20				80
Southeast Asia	20		400	[5] 880	120		120			1,540
Soviet bloc	960	40		20	40	200		20		1,280
Western Europe	240	100						40		380
Canada	20	80								100
China				160						160
Others [6]			120	40	20	20	20			220
Total world	12,900	6,540	940	4,920	2,320	1,800	180	720	300	30,620

[1] Includes Canada and imports into North America via transhipment terminals.
[2] Includes Caribbean Sea.
[3] Mostly South Africa.
[4] Includes shipments via Red Sea-Mediterranean pipeline.
[5] Includes 40,000 barrels per day from Australia.
[6] Includes Alaska and the United States, west coast.

Source: H. P. Drewry (shipping consultants) Ltd., London.

Mr. HELMS. A quick calculation tells us that less than one-third of the world's oil moved by sea even comes into the Western Hemisphere.

At the very outset, then, regardless of the total amount of oil-carrying tonnage plying the high seas or being built in the world's shipyards—and here is the basic error of the Senator from Alaska—more than two-thirds of the crude oil shipped is not even destined for the Americas.

Clearly, the Panama Canal is never going to be proved obsolescent by the formula used by the distinguished Senator from Alaska on this floor.

Mr. President, this table is "Estimated Main Seaborne Oil Movements," published on page 337 of the International Petroleum Encyclopedia for 1977, and it cites as its source H. P. Drewry (Shipping Consultants) Ltd., London.

The Senator from North Carolina assumes that this is the same firm the distinguished Senator from Alaska visited in making his two-continent search for oil tonnage statistics.

If Senators will look at the table they will see source areas listed vertically at the left, and destination areas listed horizontally across the top.

If we add the bottom line figures in the four columns for the East Coast and West Coast of both North America and South America, we come up with 9,460,000 barrels per day shipped to the Western Hemisphere.

The last vertical column on the right gives the world total seaborne oil movements as 30,620,000 barrels per day. Since not even 10 million barrels a day come into our hemisphere it is immediately seen that less than one-third of the world's total oil production comes to the Americas.

Mr. President, the percentage is only 30.9 percent.

We see, then, that practically 70 percent of the world's oil goes by direct routes to the Old World, and does not even come close to the Panama Canal.

Mr. President, neither the map nor the table indicates what percentage of the world's shipping cargos crude oil comprises.

However, I have determined it for the year 1974 from two sources furnished by the Library of Congress:

Statistical Yearbook, 1976, published by the United Nations Department of Economic and Social Affairs, sets forth on page 63 figures for total world commerce given in long tons of cargo unloaded annually. For 1974 the figure reported was 3,204,000,000 long tons.

B. P. Statistical Review of the World Industry, 1974, published by British Petroleum Co., Ltd., London, shows seaborne crude oil tonnage for 1974 to have been 1,655,800,000 metric tons. That converts to 1,629,307,200 long tons of crude oil.

Thus we see, Mr. President, that in 1974, crude oil carried on the high seas amounted to 50.85 percent of the world's maritime cargo total.

Over one-half of the ocean cargoes was crude oil.

This means that the 30.9 percent of the world's crude which we have determined was destined for the Americas is the equivalent of but 15.71 percent of the world's total commerce.

This demonstrates even more clearly, Mr. President, that the so-called "stunning" figure of 76.5 percent—the percentage of the oil shipping tonnage that cannot transit the Panama Canal postulated by the Senator from Alaska—has practically nothing to do with the realities of the Western Hemisphere and the Panama Canal.

The Senator from North Carolina now will take a moment to pinpoint what did come to the United States via that canal in 1974, the year for which our route map took its data. My source is volume 3 of "A Long Term Forecast of U.S. Waterborne Foreign Trade" published by Department of Commerce, Maritime Administration.

The United States is served by some 31 international trade routes. Basically, only two of these routes take crude oil through the Panama Canal. In 1974 only one of them did, route No. 17—identified as U.S. Atlantic, Gulf and Pacific/Indonesia, Malaysia, Singapore. In 1974 the United States imported a total of 11,733,846 long tons of crude petroleum via that route. At a conversion factor of 7.4 barrels per long ton of that gravity oil, it amounted to 86,830,460 barrels.

The American Petroleum Institute in its "Annual Statistical Review, Petroleum Industry Statistics, 1965–1974," citing the U.S. Bureau of Mines as its source, reported the figure of 3,477,000 barrels of foreign crude imported daily into the United States in 1974. That made for an annual total of 1,269,105,000 barrels that year.

Since we imported through the Panama Canal a maximum of 86,830,460 barrels via route No. 17, we find that only a maximum of 6.8 percent came into the United States via that waterway. I say maximum, because route No. 17 carries crude direct to our Pacific Coast where, I am told, the largest portion of it is unloaded for our Western refineries, before passing through the canal. I do not have the precise breakdown.

Therefore, considerably less than the 86.8 million barrels come on to our Gulf and East Coast refineries.

In any event, Mr. President, it is shown by these figures that at the very most, only 6.8 percent of the oil imported in 1974 could have come through the canal to the United States. The actual percentage is, of course, very much less.

Oil from abroad does come through the canal in some years via route No. 24—identified as U.S. Pacific/East Coast South America. However, at least since 1973 it has been much less than by way of route No. 17.

The Senator from North Carolina is not anxious to get into the projection business to the same degree as the distinguished Senator from Alaska. But he will quote the predicted figure for the year 2000 for both routes as forecast by the Maritime Administration in the study being quoted.

They project 30,893,248 long tons, or 228,610,035 barrels, will be imported via route No. 17, and 18,686 tons,or 138,276 barrels via route No. 24.

Such increasing figures, of course, do not in any way support the obsolescence of the Panama Canal by the year 2000 that my good friend from Alaska is predicting for us.

Mr. President, the Senator from North Carolina believes that some other comparisons will help us see the error in the formula by which the Panama Canal supposed to be proven obsolescent—and worthy only of a niche in the Smithsonian.

Let us look at the world's deepwater ports and their facilites. First and foremost, the United States does not have a single deepwater port capable of receiving oil from the ULCC's and VLCC's. MARAD considers a deepwater port to be a natural port capable of handling upward of 150,000 deadweight tons. That is further defined as summer deadweight.

Valdez, Alaska, of course, could qualify, but we all know it exports oil, and does not receive oil.

MARAD informs me that in the entire would there are only a total of 151 such ports. Of these, 118 can take oil, and 33 take dry bulk—grain and the like.

There are only 10 natural deepwater ports in the entire Western Hemisphere that can accept both VLCC's and ULCC's. These all take oil and are listed below:

Freeport, Bahamas; South Riding Point, Bahamas; Aruba, Netherlands, West Indies; Curacao, Netherlands West Indies; Bonaire, Netherlands West Indies; Trinidad; St. Croix, Virgin Islands; Sao Sebastiao, Brazil; Point Tupper, Nova Scotia, and Come By Chance, Newfoundland.

On the very face of it, Mr. President, the bulk of the world's tankers—the majority of them—are not likely to be traveling to such a small number—a minority—of the ports capable of receiving their oil.

If we include Valdez as the 11th Western Hemisphere deepwater port, we find that of the 118 oil receiving deepwater ports around the globe, the entire New World has but 9.32 percent of all the deepwater ports in the world.

U.S. deepwater offshore ports that are to be built, such as the Louisiana offshore oil port—the so-called LOOP—are still in the offing.

But even when they are in operation, supertankers carrying oil from any likely source but Alaska still will not need to utilize the Panama Canal.

Mr. President, let us look at another fact of shipping life.

The Senator from North Carolina could quote numerous sources to show how for several years in the past, many, many tankers remained idle. The American Petroleum Institute informs me even as high as one-third of the tonnage has been idle. Again, the Senator from North Carolina wants to emphasize that cargo tonnage is what is important. If there is no cargo tonnage to be hauled, the supertankers' own tonnage counts for naught, whether they could transit the Panama Canal or not. Clearly, the Senator from Alaska nade no provision for idle ship tonnage in his fallacious formula.

Mr. President, it seems that while in Oslo, the Senator from Alaska failed to pick up some very important figures from Fearnly & Eger's Chartering Co., Ltd. Or, if he got them, he subsequently failed to use them in his projections.

The Senator from North Carolina has discovered that figures from that firm have been utilized by the Organization for Economic Cooperation and Development—the OECD—to show the average

deadweight tonnage of the world's existing fleet of vessels of various classes, and the average deadweight tonnage of vessels on order in those various classes.

Mr. President, the Fearnley & Eger statistics for vessels on order, show that, as of January 1 for each year, the trend from 1974 to 1977 has been just the opposite of that which the Senator from Alaska seems to believe is true—and would have us believe is true. Even though I believe I have shown his formula is irrelevant, it is important that we know the true trends.

The OECD published in Paris a study entitled "Maritime Transport, 1975, A Study by the Maritime Transport Committee." A subsequent volume with the same title was issued for the year 1976.

Mr. President, I have prepared a consolidated table from both volumes and I ask unanimous consent that it be printed in the Record at this point in my remarks.

There being no objection, the table was ordered to be printed in the Record, as follows:

AVERAGE SIZE OF SHIPS IN SERVICE AND ON ORDER, 1974–77

[In deadweight tons (metric)]

	Existing fleet as at Jan. 1—				Vessels on order as at Jan. 1—			
	1974	1975	1977	1977	1974	1975	1976	1977
Tankers over 10,000 dwt	64,400	74,700	84,600	94,200	171,400	165,900	150,200	137,200
Combination carriers	103,700	109,100	111,100	112,800	137,800	131,200	118,100	112,700
Dry bulk carriers	31,600	32,700	33,100	33,700	44,400	44,400	40,500	38,300
Other cargo carrying ships	7,300	7,300	7,400	7,500	9,600	14,200	14,900	15,600
All cargo ships	21,500	24,300	26,000	27,600	86,800	82,200	53,800	36,500

Source: Fearnley & Eger's Chartering Co. Ltd. "Review 1975," and Fearnley & Eger's Chartering Co. Ltd., "Review 1976."

Mr. HELMS. I have taken the figures for both existing fleet and vessels on order for 1974 from the earlier volume, and those for the years 1975, 1976, and 1977 from the latter volume. Somewhat different figures from 1975 and 1976 in the second publication in no way change the trends evidenced. More correct figures can be assumed to me available in the later volume. Contrary to the trend proclaimed by the Senator from Alaska on the basis of vessel construction in earlier years, and later projected construction, precise construction figures for vessel tonnage paint a picture of decreasing tonnage on order on every class of vessel except those categorized as "Other Cargo Carrying Ships"—and those are all the much smaller ships.

The size trend in construction of tanker and other cargo vessels, Mr. President, is downward.

There is a renewed emphasis on smaller vessels for various economic reasons.

On page 67 of the 1975 OECD report there appears this paragraph:

> The average size of various vessel types existing and on order is given on page 70. It is notable that the average size of vessels on order has declined steadily over the last three years for all three types of bulk carrier, with the lack of new orders for the largest size categories and the growing interest in product tankers and bulk carriers that can transit the Panama Canal.

Mr. President, let me repeat:

The growing interest in product tankers and bulk carriers that can transit the Panama Canal.

That does not sound like any deathknell or obsolescense is indicated, does it?

Mr. President, I also repeat that the figures given below are taken from Fearnley & Eger's Chartering Co., Ltd., of Oslo, the same source to which the distinguished Senator from Alaska credits much of the data behind his projections.

I will not read the tonnages of the existing world fleet since they were still going up somewhat by January 1, 1977.

I shall, however, read just the tonnages of the tankers on order over 10,000 dwt—deadweight tons—for each of the 4 years.

They were: 1974, 171,400; 1975,165,900; 1976,150,200; 1977,137,200.

The Journal of Commerce for February 27 of this year touches on this trend in a page 1 article titled, "Shipbuilders Begin To See New Tanker Orders Ahead."

Mr. President, I ask unanimous consent to insert this article in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, the Senator from North Carolina cannot resist making mention of what he considers an ironic development in view of the argument of the Senator from Alaska based on ship construction tonnage.

Business Week for March 6, 1978, in a timely article entitled, "Tankers Are Still in the Doldrums," reports that the Senator's Norweigin source—and now, indeed, my own, Fearnley and Eger—was forced to sell a 250,000-ton tanker only 4 years old to pay off a mortgage. The vessel, which cost some $30 million new, brought only $10 million—a true reflection of the big tankers' recent doldrums.

Mr. President, I ask for unanimous consent to insert this article in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HELMS. Mr. President, the concept behind the tanker tonnage formula used by the Senator from Alaska, concerned as he is with quick delivery to the Lower 48 States of Alaskan oil, is just not applicable.

Let me cite a couple of examples, both utilizing other forms of transportation, to demonstate how it is not applicable.

First, one that is not a precise parallel, but easily understood: Automobiles. Let us belabor the obvious for a moment.

While it is true that any car can be driven on Alaskan highways, the fact is that no car will be driven in Alaska if its owner never takes it to Alaska.

The Motor Vehicle Manufacturers Association informs me that in 1976, U.S. retail passenger car sales amounted to 8,611,000, and total import passenger car retail sales amounted to 1,498,000.

The National Automobile Dealers Association informs me that in Alaska there were only 11,886 new car registrations in 1976.

Now, Mr. President, if we divide 11,886 by the total of domestic and import auto sales, namely, 10,109,000, we come up with a percentage for Alaska that is practically microscopic. To quote the Senator from Alaska:

> To me, it is almost unbelievable, but once the figures are there, we have to just accept them.

The exact percentage is 0.12 percent.

Little more than one-tenth of 1 percent.

Yet this is the same kind of reasoning—the same kind of figuring—the Senator from Alaska has been doing to lead us to believe the Panama Canal is worthless, or becoming so, since so many tons of the world's shipping, which never, never will go near the canal, cannot squeeze through that waterway.

Should we tear up Alaska's highways—or give them to the Russians—because 10,097,114 new 1976 cars—and similar number of 1977 and 1978 models—have not been bought and used by its residents or used by out-of-Staters on Alaska's roads?

I think not, Mr. President; the absurdity of it speaks for itself.

Even should Alaska's automobile density increase greatly, it will always remain but a small portion of that of the entire Nation, regardless of its proportion.

Cars that will never travel in Alaska are like tankers that never will go near the Panama Canal.

Mr. President, another comparison will also show the error of the Senator's rationale. My second example, again utilizes Alaska as the setting, this time for airplanes—very large aircraft.

I am informed by the Federal Aviation Administration that there are 763 public and private airports in Alaska, including heliports and seaports: 543 are public; 220 are private.

Of this total, 37 airports are fully certified for air carrier operation.

Thirty more are certified for limited air carrier operation.

At once we can see that in Alaska every airport cannot handle a widebody aircraft. Or even an intermediate jet. Some will take the Boeing 747's and McDonnell Douglas DC–10's. Some cannot even take a 727 or DC–9.

Can all the fully certified 37 fields handle the 747's and DC–10's?

The FAA informs me that only Fairbanks and Anchorage handle those two types of very large passenger jet aircraft.

Kenai is used as an alternate for those airplanes. Ketchikan and Juneau could be used, but are not.

Mr. President, if we were to follow the logic of the Senator from Alaska regarding the proof of the Panama Canal's obsolesence being in the world shipping tonnage that it cannot handle, then we would have to declare obsolete some 758 public and private airports in Alaska. Widebody jets are here. More and more are being produced. The Senator from North Carolina does not, however, expect to hear his colleague demand that Alaskan runways and facilities be given to Russians.

The design utility of the airports and the design utility of the aircraft determine the availability of the one to the other. But that is not all. The market, the passenger, and freight potential come into play, as do a myriad of economic factors.

These kinds of factors, Mr. President, help to determine the seaborne oil and bulk cargo routes, just as they determine the airline routes.

Safety also plays a role.

The FAA does not allow four engine jets to land at National Airport in Washington, D.C.

Do we Senators who continually use National declare it obsolete? Certainly 747's and DC–10's could carry far more passengers in and out of the Nation's Captial if they could operate out of National.

The new European-built A–300 Airbus is having trouble at La Guardia Airport in New York City because of its weight. Its wheels are close together and concentrate that weight. Its impact on the runways is evidently excessive.

That does not make La Guardia obsolescent, even if the new Airbus should never use it for scheduled flights.

One FAA official made the offhand observation, without searching out the precise figure, that perhaps three-fourths of the airports in the United States cannot handle the 747's and DC–10's.

If we take that as an approximate figure, not one of them is made obsolete or can be shown to be on the road to obsolescence, by the inablility of the huge jets to utilize it.

Mr. President, for a final example, let us look at the Panama Canal itself.

the Governor of the Canal Zone, Maj. Gen Harold R. Parfitt, submitted a prepared statement when he testified before the Panama Canal Subcommittee of the House Merchant Marine and Fisheries Committee on July 25, 1977, in which he said:

> There is ample evidence that an absolute advantage to world trade exists that permits the Canal to retain its importance. There are today, for instance, almost 25,000 vessels of 1,000 gross registered tons and over, out of an approximate world fleet of 27,000, that can transit the Panama Canal, and some 4,000 actually do use the Canal.

I repeat, Mr. President, General Parfitt's words, "and some 4,000 actually do use the canal."

In other words, 21,000 vessels over 1,000 gross registered tons that could transit the Panama Canal, simply do not do so.

Trade routes, Mr. President, determine the shipping through the canal—not the number of ships afloat or under construction.

Mr. President, in conclusion, it should be clear to the American people, and my colleague from Alaska—that the supercargo carriers and supertankers that cannot transit the Panama Canal, or those vessels whose owners or charterers choose not to use it, have no more bearing on that waterway than the cars that never will drive on Alaska's roads, or the big jets that cannot land at all of Alaska's airports, have on those particular roads or airports.

I thank the Chair and I yield the floor.

EXHIBIT 1.—SHIPBUILDERS BEGIN TO SEE NEW TANKER ORDERS AHEAD

(By Craig Howard)

For the first time in almost five years, shipbuilders around the world are beginning to see firm signs of new tanker orders, shipping and banking sources claim.

The new orders involve product carriers, able to carry various grades of fuel and its derivatives, and crude oil carriers able to serve U.S. ports.

Already some signs of this new trend are evident. In past weeks, Socal has ordered two 120,000 dwt. tankers from Mitsubishi in Japan, while British-flag

independent owner Ravi Tikoo announced last week that he had ordered one 87,000-tonner, with the option to build two more, from IHI, also in Japan.

Additionally, experts in the ship sale and purchase market report, Kuwait National Petroleum Co. is seeking to buy eight new or used product carriers in the 30,000 dwt. range.

This new demand not only reflects the fact that construction of these classes of tankers was neglected in the early part of the decade, when every shipowner was ordering supertankers, but also steadily growing U.S. import demand and increasing traffic in refined rather the crude oils.

SHORTAGES EMERGING

Thus, even though the world tanker fleet has in the region of 100 million tons of surplus tankers—largely VLCCs, shortages of products carriers and intermediate sized oilers are beginning to emerge.

The trend has been further bolstered by new anti-pollution and safety legislation around the world as well as the high price of fuels. Existing tankers in these ranges are not only too few, but also do not meet the latest government regulations and burn too much fuel.

Thus, Salim M. Lalani, vice president, specializing in shipping affairs, at the Bank of America told The Journal of Commerce: "We are seeing more interest in intermediate sized tankers, especially for delivery after 1979."

Shipping sources pointed out that to have vessels ready for 1979 delivery, they would have to be ordered now or within the next few months.

It was also noted that the Socal and Tokoo orders were very specific. Normally, tankers of 120,000 dwt. would be considered too large for American ports but Socal is believed to have required that these ships be especially shallow-drafted so that they can carry full loads from the Arabian Gulf to the U.S. West Coast. Similarly, in announcing his latest order, Mr. Tikoo said that the ships were designed to trade between the Arabian Gulf and U.S. East coast ports.

Morover, it is reported, new ships are being offered at bargin prices by shipbuilders begging for work. Maximize sized tankers for U.S. ports are being offered in Japan at an incredibly cheap $20–$23 million, and even less in such countries as Brazil and Korea.

The more complicated products tankers, though smaller but equipped with stainless steel cargo tanks, are commanding similar prices.

Moreover, it is reported, credit terms are good while shipowners have been able to specify delivery date ranges of as much as 18 months. Thus, should the expected demand for these vessels be delayed, owners have secured the right to delay the delivery of their new ships.

Another trend now being identified is that more and more interest in newbuildings is being shown by buyers that have no shipping background—a reflection, some sources said, of the fact that many of today's shipowners cannot afford to maintain their present fleets, let alone take on new ships.

EXHIBIT 2.—TANKERS ARE STILL IN THE DOLDRUMS

In London last week, the Intergovernmental Maritime Consultive Organization, a United Nations body, threw out a U.S. proposal that could have cut the world's 100 million tons of tanker surplus by roughly a third. Now tanker owners wonder how to pump new life into their depressed industry as the world oil market continues slack. With no immediate end to the tanker crisis in sight, owners, bankers, and, increasingly, governments are being forced to consider new ways to heal the ailing business. It is mainly foreign tankers that are affected, since U.S. flag tankers are under the protection of the Jones Act, and are owned by petroleum.

In Scandinavia, the Norwegian Shipowners' Assn. estimates that 60 Norwegian shipowners will have a cash deficit totaling $450 million this year, unless tanker rates improve. Some companies are already being forced by their banks to sell tankers. Swedish shipowner Malmros Rederi, reportedly under pressure from its bank, has put on the market a 372,000-ton tanker for which the company paid up to $55 million. Negotiations are under way to sell the ship to a Hong Kong company for $22.5 million.

In another case, the Norwegian company Fearnley & Eger sold a 250,000-ton tanker to France's Total Oil Group for $10 million. The deal came after the French export guarantee agency insisted that Fearnley sell the ship to pay an outstanding mortgage. When it was built four years ago, the tanker cost an estimated $30 million, and the recent sale has set a new low for tankers that size.

BANKERS' FEARS

The Fearnley sale has chilled the banking world because other banks now dread the day when they, too, may have to force tanker sales to recoup loans.

A major U.S. multinational bank estimates that $25 billion, some 40% of which is owed to private banks and 60% to governments, is a risk. Jim Davis, shipping director for the London merchant bank Kleinwort Benson, Ltd., wants Arab oil countries to chip in $5 billion to help. "If Arab nations want their investment in shipping to be profitable, an improvement in the tanker market must be generated," Davis says. So far, there has been little Arab response to the idea.

In Japan, where tanker owners estimate their losses will total $85 million this year, the government is helping by backing an "in-tanker stockpiling association" that would put surplus tanker bottoms to work by stockpiling oil for emergency use.

IDLING TANKERS FOR PROFIT

But perhaps the most controversial solution is a try for an owners' cooperative that would lay up enough idle tanker capacity to increase tanker rates. In Scandinavia, 23 independent tanker owners are forming a London-based group, International Tanker Services Ltd., the aim of which is the orderly marketing of 40 million tons of larger tanker capacity.

The owners already have about 17 million tons of supertankers in the proposed pool, but the plan is running into a good deal of opposition. "When I think of [the plan's] cartel qualities. I think it has very real difficulties," says Kleinwort's Davis.

The tanker picture, however, is not entirely bleak. Though a partial recovery in mid-1976 failed to last (BW—June 14, 1976), there are some experts who predict an enduring upturn in the tanker market by 1980.

Tormod Rafgard, general manager of Oslo-based International Association of Independent Tanker Owners, for example, sees some hope in an expected reduction in delivered new tankers this year to about 10 million tons, compared with 24 million tons in 1977. He also predicts scrapping of tankers this year at last year's brisk rate of 10 million tons, as well as a 10-percent hike in tanker demand, compared with last year's 6-percent increase. Says Rafgard, "There will be a reasonable tanker market by 1980."

But many see it taking longer. "I don't know anybody who expects a good tanker market before 1982 or 1983," says Andrew Carpenter, tanker director of H. P. Drewry Ltd., London shipping consultants. "Demand for oil has not increased, and there will be more demand for shorter-haul North Sea and Alaskan oil. The Suez is being expanded to take large ships. All this will dampen growth . . . and we will need two years of 10 percent growth before we get rid of the bulk of that surplus. I don't see more than 6 percent this year."

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROOKE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION NO. 12

Mr. BROOKE. Mr. President, to date, the administration has been unable or unwilling to submit the implementing legislation related to the Panama Canal treaties formally to the Congress. I continue to be perplexed as to why this is the case.

Nevertheless, like many of my colleagues I have received what is purported to be the final draft of that legislation along with a detailed explanation of each of its sections. I use the term "purported" because State Department officials, in making this material available to me, stated that it might still be revised somewhat after, I repeat, after the OMB reviews it.

The State Department has had 7 months to draft the administration's proposals. Department spokesmen stated last fall to the Senate Foreign Relations Committee that the implementing legislation would be submitted to the Congress by late October or early

November of 1977. And yet they are still awaiting OMB approval of the draft. In case other Members of the Congress have not been provided the latest draft, I ask unamimous consent that it and its explanation prepared by the State Department be printed in the Record at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. BROOKE. Mr. President, when I first called attention to the dilatory way the administration was handling the implementing legislation at the beginning of our debate on the treaties, many of the proponents of the treaties stated that the implementing legislation had no bearing on the final Senate decision on the treaties. I differed with their view then and my reading of the draft legislation has done nothing to change my mind.

I will only mention one item today to indicate why I believe there is an important relationship between the proposed implementing legislation and the manner by which our decisions on the treaties are finalized.

The administration proposes in title II, section 202 of its draft that the payment of interest to the U.S. Treasury on the net direct investment of the United States in the canal be discontinued if the Panama Canal Treaty comes into effect. Currently, this payment is approximately $60 million per year. Comptroller General Staats estimates that discontinuance of this payment would result in a total loss to the Treasury of $505 million over the life of the treaty.

I believe that the Congress will and should insist that this payment continue. it will certainly be in our power to do so as we work our will on the implementing legislation, if the Panama Canal Treaty is ratified.

The decision to continue the interest payments will have an impact on the efforts to carry out the spirit and letter of the treaty. Its most evident impact will be to increase the size of the toll rate necessary to compensate for the added costs contemplated in the treaty. And a further increase in toll rates will bring about some reduction in traffic flow.

The latter point is especially significant in terms of Panamanian expectations as to financial benefits to be expected from the treaties. As is well known, Panama is to receive $0.30 per canal ton transiting the canal. Any reduction in traffic flow reduces the amount Panama will receive under this provision. In order to avoid any misunderstanding with Panama on this matter, it seems to me eminently reasonable, if the treaty is ratified, to avoid an exchange of the instruments of ratification until such time as the implementing legislation has been enacted setting forth precisely what will be the situation regarding the interest payment to the Treasury.

Other demands on canal revenues imposed by congressional action on the implementing legislation, such as an instance that the added civil service retirement costs required by the treaty provisions—an estimated $7.5 million to $8.4 million per year—be paid for out of canal revenues, would have a similar effect on assumptions integral to the treaty. We should be very circumspect about allowing false expectations to flourish about the likely impact of mere ratification of the treaties.

In order to avoid the debilitating effects of unfulfilled Panamanian expectations, I have come to the conclusion that if the Panama Canal Treaty is ratified, the exchange of the instruments of ratification should not take place until enactment of the relevant implementing legislation. Therefore, I am today submitting a reservation to that effect. I believe it is a reasonable method of avoiding problems downstream that would seriously weaken the capacity of the United States and Panama to cooperate in the effective management of the canal over the next 22 years.

Mr. President, I send to the desk the reservation.

The PRESIDING OFFICER. The reservation will be received and printed, and will lie on the table.

EXHIBIT 1.—A BILL TO IMPLEMENT THE PANAMA CANAL TREATY OF 1977 AND RELATED AGREEMENTS, AND FOR OTHER PURPOSES

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Be it enacted by the Senate and House of Representatives of the United States of America assembled, That it is the purpose of this Act to provide legislation necessary to or desirable for the implementation of the Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama and of the related agreements accompanying that Treaty.

SECTION 2. DEFINITIONS AND GENERAL PROVISIONS

(a) As used in this Act, references to the Panama Canal Treaty of 1977 and related agreements between the United States of America and the Republic of Panama signed September 7, 1977, and the agreements related to and implementing that Treaty signed on the same date.

(b) The Canal Zone Code is hereby redesignated as the Panama Canal Code.

(c) Except as otherwise provided in, or where inconsistent with, the provisions of this Act, the following words and phrases are amended as follows wherever they appear in the Panama Canal Code and other laws of the United States, unless in context the changes are clearly not intended, or unless such words and phrases refer to a time prior to the effective date of this Act, as defined in Section 502 (herein called "the effective date"):

(1) "Panama Canal Company" to read "Panama Canal Commission".

(2) "Company" to read "Commission" wherever the word "Company" has reference to the Panama Canal Company.

(3) "Canal Zone Government" to read "Panama Canal Commission".

(4) "Governor" or "Governor of the Canal Zone" to read "Panama Canal Commission" wherever the reference is to the Governor of the Canal Zone.

(5) "President" to read "Administrator" wherever the word "President" has reference to the president of the Panama Canal Company.

(6) "Government of the Canal Zone", or "Government", wherever the reference is to the Government of the Canal Zone, to read "United States of America".

(7) "Canal Zone waters" and "waters of the Canal Zone" to read "Panama Canal waters" and "waters of the Panama Canal", respectively.

(8) "Canal Zone Merit System" to read "Panama Canal Employment System".

(9) "Canal Zone Board of Appeals" to read "Panama Canal Board of Appeals".

(d) Reference to the Canal Zone in provisions of the Panama Canal Code or other laws of the United States which apply to transactions, occurrences, or status after (treaty effective date) shall be deemed to be to areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements.

(e) The President shall, within two years after the Panama Canal Treaty of 1977 enters into force, submit to the Congress proposed legislation which would—

(1) amend or repeal provisions of law which in their present form are applicable only during the transition period prescribed in Article XI of that Treaty, and

(2) incorporate the remaining provisions of the Panama Canal Code into the United States Code, proposing any changes thereto considered advisable in light of the experience as of that time under that Treaty.

TITLE I—PANAMANIAN RELATIONS AND SECURITY MATTERS

SECTION 101. UNITED STATES-PANAMA JOINT COMMITTEES; SEA LEVEL CANAL STUDY

(a) The President shall appoint the representatives of the United States to the Joint Commission on the Environment to be established under paragraph 2 of Article VI of the Panama Canal Treaty of 1977, and to any joint committee or body with the Republic of Panama to study the possibility of a sea level canal in the Republic of Panama pursuant to Article XII of that Treaty.

(b) Upon the completion of any joint study between the United States and the Republic of Panama concerning the feasibility of a sea level canal in the Republic of Panama pursuant to to paragraph 1 of the Article XII of the Panama Canal Treaty of 1977, the text of the study shall be transmitted by the President to the President of the Senate and to the Speaker of the House of Representatives.

(c) No construction of a sea level canal by the United States in the Republic of Panama shall be undertaken except with express Congressional authorization after submission of the study by the President as provided in subsection (b).

(d) The President shall designate and the Secretary of State shall coordinate the participation of the representatives of the United States to the Consultative Committee between the United States and the Republic of Panama to be established under paragraph 7 of Article III of the Panama Canal Treaty of 1977.

SECTION 102. AUTHORITY OF THE AMBASSADOR

(1) The Ambassador to the Republic of Panama shall have full responsibility for the coordination of the transfer to the Republic of Panama of those functions that are to be assumed by the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(2) The Administrator of the Panama Canal Commission shall not be subject to the direction or supervision of the United States Ambassador to the Republic of Panama, but the Administrator shall keep the Ambassador fully and currently informed with respect to all activities and operations of officers and employees of the Commission.

SECTION 103. SECURITY LEGISLATION

(a) Sections 34 and 35 of title 2 of the Panama Canal Code are repealed.

(b) Section 1 of title II of the Act of June 15, 1917 (50 U.S.C. § 191), is amended by (1) striking the second paragraph of that section, and by (2) striking the term "the Canal Zone,".

(c) Section 2 of the Act of November 15, 1941 (50 U.S.C. § 191b), is repealed.

(d) Section 1 of title XIII of the Act of June 15, 1917 (50 U.S.C. § 195), is amended by striking the term "the Canal Zone and".

(e) Section 1 of the Act of August 9, 1954 (50 U.S.C. § 196), is amended by striking the term "including the Canal Zone,".

SECTION 104. ARMS EXPORT CONTROL

Section 38 of the Arms Export Control Act (22 U.S.C. § 2778) is amended by striking out subsection (d) thereof.

SECTION 105. PRIVILEGES AND IMMUNITIES

The Secretary of State shall from among persons recommended by the Panama Canal Commission determine, and shall maintain and from time to time furnish to the Government of the Republic of Panama, the list of those officials and other persons who shall enjoy the privileges and immunities accorded under Article VIII of the Panama Canal Treaty of 1977.

SECTION 106. TERMINATION OF CANAL ZONE GOVERNMENT; TRANSFERS OF RECORDS

(a) Sections 1, 2, 3, 31, 32, 33, 333, and 334 of title 2 and sections 5081–5092 of title 6 of the Panama Canal Zone are repealed.

(b) The Panama Canal Commission, other agencies or departments, and United States courts in the Republic of Panama are authorized to transfer any of their records, or copies thereof, including records acquired from the Canal Zone Government or Panama Canal Company such as vital statistics records, to other agencies, departments or courts of the United States and, under the coordination and with the approval of the Ambassador, to the Government of the Republic of Panama.

TITLE II—PANAMA CANAL COMMISSION

CHAPTER 1. COMMISSION: FISCAL MATTER

SECTION 201.—(a) Section 61 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 61. Continuation, purposes, offices, and residence of the Commission. (a) For the purpose of managing, operating, and maintaining the Panama Canal and its complementary works, installations and equipment, and of conducting operations incident thereto, in accordance with the Panama Canal Treaty of 1977 and related agreements, the Panama Canal Commission is established as a body corporate and as an agency and instrumentality of the United States, and is declared to be the successor to the Panama Canal Company.

"(b) The principal office of the Commission shall be located in the Republic of Panama in one of the areas made available for the use of the United States under the Panama Canal Treaty of 1977 and related agreements, but the Commission may establish agencies or branch offices in such other places as it deems necessary or appropriate in the conduct of its business. Within the meaning of the laws of the United States relating to jurisdiction of venue in civil actions, the Commission is an inhabitant and resident of the District of Columbia, and of the eastern judicial district of Louisiana."

(b) Subsection (a) of section 62 of title 2 of the Panama Canal Code is amended by substituting the words "Panama Canal Company" for "Company" and the words "Panama Canal Commission" for "Panama Canal Company".

SECTION 202.—(a) Subsection (e) of section 62 of title 2 of the Panama Canal Code is repealed.

(b) Subsection (f) of section 62 of title 2 of the Panama Canal Code is amended by substituting the words "compute its capital surplus account" for "account for its

surplus", and by deleting the words "in determining the base for the interest payments required by subsection (e) of this section".

(c) Section 70 of title 2 of the Panama Canal Code is amended by deleting the words "in determining the base for interest payments required by section 62(e) of this title", and by inserting the term "including operating expenses and payments required by Article III(5) and Article XIII(4) (a), (b) and (c) of the Panama Canal Treaty of 1977," after the term "working capital requirements,".

(d) Section 72 of title 2 of the Panama Canal Code is amended by deleting the words "pursuant to section 62(e) of this title".

SECTION 203.—(a) Subsection (g) of section 62 of title 2 of the Panama Canal Code is amended to read as follows:

"(g) The Panama Canal Commission shall pay directly from Canal operating revenues to the Republic of Panama those payments required under paragraph 4 of Article XIII of the Panama Canal Treaty of 1977. In determining the adequacy of operating revenues for the purpose of payments to Panama under paragraph 4(c) of that Article, such operating revenues of a given fiscal period shall be reduced by all expenditures of that period including: (i) amounts paid or payable for operations and maintenance, inventory, goods, services and that portion of unfunded liabilities paid or currently payable; (ii) payments to Panama under paragraphs 4(a) and 4(b) of that Article and under paragraph 5 of Article III of the Treaty; (iii) amounts payable into a capital reserve account programmed to fund requirements for plant replacement, expansion and improvements; (iv) amounts payable into programmed reserve accounts established prior to the effective date of an increase in tolls for the purpose of matching revenues with expenses during the period projected for a given toll rate to remain in effect; and (v) the accumulative sum from prior years (beginning with the year in which the Panama Canal Treaty of 1977 enters into force) of any excess of such expenditures of the Commission over operating revenues.

(b) Title I of the Act of November 27, 1973 (87 Stat 636) is amended by striking out the heading "Payment to the Republic of Panama" and all that follows under that heading.

SECTION 204.—Section 62 of title 2 of the Panama Canal Code is amended by adding a new subsection (h) reading as follows:

"(h) Payments by the Commission to the Republic of Panama for providing public services in accordance with paragraph (5) of Article III of the Panama Canal Treaty of 1977 shall be treated for all purposes as an operating cost of the Commission."

SECTION 205.—Subsection (a) of section 63 of title 2 of the Panama Canal Code is amended to read as follows:

"(a) A board of directors shall manage the affairs of the Panama Canal Commission. The President of the United States shall appoint the members of the board in accordance with paragraph 3 of Article III of the Panama Canal Treaty of 1977, and neither this chapter nor any other law prevents the appointment and service as a director, or as an officer of the Commission, of an officer or employee of the United States, or of a person who is not a national of the United States. Each director so appointed shall, subject to paragraph 3 of Article III of the Panama Canal Treaty of 1977, hold office at the pleasure of the President, and, before entering upon his duties, shall take an oath faithfully to discharge the duties of his office."

SECTION 206.—Subsection (c) of section 63 of title 2 of the Panama Canal Code is amended to read as follows:

"(c) The directors shall hold meetings as provided by the bylaws of the Panama Canal Commission. A quorum for the transaction of business shall consist of a majority of the directors of which a majority of those present are citizens of the United States."

SECTION 207.—Section 64 of title 2 of the Panama Canal Code is amended to read as follows:

"SEC. 64. ADMINISTRATOR AND DEPUTY.—The President of the United States shall appoint the Administrator and Deputy Administrator of the Panama Canal Commission. The Administrator shall, subject to the direction and under the supervision of the Board, be the chief executive officer of the Commission. The Administrator and Deputy Administrator shall hold office at the pleasure of the President."

SECTION 208.—Paragraph (3) of subsection (a) of section 65 of title 2 of the Panama Canal Code is amended to read as follows:

"(3) Sue and be sued in its corporate name, except that—

"(A) its amenability to suit is imited by the immunities provided by Article VIII of the Panama Canal Treaty of 1977, and otherwise by law;

"(B) salaries or other moneys owed by the Commission to its employees shall not be subject to attachment, garnishment or similar process, except as otherwise expressly provided by the laws of the United States; and

"(C) it is exempt from any liability for prejudgment interest."

SECTION 209.—The opening clause of subsection (a) of section 66 of title 2 of the Panama Canal Code is amended to read as follows:

"(a) Subject to the Government Corporation Control Act (31 U.S.C., sec. 841 et seq.), and to the Panama Canal Treaty of 1977 and related agreements, the Panama Canal Commission may:"

SECTION 210.—Sections 67 and 73 of title 2 of the Panama Canal Code are repealed. Section 68 of that title is amended to read as follows:

"SEC. 68.—ASSETS AND LIABILITIES.—(a) Property and other assets of the Panama Canal Company and of the Canal Zone Government which are not transferred to other United States Government agencies or to the Republic of Panama, or otherwise disposed of, shall be the property and assets of the Panama Canal Commission from and after the effective date, and except as otherwise provided by law, the Commission shall assume the liabilities of the Panama Canal Company and the Canal Zone Government then outstanding.

"(b) The Commission may depreciate the Panama Canal, its complementary works, installations and equipment, and all other property and assets of the Commission, and may amortize over the life of the Panama Canal Treaty of 1977 the right to use certain assets such as housing made available to the United States under that Treaty and related agreements.

"(c) The assets and liabilities referred to in this section shall be deemed to have been accepted and assumed by the Commission without the necessity of any act on the part of the Commission except as otherwise stipulated by section 62 of this title."

Section 211.—(a) The introductory phrase to Section 1331 of title 2 of the Panama Canal code is amended by striking out the word "President" and by inserting in lieu thereof the word "Commission".

(b) Paragraph (1) of section 1331 of title 2 of the Panama Canal Code is amended by striking out the words "harbors and other waters of the Canal Zone" and by inserting in lieu thereof the words "waters of the Panama Canal and areas adjacent thereto including the ports of Balboa and Cristobal".

(c) Paragraph (4) of section 1331 of title 2 of the Panama Canal Code is amended by striking out the words "waters of the Canal Zone" and by inserting in lieu thereof the words "waters of the Panama Canal and areas adjacent thereto including the ports of Balboa and Cristobal".

Section 212.—Funds and Accounts.—(a) Section 231 of the title 2 of the Panama Canal Code is repealed.

(b) Section 232 of title 2 of the Panama Canal Code is amended to read as follows:

"Sec. 232.—Furnishing of Services; Reimbursements.

"(a) The Department of Defense shall reimburse the Panama Canal Commission for amounts expended by the Commission in maintaining defense facilities in standby condition for the Department of Defense.

"(b) Notwithstanding any other law, appropriations of the Department of Defense, or such other agency or agencies as may be designated for this purpose by the President, are made available for conducting educational and health care activities, including kindergartens and college, formerly carried out by the Canal Zone Government, and for providing the services related thereto. Amounts so expended for furnishing services to employees of other agencies and their dependents, less amounts payable by such persons, shall be fully reimbursible to the agency furnishing the services. The appropriations or funds of the agency bearing the cost of the compensation of the employee concerned are made available for such reimbursements. In addition, the appropriations or funds of agencies conducting operations in the Repbulic of Panama are made available for provisions of health care services to elderly or disabled persons who were eligible for such services prior to the effective date."

(c) Section 233 of title 2 of the Panama Canal Code is amended by striking the terms "Canal Zone Government or the Panama Canal Company" and by inserting in their place the term "Panama Canal Commission".

(d) Section 234 of title 2 of the Panama Canal Code is amended by striking out the term "Canal Zone" and by insertion in its place the term "Panama Canal Commission".

(e) Section 235 of title 2 of the Panama Canal Code is amended by striking the term "Canal Zone Government and the Panama Canal Company" and by inserting in its place the term "Panama Canal Commission".

SECTION 213. PUBLIC PROPERTY AND PROCUREMENT

(a) Section 371 of title 2 of the Panama Canal Code is repealed.

(b) Section 372 of title 2 of the Panama Canal Code is amended to read as follows:

"Sec. 372.—Transfers and Cross-Servicing Between Agencies.—(a) In the interest of economy and maximum efficency in the utilization of Government property and facilities, there are authorized to be transferred between departments and agenices, with or without exchange of funds, all or so much of the facilities, buildings, structures, improvements, stock and equipment or their activities located in the Republic of Panama as may be mutually agreed upon by the departments and agencies involved and approved by the President of the United States or his designee. With respect to transfers without exchange of funds, transfers to or from the Panama Canal Commission are subject to section 62 of this title, as amended.

"(b) The Panama Canal Commission and other agencies of the United States may enter into cross-servicing agreements for the use of facilities, furnishing of services, or performance of functions."

Chapter 2. Tolls

Section 230.—Section 411 of title 2 of the Panama Canal Code is amended to read as follows:

"Sec. 411. Prescription of Measurement Rules and Tolls.—(a) the Panama Canal Commission may prescribe, and from time to time change:

"(1) the rules for the measurement of vessels for the Panama Canal; and

"(2) subject to section 412 of this title, the tolls that shall be levied for the use of the Canal.

"(b) The Commission shall give three months notice, by publication in the Federal Register, of proposed changes in basic rules of measurement or in rates of tolls, during which period a public hearing shall be conducted. Changes in basic rules of measurement and changes in rates of tolls shall be subject to and shall take effect upon the approval of the President of the United States, whose action in such matters shall be final."

Section 231.—In order to insure that the rates of tolls in effect on the effective date are adequate to meet the requirements of section 412 of title 2 of the Panama Canal Code, as amended by section 232 of this Act, the Panama Canal Company is authorized, in advance of that date, to change the rates, effective on the effective date, such change to be subject to the approval of the President whose action in the matter shall be final. If and to the extent that time permits, the Company shall give three months' notice, by publication in the Federal Register, of such proposed changes in rates of tolls, during which period a public hearing shall be conducted. This section shall become effective upon the date of enactment of this Act.

Section 232.—Bases of Tolls.—(a) Subsection (b) of section 412 of title 2 of the Panama Canal Code is amended to read as follows:

"(b) Tolls shall be prescribed at rates calculated to cover as nearly as practicable all anticipated costs of maintaining and operating the Panama Canal, together with the facilities and appurtenances related thereto, including depreciation of assets, amortization of use rights, and the payments to Panama pursuant to paragraphs 4(a) and 4(b) of Article XIII of the Panama Canal Treaty of 1977. In determining the rates of tolls, there may also be taken into account unrecoverd past costs, funding required to establish or maintain a capital reserve account programed to fund requirements for plant replacement, expansion, and improvements, and the necessity of establishing reserves for the purpose of matching revenues with expenses during the period projected for a given toll rate to remain in effect."

(b) Subsection (c) of section 412 of title 2 of the Panama Canal Code is amended to read as follows:

"(c) Vessels operated by the United States, including vessels of war and auxiliary vessels, and ocean-going training ships owned by the United States and operated by State nautical schools, shall pay tolls."

(c) Subsection (d) of section 412 of title 2 of the Panama Canal Code is amended by deleting the words "of articles XVIII and XIX of the covention between the United States and Panama concluded on November 18, 1903, and", by inserting a comma in place of the period at the end of the subsection, and by adding thereafter "and of Articles II, III, and VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, between the United States of America and the Republic of Panama, signed September 7, 1977."

Chapter 3. Claims

Section 260.—Chapter 11 of title 2 of the Panama Canal Code is amended as follows:

(a) The title of the chapter is amended to read, "Claims Arising from Operation of Canal."

(b) Section 271 of title 2 of the Panama Canal Code is repealed.

(c) The headings of subchapters I and II are deleted.

(d) Section 291 of title 2 of the Panama Canal Code is amended as follows:

(1) The period at the end of the first sentence is changed to a comma, and the following language is added: "unless it is established that the injury was not proximately caused by the negligence or fault of any of its officers or employees acting within the scope of his employment and in the line of his duties in connection with the operation of the Canal."

(2) In the fourth sentence, the words "the side" are amended to read "any portion of the hull."

(e) Section 293 of title 2 of the Panama Canal Code is amended to read as follows:

"Sec. 293.—Measure of Damages.

"(a) In determining the amount of the award of damages for injuries to a vessel for which the Panama Canal Commission is determined to be liable, there may be included:

"(1) actual or estimated cost of repairs;

"(2) charter hire actually list by the owners, or charter hire actually paid, depending upon the terms of the charter party, for only the time the vessel is actually undergoing repairs, on drydock or otherwise;

"(3) maintenance of the vessel and wages of the crew, if they are found to be actual additional expenses or losses incurred outside of the charter hire, for only the time the vessel is actually undergoing repairs, on drydock or otherwise; and

"(4) except as prohibited by subsection (b) of this section, or by any other provision of law, other expenses which are definitely and accurately shown to have been incurred necessarily and by reason of the accident or injuries.

"(b) Agent's fees or commissions, general average expenses, attorney's fees, bank commissions, port charges of other incidental expenses of similar character, or any items which are indefinite, indeterminable, speculative, or conjectural may not be allowed.

"(c) The Commission shall be furnished such vouchers, receipts, or other evidence as may be necessary in support of any item of a claim. If a vessel is not operated under charter but by the owner directly, evidence shall be secured if available as to the sum for which vessels of the same size and class can be chartered in the market. If the charter value cannot be determined, the value of the use of the vessel to its owners in the business in which it was engaged at the time of the injuries shall be used as a basis for estimating the damages for the vessel's detention; and the books of the owners showing the vessel's earnings about the time of the accident or injuries shall be considered as evidence of probable earnings during the time of detention. If the books are unavailable, such other evidence shall be furnished as may be necessary."

(f) Section 294 of title 2 of the Panama Canal Code is amended by deleting the word "or" in paragraph (5), by renumbering the present paragraph (6) as paragraph (7), and by inserting a new paragraph (6) reading as follows: "(6) time necessary for investigation of marine accidents; or".

(g) Section 296 of title 2 of the Panama Canal Code is amended by deleting the words "United States District Court for the District of the Canal Zone" in the first sentence and inserting in lieu thereof the words "United States District Court for the Eastern District of Louisiana".

(h) The present section 297 of title 2 of the Panama Canal Code is designated as subsection (a), and a new subsection (b) is added to read as follows:

"(b) Lack of knowledge on the part of the master, officers, crew or passengers that an accident giving rise to a claim under this chapter has occurred does not exclude non-compliance with the requirements of this section."

(i) A new section 298 of title 2 of the Panama Canal Code is added, to read as follows:

"Sec. 298.—Time for Presenting Claim and Commencing Action.—A claim against the Commission under this chapter shall be forever barred unless it is presented in writing to that agency within two years after such claim accrues or unless action is begun within one year after the date of mailing of notice of final decision on the claim by the Commission."

(j) A new section 299 of title 2 of the Panama Canal Code is added, to read as follows:

"Sec. 299.—Board of Local Inspectors.

"(a) There is established a Board of Local Inspectors of the Panama Canal Commission which shall perform, in accordance with regulations prescribed by the Commission—

"(1) the investigations called for by section 297 of this chapter; and

"(2) such other duties in matters of a marine character as it may be assigned by the Commission.

"(b) The Commission shall, by regulation, designate the members of the Board and establish procedures by which the Board carries out its functions.

"(c) In conducting the investigations provided for by subsection (a) of this section, members of the board may summon witnesses, administer oaths and require the production of books and papers necessary thereto."

TITLE III—EMPLOYEES AND POSTAL MATTERS

CHAPTER 1. EMPLOYMENT SYSTEM

Section 301.—(a) Sections 101, 102, 122, 123, 147 and 154 of title 2 of the Panama Canal Code are repealed.

(b) Section 103 of title 2, of the Panama Canal Code is amended by striking the term "Canal Zone Government, Panama Canal Company" and inserting in lieu thereof the term "Panama Canal Commission", and by redesignating that section as section 122 of that title and code.

Section 302.—Section 141 of title 2 of the Panama Canal Code is amended as follows:

(a) The definition of the word "department" is amended to read as follows:

"'department' means (i) the Panama Canal Commission, and (ii) an executive agency (within the meaning of section 105 of title 5 of the United States Code) which makes an election under section 142(b) of this chapter;"

(b) The definition of the word "position" is amended to read as follows:

"'position' means those duties and responsibilities of a civilian nature under the jurisdiction of a department which are performed in the Republic of Panama."

Section 303.—Section 142 of title 2 of the Panama Canal Code is amended by redesignating subsection (b) thereof as subsection (c), and by striking the caption and subsection (a) thereof and inserting in their place the following:

"SECTION 142. PANAMA CANAL EMPLOYMENT SYSTEM

"(a) The Panama Canal Commission shall conduct its wage and employment practices in accordance with a Panama Canal Employment System which shall be established in accordance with—

"(1) the principles established in the Panama Canal Treaty of 1977 and related agreements, and with the provisions of this chapter and other applicable law; and

"(2) regulations promulgated by, or under the authority of, the President in accordance with this chapter and taking into account any recommendation of the Panama Canal Commission.

"(b) The head of an executive agency other than the Panama Canal Commission may elect in whole or in part to have the Panama Canal Employment System made applicable to personnel of his agency in the Republic of Panama."

Section 304.—Notwithstanding other provisions of this chapter, the provisions of subchapter III of chapter 7 of title 2 of the Panama Canal Code establishing the Canal Zone Merit System, and the administrative regulations promulgated thereunder, shall continue in effect until such time as the Panama Canal Employment System has been established pursuant to section 303 of this Act.

Section 305.—Section 144 of title 2 of the Panama Canal Code is amended by deleting subsection (d) thereof. Section 146 is amended by deleting subsection (d) thereof. Section 146 is amended to read as follows:

"SEC. 146. RECRUITMENT AND RETENTION REMUNERATION

"(a) In addition to basic compensation, additional remuneration in such amounts as the head of the department concerned determines, may be paid as overseas recruitment and retention differentials to—

"(1) persons employed by the Panama Canal Company, Canal Zone Government or a department in the Canal Zone prior to the effective date;

"(2) persons thereafter recruited outside of Panama for a position in the republic of Panama; and

"(3) Medical doctors employed by the Department of Defense or Panama Canal Commission if in the judgment of the head of the department concerned, the recruitment and retention of such employees is essential.

"(b) Employees who fall into more than one of the three categories described in subsection (a) of this section may qualify for additional remuneration under only one of those categories.

"(c) Additional remuneration prescribed under this section may not exceed by more than 25 percent the rate of basic compensation for the same or similar work performed in the continental United States by employees of the Government of the United States."

Section 306.—Title 2 of the Panama Canal Code is amended by adding a new section 147 to read as follows:

"Sec. 147.—Transfer of Federal Employees to Panama Canal Commission.—The head of any Federal agency, including the United States Postal Service, is authorized to enter into agreements for the transfer or detail of that agency's employees, serving under permanent appointment, to the Panama Canal Commission. Under regulations prescribed by the Civil Service Commission, any employee so transferred or detailed shall, upon completion of his tour of duty with the Commission, be entitled to reemployment with the agency from which he was transferred or detailed without loss of pay, seniority or other rights or benefits to which he would have been entitled had he remained on the rolls of that agency."

Section 307.—Section 149 of title 2 of the Panama Canal Code is amended to read as follows:

"Sec. 149. Merit and Other Employment Requirements

"(a) Subject to this chapter, the President may, from time to time and taking into account any recommendation of the Panama Canal Commission, amend or modify the provisions of the Panama Canal Employment System, including provisions relating to selection for appointment, reappointment, reinstatement, re-employment, and retention, with respect to positions, employees, and individuals under consideration for appointment to positions, established by regulations under section 142 of this chapter.

"(b) The Panama Canal Employment System shall:

"(1) subject to and as limited by the Panama Canal Treaty of 1977 and related agreements, be based on the merit of the employee or individual and upon his qualifications and fitness to hold the position concerned;

"(2) conform generally to policies, principles, and standards for the competitive civil service of the Government of the United States; and

"(3) include provision for appropriate interchange, between the Panama Canal Employment System and the competitive civil service of the Government of the United States, of citizens of the United States employed by the Government of the United States."

Section 308.—Section 155 of title 2 of the Panama Canal Code is amended by redesignating subsection (b) thereof as subsection (c), and by inserting in lieu of subsection (a) thereof the following:

"(a) The President shall issue regulations necessary and appropriate to carry out the provisions and accomplish the purposes of this subchapter and, in the event of any election under section 142(b), coordinate the policies and activities under this subchapter of the departments involved.

"(b) In order to assist in carrying out his coordination responsibility under subsection (a) and in implementing the provisions of the Panama Canal Treaty of 1977 and related agreements relating to recruitment, examination, determination of qualification standards and similar matters, the President may establish, as the successor to the Canal Zone Central Examining Office, an office which shall be an entity within the Panama Canal Commission."

Sec. 309. Subsection (a) of section 201 of title 2 of the Panama Canal Code is amended by deleting the words "Governor of the Canal Zone and President of the Panama Canal Company, or as Lieutenant Governor of the Canal Zone and Vice President of the Panama Canal Company," and inserting in lieu thereof the words "Administrator or Deputy Administrator of the Panama Canal Commission."

Chapter 2.—Conditions of Employment, Placement, and Retirement

Sec. 321. Title 2 of the Panama Canal Code is amended by adding a new section 202 reading as follows:

"Sec. 202. Transferred Employees. With respect to employees of the Panama Canal Company or Canal Zone Government who are transferred to employment with the Panama Canal Commission or other United States Government agencies in the Republic of Panama, the following terms and conditions of employment shall be generally, no less favorable, from and after the date of exchange of instruments of

ratification of the Panama Canal Treaty of 1977, than the terms and conditions of employment with the Panama Canal Company and Canal Zone Government immediately prior to that date:

Wage rates; tropical differential; premium pay and night differential; reinstatement and restoration rights; injury and death compensation benefits; leave and travel, except as modified to provide equity with other employees within the agency to which the employee is transferred; transportation and repatriation benefits; group health and life insurance; reduction in force rights; an employee grievance system, and the right to appeal adverse and disciplinary actions as well as position classification actions; veteran's preference eligibility; holidays; saved pay provisions; and severence pay benefits."

Sec. 322. Title 2 of the Panama Canal Code is amended by adding a new section 203 reading as follows:

"Sec. 203. PLACEMENT. (a) A United States citizen who, immediately preceding the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 was an employee of the Panama Canal Company or Canal Zone Government, who separates or is scheduled to separate on that date or anytime thereafter throughout the life of the Panama Canal Treaty of 1977 for any reason other than misconduct or delinquency, and who is not placed in another appropriate position with the United States Government in the Republic of Panama shall, upon the employee's request, be accorded appropriate placement to vancancies with the United States Government in the United States."

"(b) A United States citizen who, immediately preceding the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 was an employee of an agency of the United States Government in the Canal Zone other than the Panama Canal Company or Canal Zone Government, whose position is eliminated as the result of implementing the Panama Canal Treaty of 1977, and who is not placed in another appropriate position with the United States Government in the Republic of Panama shall, upon the employee's request, be accorded the placement assistance provided for in subsection (a)."

"(c) The United States Civil Service Commission shall develop and administer a Federal Government-wide placement program for all eligible employees who request placement assistance under this section."

Sec. 323. Title 2 of the Panama Canal Code is amended by adding a new section 204 to read as follows:

"Sec. 204. EDUCATIONAL TRAVEL BENEFITS.—Dependents of United States citizen employees of the Panama Canal Commission who are eligible for educational travel benefits under regulations issued by the Commission shall be entitled to one round trip per year for undergraduate studies in the United States until they reach their 23rd birthday."

Sec. 324. ADJUSTMENT OF COMPENSATION.—United States citizen employees of the Panama Canal Commission shall be paid an allowance to offset the increased cost of living that may result from the withdrawal of the eligibility of such employees and their dependents to use military postal service, sales stores and exchanges five years after the date of entry into force of the Panama Canal Treaty of 1977. The amount of the additional compensation shall be determined by the Panama Canal Commission.

Sec. 325. EARLY RETIREMENT ELIGIBILITY.

Sec. 8336 of title 5 of the United States Code is amended:

(1) by redesignating subsection (c) as subsection (c)(1) and adding the following new paragraph "(2) A law enforcement officer or firefighter employed by the Panama Canal Company or the Canal Zone Government immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977, who is separated from the service prior to January 1, 2000, and, upon separation, meets the age and service requirements in paragraph (1), or who is separated within 2 years prior to meeting the age and service requirements in paragraph (1) is entitled to an annuity."

(2) by redesignating subsection (h) as subsection (k) and inserting the following new subsections "(h), (i), and (j)"

"(h) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama, who is separated from the service prior to January 1, 2000—

(1) involuntarily, as a result of the implementation of the Panama Canal Treaty of 1977, except by removal for cause on charges of misconduct or delinquency, after completing 20 years of service;

(2) voluntarily after completing 25 years of service or after becoming age 50 and completing 20 years of service; or

(3) involuntarily, as a result of the implementation of the Panama Canal Treaty of 1977, except by removal for cause on charges of misconduct or delinquency, or voluntarily within 2 years prior to meeting the age and/or service requirements in paragraph (2) is entitled to an annuity if he—

(A) was employed by the Canal Zone Government or the Panama Canal Company immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977; and

(B) has been continuously employed by the Panama Canal Commission or by an Executive agency conducting operations in the Canal Zone or the Republic of Panama since the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 or its entry into force."

"(i) An employee of the Panama Canal Commission or of an Executive agency conducting operations in the Canal Zone or Republic of Panama, who is separated from the service as a result of the implementation of the Panama Canal Treaty of 1977, prior to January 1, 2000—involuntarily, except by removal for cause on charges of misconduct or delinquency—

"(1) after completing 20 years of service; or

"(2) within 2 years prior to meeting the age and/or service requirements in paragraph (2) of subsection (h) of this section is entitled to an annuity if he—

"(A) was employed in the Canal Zone by an Executive agency other than the Panama Canal Company or the Canal Zone Government immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977; and

"(B) has been continuously employed by the Panama Canal Commission or an Executive agency conducting operations in the Canal Zone or the Republic of Panama since the exchange of instruments of ratification of the Panama Canal Treaty of 1977 or its entry into force.

"(j) For the purpose of subsections (h) and (i) of this section, 'Executive agency' includes the Administrative Office of the United States Courts and the Smithsonian Institution."

Sec. 326. EARLY RETIREMENT COMPUTATION.

Section 8339 of title 5 of the United States Code is amended—

(1) by inserting in subsection (f), immediately after "subsections (a)–(e)", the following: "and (n)";

(2) by inserting in subsection (i), immediately after "subsections (a)–(h)", the following:" and (n)";

(3) by inserting in subsections (j) and (k)(1), immediately after "subsections (a)–(i)" each time it appears, the following: "and (n)";

(4) by inserting in subsection (l), immediately after "subsections (a)–(k)", the following "and (n)";

(5) by inserting in subsection (m), immediately after "subsections (a)–(e)", the following "and (n)"; and

(6) by adding at the end thereof the following new subsections "(n), (o), and (p)":

(n) The annuity of an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of the Panama Canal Treaty of 1977, who continues in employment with the Panama Canal Commission, or with another Executive agency in the Republic of Panama is computed with respect to the period of that service performed on a continuous basis after the entry into force of the Panama Canal Treaty of 1977 by multiplying—

(A) 2½ percent of the employee's average pay by so much of such service as does not exceed 20 years; plus,

(B) 2 percent of the employee's average pay multiplied by so much of such service as exceeds 20 years."

"(o) The annuity computed under subsection (n) of this section for an employee who was employed as a law enforcement officer or firefighter shall be increased by $8 for each full month of such service in the Republic of Panama after the entry into force of the Panama Canal Treaty of 1977. This increase in annuity shall not be paid with respect to service performed after completion of 20 years as a law enforcement officer or firefighter."

"(p) The annuity computed under this subchapter for an employee who was employed as a law enforcement officer or firefighter by the Panama Canal Company or the Canal Zone Government immediately prior to the date of exchange of instruments of ratification or entry into force of the Panama Canal Treaty of 1977, who does not qualify for retirement under section 8336(c) of this title shall be increased by $12 for each full month of such service, prior to the entry into force of the Panama Canal Treaty of 1977. This increase in annuity shall not be paid with

respect to service performed after completion of 20 years as a law enforcement officer or firefighter."

Sec. 327. Court, Canal Zone Civilian Personnel Policy Coordinating Board, and Related Employees.—For the purposes of sections 202, 203, and 204 of title 2 of the Panama Canal Code, as amended by sections 321, 322, and 323 of this Act, and sections 325–326 of this Act, the district judge, the clerk, the court reporter, and other employees of the United States District Court for the District of the Canal Zone, the United States Attorney for the District of the Canal Zone and the Assistant United States Attorneys and their clerical assistants, and the United States Marshal for the District of the Canal Zone and his deputies and clerical assistants; the Executive Director of the Canal Zone Civilian Personnel Policy Coordinating Board, the Manager, Central Examining Office, and their deputies and clerical assistants shall be treated the same as employees of the Panama Canal Commission.

Sec. 328. (a) Chapters 81 (Compensation for Work Injuries), 83 (Retirement), 87 (Life Insurance), and 89 (Health Insurance), of title 5 of the United States Code are inapplicable to persons who are not citizens of the United States, who are hired by the Panama Canal Commission after the effective date and who are covered by the Social Security System of the Republic of Panama pursuant to the Panama Canal Treaty of 1977 and related agreements.

(b) In section 8701 of title 5 of the United States Code, the definition of "employee" in subsection (a) is amended by revising paragraph (B) to read as follows:

"(B) an employee who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless such person was an employee for the purpose of this chapter on the day before the effective date by virtue of service with a Federal agency in the Canal Zone.

(c) In section 8901 of title 5 of the United States Code, the definition of employee in subsection (1) is amended by revising paragraph (ii) to read as follows:

"(ii) an employee who is not a citizen or national of the United States and whose permanent duty station is outside the United States unless such person was an employee for the purpose of this chapter on the day before the effective date by virtue of service with a Federal agency in the Canal Zone."

Sec. 329. Non-U.S. Citizen Retirement Under Special Treaty Provisions.—(a) Under such regulations as the President may prescribe, there shall be paid to the Social Security System of the Republic of Panama, out of funds deposited in the Treasury of the United States to the credit of the Civil Service Retirement Fund under section 8334(a)(2) of title 5 of the United States Code, such sums of money as may be necessary to aid in the purchase of a retirement equity in that System for each person who is separated from employment with the Panama Canal Company, the Canal Zone Government, or the Panama Canal Commission, as the result of the implementation of the Panama Canal Treaty of 1977 and related agreements, and becomes employed under the Social Security System of the Republic of Panama through the transfer of a function or activity to the Republic of Panama from the United States or through a job placement assistance program, provided such person—

(1) has been credited with at least five years of Federal service under the United States Civil Service Retirement System;

(2) is not eligible for an immediate retirement annuity, and does not elect a deferred annuity under the United States Civil Service Retired System; and

(3) elects to withdraw the entire amount of his contributions to the United States Civil Service Retirement System and transfer it to the Social Security Systems of the Republic of Panama pursuant to the special regime referred to in paragraph 3 of Article VIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977.

(b) The sums of money made available under subsection (a) shall not exceed, in any case, the amount of the employee contribution withdrawn from the fund and paid over to the Panamanian Social Security System.

(c) (1) Pursuant to Paragraph 2(b) of Annex C to the Agreement in Implementation of Article IV of the Panama Canal Treaty of 1977, the President of the United States, or his designee, is authorized to pay out of the general funds of the United States Treasury, in accordance with such regulations as the President or his designee may prescribe, such sums of money as may be necessary to purchase, or to supplement the purchase of, a retirement equity in the Social Security System of the Republic of Panama for the benefit of each employee of the United States Forces in the Republic of Panama—

(A) who is not a citizen of the United States of America;

(B) who was employed prior to and is employed upon the effective date of the Panama Canal Treaty of 1977 by an instrumentality of the United States Govenment in the Republic of Panama (including, in the case of employment prior to such date, the former Canal Zone);

(C) who, for any period of his or her employment with that instrumentality of the United States Government prior to the effective date of the Panama Canal Treaty of 1977 was not covered, on account of such employment, by the Civil Service Retirement System of the United States of America or another retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama; and

(D) whose period of employment referred to in subparagraph (C) above was of such a nature that he or she would have been covered at that time by the Social Security System of the Republic of Panama had such law been applicable.

(2) The retirement equity referred to in subparagraph (c)(1) above will cover retroactively, from the effective date of the Panama Canal Treaty of 1977, all periods of employment of such persons with United States Government instrumentalities in the Republic of Panama (including the former Canal Zone) during which such persons were not covered by the Civil Service Retirement System of the United States of America or any other retirement system providing benefits similar to those retirement benefits provided by the Social Security System of the Republic of Panama and during which such persons' employment was of such a nature that he or she would have been covered by the Social Security System of the Republic of Panama had such law been applicable.

Sec. 330. (a) Section 6322(a) of title 5 of the United States Code is amended by deleting the words "the Canal Zone or", by inserting a comma in place of the period after "the Trust Territory of the Pacific Islands" at the end of the same sentence, and by adding thereafter "or the Republic of Panama."

(b) Subchapter III of Chapter 59 of title 5 of the United States Code, pertaining to Overseas Differentials and Allowances, is inapplicable to employees assigned to work in the Republic of Panama for the Panama Canal Commission or an executive agency which makes an election under section 142(b) of title 2 of the Panama Canal Code.

(3) References to the Canal Zone in the following sections of title 5 of the United States Code shall henceforth be deemed to refer to areas in the Republic of Panama used or regulated by the United States pursuant to the Panama Canal Treaty of 1977 and related agreements:

(1) section 5595(a)(2)(iii);

(2) section 5724a(a); and

(3) section 8102(b).

(d) Section 1(b) of the Act of April 14, 1966 (20 U.S.C. § 903(c)) and section 6(a) of the Act of July 17, 1959 (20 U.S.C. § 904(a)(2)) are inapplicable to teachers who are employed by the Canal Zone Government school system immediately prior to the effective date and are transferred to the Department of Defense Overseas Dependent School System.

Chapter 3.—Postal Matters

Sec. 341. Postal Service. (a) The postal service established and governed by chapter 73 of title 2 of the Panama Canal Code shall be discontinued upon the effective date.

(b) The provisions of chapter 73 relating to postal-savings deposits, postal-savings certificates, postal money orders, and the accounting for funds shall continue to apply for the purpose of meeting the obligations of the United States concerning outstanding postal savings and money orders and disposition of funds.

(c) The Panama Canal Commission shall take possession of and administer the funds of the postal service and shall assume its obligations. The Commission and the United States Postal Service are authorized to enter into agreements for the transfer of funds or property and the assumption of administrative rights or responsibilities, with respect to the outstanding obligations of the postal service.

(d) Mail addressed to the Canal Zone from or through the continental United States may be routed by the United States Postal Service to the military post offices of the United States Forces in the Republic of Panama. Such military post offices shall provide the required directory services and shall accept such mail to the extent permitted under the Panama Canal Treaty of 1977 and related agreements. The Panama Canal Commission is authorized and directed to furnish personnel, records and other services to said military post offices to assure wherever appropriate the proper distribution, rerouting, or return of said mail.

(e)(1) The words, "Except as provided in the Canal Zone Code, the", in the second sentence of section 403(a) of title 39 of the United States Code are revised to read, "The";

(2) The words "each post office in the Canal Zone postal service," in section 3402(a) of title 39 of the United States Code are revised to read "each military post office of the United States Forces in the Republic of Panama" and section 3402(b) of title 39 of the United States Code is deleted;

(3) Section 3682(b)(5) of title 39 of the United States Code is amended by striking the words "the Canal Zone and"; and

(4) Section 3401(b) of title 39 of the United States Code is amended by inserting the word "or" before the words "the Virgin Islands" and by striking the words "or the Canal Zone."

Title IV—Courts and Related Functions

Sec. 401. Continuation of Code and Other Laws.

(a) Except as otherwise provided in this Act, the provisions of the Panama Canal Code, as amended, and other laws applicable in the Canal Zone prior to the entry into force of the Canal Zone prior to the entry into force of the Panama Canal Treaty of 1977 by virtue of the territorial jurisdiction of the United States in the Canal Zone shall continue in force only for the purpose of the exercise of the authority vested in the United States by that Treaty and related agreements.

(b) None of the provisions or laws referred to in subsection (a) shall henceforth be construed as regulating, or providing authority to regulate, any matter as to which the United States may not exercise jurisdiction under the Panama Canal Treaty of 1977 and related agreements.

Sec. 402. Jurisdiction During Treaty Transition Period. (a) The Congress of the United States finds that Article XI of the Panama Canal Treaty of 1977 prescribes certain special provisions governing the jurisdiction of the United States in the Republic of Panama during a transition period of thirty months beginning upon the date the Panama Canal Treaty of 1977 enters into force.

(b) Notwithstanding inconsistent provisions of the Panama Canal or any other law, the jurisdiction of the district court and magistrates' courts established pursuant to title 3 of the Panama Canal Code shall be limited as provided by Article XI of the Panama Canal Treaty of 1977.

(c) For the purposes of the exercise of the aforesaid jurisdiction, the terms "United States citizen employees," "members of the United States Forces," "civilian component," and "dependents" shall be construed as they are defined in the Panama Canal Treaty of 1977 and related agreements. Similarly, the term "areas and installations made available for the use of the United States" shall be construed to mean (1) the Canal operating areas and housing areas described in Annex A to the Agreement in Implementation of Article III of that Treaty, (2) the Ports of Balboa and Cristobal described in Annex B to that Agreement, and (3) the Defense Sites and Areas of Military Coordination described in Annex A to the Agreements in Implementation of Article IV of that Treaty.

Sec. 403. Divisions and Terms of District Court. (a) The United States District Court for the district of the Canal Zone is authorized to conduct its affairs at such places within the areas made available for the use of the United States under the Panama Canal Treaty of 1977 and related agreements, and at such times, as the district judge may designate by rule or order.

(b) Sections 2 and 3 of title 3 of the Panama Canal Code are repealed.

Sec. 404. Term of Certain Offices. Notwithstanding the provisions of sections 5, 41, 45 and 82 of title 3 of the Panama Canal Code, the term of office of a district judge, magistrate, United States attorney or United States marshal appointed after the date of enactment of this Act shall extend for a period of 30 months beyond the date the Panama Canal Treaty of 1977 enters into force, and be subject to such extension of time as may be provided for disposition of pending cases by agreement between the United States and the Republic of Panama pursuant to the last sentence of paragraph 7 of Article XI of the Panama Canal Treaty of 1977.

Sec. 405. Residence Requirements. Sections 5(d), 7(d), 41(d), and 45(d) of title 3 of the Panama Canal Code, the second sentence of section 42 of that title, and the second sentence of section 82(c) of that title, which require that certain court officials reside in the Canal Zone, are repealed.

Sec. 406. (a) Section 6 of title 3 of the Panama Canal Code is amended to read as follows:

"Sec. 6. Special District Judge. The chief judge of the judicial circuit of which the district court is a part may designate and assign a special district judge, to act when necessary:

(1) during the absence of the district judge;
(2) during the district judge's disability or disqualification, because of sickness or otherwise, to discharge his duties, or
(3) when the office of district judge is vacant.
(b) Each such designation and assignment by the chief judge shall be made in accordance with chapter 13 of title 28 of the United States Code, which shall be deemed to apply for such purposes.

Sec. 407. Magistrates' Courts. (a) The two magistrates' courts established pursuant to the date upon which the Panama Canal Treaty of 1977 enters into force shall continue in operation for 30 months from that date unless discontinued during that period as otherwise provided by this section.

(b) During the period referred to in subsection (a), one or both magistrates' courts, together with the positions of magistrate and constable corresponding thereto, may be abolished by the President or his designee if in his judgment the workload is insufficient to warrant continuance of either or both courts. If one of the courts is so abolished, the remaining magistrate's court shall exercise the jurisdiction that otherwise would have been exercised by the abolished court and shall take custody of and administer all its records.

(c) If both magistrates' courts are abolished pursuant to subsection (b), the following provisions shall thereafter apply:

(1) The district court shall exercise the jurisdiction of the magistrates' courts.

(2) All records of the magistrates' courts shall be deemed records of the district court.

(3) A criminal action that otherwise would have come within the original jurisdiction of the magistrates' courts shall be instituted in the district court by a complaint executed pursuant to section 3701 of title 6 of the Panama Canal Code, and the law and rules applicable in the district court shall thereafter apply. All other criminal actions shall be instituted in the district court by the filing of each case of an information pursuant to chapter 213 of title 6 of the Panama Canal Code.

(4) The requirement of and procedures for preliminary examinations under section 172 of title 3 and sections 3801–3806 of title 6 of the Panama Canal Code shall not apply.

Sec. 408. Section 543 of title 3 of the Panama Canal Code is amended to read as follows:

"Sec. 543. Oath. Before receiving a certificate the applicant shall take and subscribe in court an appropriate oath prescribed by the district judge."

Sec. 409. Transition Authority. Except as expressly provided to the contrary in this Act, in any other statute, in the Panama Canal Treaty of 1977 and related agreements, or by executive order, any authority necessary to the exercise during the transition period of the rights and responsibilities of the United States specified in Article XI of the Panama Canal Treaty of 1977 shall be vested in the Panama Canal Commission.

Sec. 410. Special Immigrants. (a) Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) relating to the definition of special immigrant, is amended—

(1) by striking out "or" at the end of subparagraph (C);

(2) by inserting after subparagraph (D) the following new subparagraphs:

"(E) an immigrant who is an employee of the Panama Canal Company or Canal Zone Government, who is resident in the Canal Zone on the date of the exchange of instruments of ratification of the Panama Canal Treaty of 1977, and who has performed faithful service for one year, or more, and his accompanying spouse and children; or,

"(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who prior to the date of entry into force of the Panama Canal Treaty of 1977 has been honorably retired from United States Government employment in the Canal Zone (or former Canal Zone) with a total of fifteen years, or more, of faithful service or (ii) who, on the date of entry into force of the Panama Canal Treaty of 1977, has been faithfully employed by the United States Government in the Canal Zone (or former Canal Zone) for fifteen years or more and who subsequently is honorably retired from such employment."

(b) Section 212(d) of such Act (8 U.S.C. 1182(d)), relating to waivers of conditions of inadmissability to the United States, is amended by adding after paragraph (8) the following new paragraph:

"(9) The provisions of paragraphs (7) and (15) of subsection (a) shall not be applicable to any alien who is seeking to enter the United States as a special immigrant under subparagraphs (E) or (F) of section 101(a)(27)."

TITLE V—MISCELLANEOUS PROVISIONS

Sec. 501. Health Director; Hospitals. (a) In chapter 57 of title 5 of the Panama Canal Code, references to "hospitals", to the "Health Bureau", and to the "health director", shall be deemed to be, respectively, to the hospitals operated by the United States in the Republic of Panama after the effective date, to the organizational unit operating such hospitals, and to the senior official in charge of such hospitals.

(b) In section 4784 of title 6, section 2 of title 7, and sections 32, 35–38 of title 8 of the Panama Canal Code, references to the health director shall be deemed to be to the senior official in charge of the hospitals operated by the United States in the Republic of Panama after the effective date.

Sec. 502. Disinterment, Transportation, and Reinterment of Remains. (a) In accordance with reservation 3(B) to the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, adopted on March 16, 1978, appropriations are made available to reimburse those agencies referred to in subsection (c) of this section for—

(1) the costs incurred for disinterring the remains of United States citizens from Mount Hope Cemetery in the Canal Zone and transporting them to and reinterring them in Corozal Cemetery in the Canal Zone, before the date of entry into force of the aforementioned treaty; and

(2) the costs incurred for disinterring and transporting to the United States, not later than thirty months after the date of entry into force of the aforementioned treaty, if the next-of-kin so requests, any remains of United States citizens interred in Mount Hope or Corozal Cemeteries, for reinterment at places designated by the next-of-kin, including national cemeteries where authorized.

(b) The costs referred to in subsection (a)(2) of this section include those incurred for disinterment, preparation, cremation, transportation, and reinterment, but do not include those incurred for caskets, urns, funeral home services, vaults, plots or crypts, which shall be borne by the next-of-kin.

(c) Except as hereafter provided in this subsection, the Panama Canal Company, the Panama Canal Commission or such other agency as the President may designate shall disinter, transport and reinter, or arrange for the reinterment of, the remains of United States citizens referred to in subsections (a)(1) and (a)(2) of this section. The Panama Canal Company shall not disinter the remains of any United States citizen interred in Mount Hope Cemetery in the Canal Zone whose next-of-kin notifies the Company in writing, not later than three months after the date of exchange of the instruments of ratification of the aforementioned treaty, that such remains should not be disinterred.

Sec. 503. Effective Date. Except as otherwise provided in sections 231, 321, 322, 325, 404 and 502 of this Act, the provisions of this Act, shall take effect on——.

Section-by-Section Analysis

INTRODUCTION

This draft legislation would implement several aspects of the responsibilities and role of the United States under the Panama Canal Treaty of 1977 and related agreements. It includes the establishment of the Panama Canal Commission as a corporate agency of the United States to operate the Canal as a self-sustaining entity. It would provide regimes for the Commission's tolls, employees and fiscal management, modify existing law to comport with the jurisdiction of the United States during the 30-month transition period under Article XI of the Treaty and cover other matters relating to implementation of the new relationship between the United States and the Republic of Panama.

Section 2. Definitions and General Provisions.—

The Bill would amend or repeal various provisions of the Canal Zone Code (redesignated as the "Panama Canal Code") and other laws necessary or desirable to implement the new treaty and related agreements. However, most of the Panama Canal Code consisting of eight titles published in three volumes, would remain in force for purposes of the jurisdiction of the United States during the 30-month transition period following the entry into force of the Treaty six months after exchange of instruments of ratification (Article XI of the Treaty). It is provided, in Section 2 of the Bill, that before the end of the transition period, other follow-up legislation would continue or amend provisions needed for the rest of the Treaty period taking into account experience during the transition period, would repeal provisions applicable only during the transition period, and would incorporate the remainder of the Panama Canal Code into the United States Code.

Section 2 also provides definitions which would amend certain proper names appearing in the present Canal Zone Code and other laws of the United States. The term "Panama Canal Commission" is substituted for the terms "Panama Canal Company," "Canal Zone Government," and "Governor of the Canal Zone" for purposes of applying existing law after the Treaty enters into force, unless other parts of this Bill provide otherwise. This will permit the new Panama Canal Commission to assume those existing authorities (1) of the present Panama Canal Company and (2) of the Canal Zone Government which the U.S. will exercise under the Treaty.

The term "Government of the Canal Zone", however, would be replaced by the term "United States of America". Unlike "Canal Zone Government" which is the name of a governmental unit, "Government of the Canal Zone" is the generic term for the local governmental authority in the present Canal Zone. To the extent that this authority could be exercised under the Treaty, it will inhere in the United States. Finally, insofar as laws of the United States which refer to the Canal Zone apply to events occurring after the effective date of the new Treaty, the phrase "Canal Zone" is redefined to refer to areas and installations used or regulated by the United States pursuant to the Treaty.

TITLE I—PANAMANIAN RELATIONS AND SECURITY MATTERS

Section 101. United States-Panama Joint Committees; Sea Level Canal Study.—

Subsection (a) provides that the President shall appoint the U.S. representatives to two of the joint committees with Panama provided in the Treaty, namely, the Joint Commission on the Environment and any joint committee subsequently designated to study the possibility of a sea-level canal in Panama. With respect to such a sea-level canal study, subsection (b) requires that the study be transmitted to the Congress and subsection (c) precludes construction of a sea-level canal by the United States in Panama unless expressly authorized by Congress after submission of such a study.

Subsection (d) would require the President to designate and the Secretary of State to coordinate the participation of the U.S. representatives to the Consultative Committee to be established under Article III(7) of the Panama Canal Treaty. As provided in the Treaty, this Committee would provide a diplomatic forum for discussion and advice on issues of primary importance; general tolls policy, policies to increase Panamanian participation in the Canal's operation, and international policies on matters concerning the Canal. It is contemplated that other affected Federal agencies will participate in this consultative process under the coordination of the Secretary of State.

Section 102. Authority of the Ambassador.—

Section 102 provides that the United States Ambassador to the Republic of Panama has full responsibility for coordinating the transfer of functions which are assumed by the Republic of Panama under the Treaty. The Administrator of the Panama Canal Commission is exempted from the direction and supervision of the Ambassador, but is required to keep the Ambassador informed of all activities and operations of the Commission. Under existing law (22 U.S.C. § 2680a) the United States Area Military Commander in Panama is similarly exempted from the direction and supervision of the Ambassador.

Section 103. Security Legislation.—

Sections 34 and 35 of title 2 of the Canal Zone Code which deal, respectively, with the authority of the President and of the Governor of the Canal Zone over certain military activities within the Canal Zone, would be repealed by Section 102(a) of the Bill to reflect the termination of the Canal Zone and of the office of the Governor. After the effective date of the Treaty, authority over the U.S. forces in Panama will be exercised in accordance with the normal chain of command.

Subsections (b) through (e) would make inapplicable, as no longer appropriate after the loss of territorial jurisdiction, certain provisions of title 50 of the United States Code concerning the regulation or seizure of foreign vessels in time of national emergency. Repeal of these provisions merely reflects the termination of the Canal Zone and does not impair the authority of the U.S. under Article IV of the Treaty to protect and defend the Canal.

Section 104. Arms Export Control.—

This section would repeal section 38(d) of foreign vessels in time of national emerthe licensing requirements of that Act applicable in the Canal Zone. This licensing authority would no longer be within U.S. jurisdiction under the Treaty.

Section 105. Privileges and Immunities.—

Article VIII of the new Treaty authorizes the United States to designate up to twenty officials of the Panama Canal Commission who, with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their depend-

ents under international law and practice. This section would vest in the Secretary of State the authority to make such designation from among persons recommended by the Panama Canal Commission, and to furnish a list to Panama as required by the Treaty.

Section 106. Termination of Canal Zone Government; Transfer of Records.—

The provisions that would be repealed by this section would be inappropriate under the new Treaty arrangements. Sections 1, 2, and 3 of title 2 of the Canal Zone Code concern the designation of the Canal Zone, the acquisition of land to be made part of the Canal Zone in addition to the 1903 grant, and the creation of towns and subdivisions in the Canal Zone. Section 31 establishes the Canal Zone Government and states its functions, section 32 provides for the appointment of the Governor, and section 33 states his powers and duties. Sections 333 and 334 authorize the Governor of the Canal Zone to issue and revoke property licenses within and without Canal Zone town sites.

Sections 5081 through 5092 of title 6 of the present Canal Zone Code provide authority to the Canal Zone Government to extradite persons to the Republic of Panama. With the termination of the Canal Zone Government, these sections would be repealed.

Subsection (b) authorizes the transfer of records, or their copies, including those of the Canal Zone Government, Canal Zone courts and Panama Canal Company, to other U.S. agencies and courts. Under the coordination and with the approval of the U.S. Ambassador to Panama, needed records of copies could also be transferred to the Republic of Panama for the purpose of carrying out their jurisdiction or functions under the Treaty.

TITLE II—PANAMA CANAL COMMISSION AND OTHER AGENCIES

Chapter 1—Commission; Fiscal Matters

This chapter relates principally to the organization of the Panama Canal Commission, its financial management, and its functions and authorities. The Commission would be established as the successor to the Panama Canal Company, would assume the assets and liabilities of the Company, and would be subject to most of the statutory provisions which now govern the Company, including its powers as a government corporation and its authority to borrow funds up to a fixed ceiling from the Treasury. In addition to the provisions of this chapter, the transition is effected to a large extent by the definitions in section 2 of the bill, which provide that references in the Canal Zone Code (redesignated as the "Panama Canal Code") to the "Panama Canal Company" would be amended to read the "Panama Canal Commisson".

Section 201. Establishment; Purposes; Location of Offices.—

Subsection (a) of this section would amend section 61 of title 2 of the Canal Zone Code which presently states the purposes, and establishes the offices and residence of the Panama Canal Company. As revised by this section, the Panama Canal Commission is substituted for the Panama Canal Company and declared to be the successor to the Company. References to the civil government of the Canal Zone are deleted, as are references to the Canal Zone as a geographical area. The Commission would be a resident of the eastern judicial district of Louisiana rather than the Canal Zone, as well as the District of Columbia, for the purpose of federal laws relating to jurisdiction or venue in civil actions. Subsection (b) provides a conforming amendment to section 62(a) of the Canal Zone Code, which would have the effect of continuing the U.S. direct investment in the present Pamama Canal Company on the books of the new Commission.

Section 202. Payment of Interest to U.S. Treasury; Repeal of Requirement.—

Subsection (e) of section 62 of title 2 of the Canal Zone Code, which requires the present Panama Canal Commission to pay into the United States Treasury interest on the net direct investment of the United States in the Canal, would be repealed by section 202(a) of this bill. the elimination of the interest obligation has been recommended in order to balance the policy objectives of keeping the Commission self-sustaining and avoiding an uneconomic increase in tolls. The conforming amendments in subsections (b), (c), and (d) of section 202 delete other references to the payment of interest. Subsection (b) also clarifies that the surplus referred to in section 62(f) is a "capital surplus account", a means for accounting for undistributed earnings accumulated to date, and not the type of annual operating surplus from which Panama would receive an additional payment under Article XIII(4)(c) of the Treaty.

Dividends to U.S. Treasury.—Subsection (c) of section 202 would amend section 70 of title 2 of the Canal Zone Code, which requires the present Panama Canal Company to pay any operating surplus into the U.S. Treasury, by indicating that

the phrase "working capital requirements" includes operating expenses and payments to Panama under the Treaty. This amendment will require the Commission to pay as dividends to the Treasury any surplus not required to be paid to Panama under Article XIII(4)(c) of the Treaty.

Section 203. Expenditures and Payments to Panama.—

Subsection (g) of section 62 of title 2 of the Panama Canal Code would be amended to authorize and direct the new Commission to pay, directly to Panama from Canal operating revenues, the payments required under paragraph 4 of Article XIII of the Treaty. At present, annuity payments to Panama are made through a special State Department appropriation which is repealed by Section 203(b). (The Panama Canal Company reimburses the United States Treasury for $519,000 of the total annuity of $2.3 million paid by the Department of State.)

The amended subsection (g) would also provide a method for determining whether the Canal operating revenues in any year produce a surplus sufficient to pay all or part of the contingent $10 million, payable under Article XIII(4)(c) of the Treaty from any excess of Canal operating revenues over expenditures of the Commission. Revenues of a given fiscal period would first be reduced by all expenditures of that period including: (i) amounts paid or payable for operations and maintenance, inventory, goods, services and that portion of unfunded liabilities paid or currently payable; (ii) payments to Panama under paragraphs 4(a) and 4(b) of Article XIII and paragraph 5 of Article III; (iii) amounts payable into a capital reserve account established to fund plant replacement, expansion, and improvements; (iv) amounts payable into reserve accounts established in order to match revenues and expenses during the projected period of a given toll rate; and (v) amounts necessary to recover past deficits.

This formula is intended to insure that the contingent payment to Panama will be made only after all costs of operating the Canal have been met.

Section 204. Public Service Payments to Panama.—

At present, the Panama Canal Company is required to treat as an operating cost the net costs of operation of the Canal Zone Government. A new subsection (h) added to section 62 of title 2 of the Panama Canal Code would similarly require the Panama Canal Commission to treat as an operating cost payments to Panama for providing certain public services in the Canal operating areas and housing areas (police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection) as required by paragraph 5 of Article III of the Treaty. The Treaty fixes the amount of this payment at $10 million annually, and provides that every three years the costs involved in furnishing the services are to be re-examined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

Section 205. Board of Directors of Commission.—

Subsection (a) of section 63 of title 2 of the Panama Canal Code, concerning the Board of Directors of the Panama Canal Commission, would be amended to conform to the new Treaty provision. Article III of the Treaty provides that the Board will have nine members, four of whom are Panamaians and five of whom are nationals of the United States. Under this revised subsection, all members of the Board would be appointed by the President of the United States and hold office at his pleasure, except as limited by Article III(3)(b) of the Treaty.

Section 206. Quorum of Board of Directors.—

Subsection (c) of sections 63 of title 2 of the Panama Canal Code would be amended to provide that a quorum for transaction of business of the Board of Directors of the Commission shall consist of a majority of the directors of which a majority of those present are citizens of the United States. The present provision states that a majority constitutes a quorum. The proposed new statement of a quorum would assure that for the transaction of business the United States members would retain their majority.

Section 207. Administrator and Deputy.—

Section 64 of title 2 of the Canal Zone Code, which provides that the Governor of the Canal Zone shall serve, ex officio, as president of the Panama Canal Company, would be amended to reflect the fact that the office of the Governor would be discontinued by section 105 of the bill. The amended section provides that the Administrator and the Deputy Administrator will be appointed by the President of the United States. The new Treaty provides that the Administrator be a United States national until 1990 and that the be a Panamanian national thereafter. The Deputy would be a Panamaian national until 1990 and a United States national thereafter.

Section 208. Suits against Commission.—

Section 65 of title of the present Canal Zone Code states the general powers of the Panama Canal Commission and this amendment to paragraph (3) of subsection (a) restates the sue-and-be-sued clause so as to provide that the amenability of the Commission to suit is limited by the immunities provides by Article VIII of the Treaty or otherwise by law. Article VIII of the Treaty provides that the Commission as an agency of the United States Government is immune from the jurisdiction of the Republic of Panama. The suability of the Commission would also be limited by a provision that the Commission, under the general rule applicable to judgments against the Unites States Government, is exempt from any liability for prejudgment interest. Monies owed by the Commission to its employees are protected against attachment or garnishment except as otherwise provided by law.

Section 209. Applicability of Government Corporation-Control Act.—

Section 66 of title 2 of the present Canal Zone Code, which states the specific powers of the Panama Canal Company, would be amended to provide that the exercise of such powers would be subjects to the new Treaty and related agreements, which limit activities and functions of the new Panama Canal Commission. Thus, the enumerated power in the present section 66 may be exercised only to the extent permitted under the Treaty.

Section 210. Commission Property and Assets; Depreciation and Amortization.—

The section would repeal sections 67, 68, and 73 of the present Canal Zone Code which reflect the transfer of assest and functions from the former Panama Railroad Company to the Panama Canal Company. These provisions would have no further relevance under the Treaty.

A new section 68 would be added to the Panama Canal Code, providing that the Commission, as successor to the Canal agencies, would take over the assets and liabilites of the Panama Canal Company, and those of the Canal Zone Government that have not been transferred to other U.S. agencies or to Panama or otherwise disposed of. The assets and liabilities would be deemed to have been accepted and assumed by the Commission under subsection (c) without the necessity of any act on its part. Subsection (b) of the new section 68 would permit the Commission to depreciate the assets to which it would succeed, in particular the Canal and its complementary works, installations, and equipment. The Commission could also amortize its right to use certain assets made available under the Treaty, in particular the employee housing that Panama will make available for use by the Commission under the Treaty.

Borrowing Authority.—No special provision is needed to continue with the Commission the present borrowing authority of the Panama Canal Company under section 71 of title 2 of the Canal Zone Code. This is accomplished by section 2 of the bill which amends the term "Panama Canal Company" to read "Panama Canal Commission".

Section 211. Regulations Regarding Navigation, Passage and Pilotage.—

Section 1331 of title 2 of the redesignated Panama Canal Code would be amended to preserve the basic authority of the United States to prescribe regulations governing the navigation of the waters of the Panama Canal and areas adjacent thereto including the ports of Balboa and Cristobal, the passage and control of vessels through the Panama Canal or any part thereof including the locks and approaches thereto, and pilotage in the Canal or the approaches thereof through adjacent waters. Under this restatement of present law, the U.S. would exercise its regulatory authority in accordance with provisions of the new Treaty and related agreements.

Section 212. Furnishing of Services; Reimbursement.—

Section 231 of title 2 of the Canal Zone Code would be repealed because it refers to funds of the Canal Zone Government, which is being discontinued. Section 232 would be amended to continue the arrangement under which the Panama Canal Commission would be reimbursed for amounts expended by the Commission in maintaining defense facilities in stand-by condition for the Department of Defense.

It is contemplated that the schools and health care facilities now operated by the Canal Zone Government will be operated by the Department of Defense since the Panama Canal Commission is not authorized by the new Treaty to continue these facilities. The amended section 232 would make the appropriations of the Department of Defense (or any other agency that might be designated by the President to perform the functions) available for conducting such educational and health care activities, including kindergartens and college which are now part of the Canal Zone Government system. The amounts expended by the agency furnishing services to employees of other agencies and their dependents, less amounts payable by such persons, would be fully reimbureable, as at present. The funds of agencies of the United States in Panama, including the new Panama Canal Commission, would be

made available for such reimbursements related to their employees and dependents. the agencies also would be authorized to pay for health care services provided to certain elderly or disabled persons, primarily disability relief recipients, Civil Service annuitants who retired prior to 1970, and a relatively few elderly persons receiving domiciliary care at Corozal Hospital. This provision would recognize the moral responsibility of the United States to continue past practices in this regard.

Section 213. Public Property and Procurement; Transfers and Cross Servicing.—

This section would repeal section 371 of title 2 of the present Canal Zone Code which refers to the acquisition of equipment, buildings, and structures by the Canal Zone Government, which is being discontinued under the new Treaty. This section would also amend section 372 of title 2 of the Canal Zone Code, by deleting material concerning the Canal Zone Government and continuing existing provisions for transfers of property and facilities between departments and agencies that would be located in Panama. The Panama Canal Commission and other agencies would also be expressly authorized to enter into cross-servicing agreements for the use of facilities, furnishing of services, or performance of functions.

Chapter 2—Tolls

This chapter amends the present provisions applicable to the determination of tolls charged for vessels transiting the Panama Canal, in order to conform to the requirements under the new Treaty.

Section 230. Measurement Rules; Changes in Rates.—

This section would amend section 411 of title 2 of the present Canal Zone Code concerning the prescription of measurement rules and tolls. The present provisions would remain the same except that, in order to provide a more timely respone to changing economic conditions, the required period for notice of proposed changes would be reduced from six months to three months.

Section 231. Setting of Rates Under New Treaty.—

This section would recognize the fact that the increased financial obligations of the Commission imposed by the annuity provisions of the new Treaty would begin on the effective date of the Treaty and that increased rates of tolls should be put into effect on that same date so that revenues will be sufficient to meet these obligations. This section would take effect on the date of enactment of this legislation and would authorize the present Panama Canal Company to review and change the rates of tolls, as necessary, effective on the Treaty effective date. The changes would be subject to the approval of the President. The section would require that, if and to the extent that time permits, the Panama Canal Company would give three months' notice and conduct a public hearing in the usual manner.

Section 232. Bases of Tolls.—

This section would amend the tolls formula in subsection (b) of section 412 of title 2 of the Canal Zone Code. Section 232 is intended to assure that tolls will be set at a level sufficient to provide for the operation of the Canal on a self-sustaining basis.

Tolls would continue to be prescribed at rates calculated to cover, as nearly as practicable, all anticipated costs of maintaining and operating the Canal, together with the facilities and appurtenances related thereto, including depreciation of assets, amortization of use rights, and payments to Panama pursuant to paragraphs 4(a) and 4(b) of Article XIII and paragraph 5 of Article III of the new Treaty. Paragraph 4(a) provides for payment to Panama of 30 cents per Panama Canal net ton for each vessel transiting the Canal for which tolls are charged, with a periodic adjustment for inflation (based on changes in the United States wholesale price index for total manufactured goods during biennial periods).

Paragraph 4(b) provides a fixed annuity of $10 million to be paid to Panama out of Canal operating revenues. Paragraph 4(c) of Article XIII requires an additional annual amount of up to $10 million to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission, including the amounts paid to Panama pursuant to paragraphs 4(a) and 4(b). The payment under paragraph 4(c), to be made only if earned, is not included in the tolls formula.

In determining the rate of tolls, the Commission may also take into account unrecovered past costs, capital requirements, and the necessity of matching revenues with expenses during the projected period of a given toll rate.

Subsection (c) of section 412 of title 2 would be amended to require vessels operated by the United States, including warships and other military vessels, to pay direct tolls for transiting the Canal. The present law provides that if the President does not require such vessels to pay tolls (and he has not so required), the tolls shall nevertheless be computed and the amounts thereof offset against the obligations of the Panama Canal Company to the United States Treasury. This, in effect, has resulted in the indirect payment of tolls for United States vessels by the Treasury.

The proposed legislation would convert the present system of computing toll credits and offsetting them against payments to the Treasury to a system of direct payment of tolls by U.S. vessels.

Subsection (d) of section 412 of title 2 of the Canal Zone Code which provides that the levy of tolls is subject to the provision of certain treaties, would be amended to delete the reference to the 1903 Treaty with Panama, which is abrogated by the new Treaty, and to include appropriate references to the new Neutrality Treaty. The provision implementing the 1914 treaty with Colombia prescribing free passage of the Canal for Colombian war ships would be continued.

Chapter 3—Claims

Section 260. Measure of Damages; Time for Filing; Board of Local Inspectors.—This section would make a number of changes in chapter 11 of title 2 of the present Canal Zone Code dealing with claims for injuries to persons or property. Section 271 of title 2 of the Canal Zone Code would be repealed because it deals with the authority of the Governor in claims arising from civil government. The civil government functions would terminate on the Treaty effective date. The Panama Canal Commission would have its own authority to settle claims after that date.

Section 291 of title 2 of the Canal Zone code, relating to claims for injuries to vessels in the locks of the Canal, would be amended to include the element of negligence as a condition of the liability of the Commission, as is the case in section 292 concerning injuries outside the locks. In cases under section 291, as revised, the Commission would have the burden of showing its freedom from negligence, a clarifying amendment to section 291 would also be made by substituting the words "any portion of the hull" for the words "the side."

Section 293 of title 2 of the Canal Zone Code, dealing with the types of damages recoverable from the Commission in vessel accident claims, would be revised to confirm the long-standing administrative construction of those damage provisions, that was affected by a court decision in 1973 concerning liability for charter hire, expenses for maintenance of the vessel, and wages of the crew, for the time the vessel is undergoing repairs. Subsection (b) would be amended specifically to cover other questions that have arisen with reference to general average expenses, attorneys' fees, bank commissions and port charges.

Section 294 of title 2 of the Canal Zone Code, specifying delays for which the Panama Canal Commission would not be responsible would be amended by the addition of a new item, time necessary for investigation of marine accidents, which was previously covered by administrative regulation.

Section 296 of title 2 of the Canal Zone Code would be amended by providing that actions on vessel accident claims against the Commission would be brought in the United States District Court for the Eastern District of Louisiana rather than the court in the Canal Zone, since on the Treaty effective date the local court would lose jurisdiction over new civil cases.

Section 297 of title 2 of the Canal Zone Code requires that, prior to the departure of a vessel involved in an accident or injury giving rise to claim, an investigation by the competent authorities has been completed and the basis for the claim has been laid before the Panama Canal Company. This section would be amended to state expressly that lack of knowledge that an accident giving rise to a claim has occurred does not excuse noncompliance with the requirements.

A new section 298 would be added to title 2 of the redesignated Panama Canal Code establishing a statute of limitations, patterned after that contained in the Federal Tort Claims Act, for vessel accident suits against the Panama Canal Commission. A claim would be required to be presented in writing within two years and action brought within one year after notice of final decision on the claim by the Commission. This new provision would probably reduce the number of actions that have to be filed on claims under negotiation, and should be beneficial in terms of time and expense both to the Commission and to claimants in view of the distance between the Canal and the court in Louisiana.

A new section 299 would be added to title 2 of the Canal Zone Code establishing a board of local inspectors, comprised of officials of the Panama Canal Commission, which would conduct the investigation of vessel accidents. At the present time the board is part of the Canal Zone Government, which would be discontinued on the effective date of the Treaty.

TITLE III—EMPLOYEES AND POSTAL MATTERS

Chapter 1—Employment Systems

This chapter would redesignate the present Canal Zone Merit System as the Panama Canal Employment System, and provide for a number of changes consistent

with the requirements and purposes of the Panama Canal Treaty of 1977. Many existing provisions would be continued through the definitional change in sections 2 and 302 of the Bill.

Section 301. Repealers and Changes in Canal Zone Code.—

This section would repeal sections 101, 102, 122, 123, 147 and 154 of title 2 of the present Canal Zone Code, and redesignate section 103 as section 122. Section 101 concerns appointment and compensation of employees of the Canal Zone Government, which is being discontinued pursuant to the Treaty. Section 102 provides an exemption from certain laws relating to dual compensation for "teachers in the public schools of the Canal Zone" who are also employed in night schools or vocation schools or programs. The provisions are not considered applicable to the circumstances that would obtain under the new Treaty. Former section 103, concerning deduction from compensation of amounts due from employees for supplies or services, would be redesignated as section 122.

Section 123 concerning hours of work for telegraph operators and train dispatchers is inconsistent with other law and in any event would no longer be needed because under the new Treaty Panama would undertake operation of the railroad. Section 147 authorizes designation of positions which for security reasons must be occupied by a citizen of the United States. Under the new Treaty arrangements this provision would no longer be appropriate. Section 154 requiring training programs to be applied uniformly to employees regardless of citizenship would be inconsistent with the provisions of the Treaty concerning increased employment and training of Panamanians.

Section 302. Definitions.—

Section 141 of title 2 of the redesignated Panama Canal Code defines terms for the purpose of the wage and employment practices provisions of the Code. The definitions of "department" and "position" are revised to delete references to the Canal Zone. The term "department" is also redefined to mean (1) the Panama Canal Commission, and (2) an executive agency which makes an election under the revised section 142(b) (see, analysis to section 303). The term "executive agency" has the same meaning as in 5 U.S.C. § 105.

Section 303. Panama Canal Employment System.—

Section 142(a) of title 2 of the present Canal Zone Code prescribes the general standards governing the system of wage and employment practices governing the Panama Canal Company, the Canal Zone government and all other U.S. agencies in the present Canal Zone. In place of this general Canal Zone system, section 142(a) would be revised and divided into two parts. First, subsection (a) would require the Panama Canal Commission to conduct its wage and employment practices in accordance with the Panama Canal Employment System. The latter system, like the present Canal Zone Merit System, would be established in accordance with applicable Treaty requirements, provisions of law, including in particular section 149 of title 2 of the Panama Canal Code (see, analysis to section 307), and regulations promulgated by or under the authority of the President. The views and recommendations of the Panama Canal Commission with respect to any proposed regulation would have to be sought and taken into account. This would give the Commission a voice in the formulation of applicable employment standards, particularly those affected by the Panama Canal Treaty of 1977.

Subsection (b) would give other executive agencies (as defined in 5 U.S.C. § 105) in Panama which have their present employment practices governed by the Canal Zone Merit System, the option of electing in whole or in part either to continue under the Panama Canal Employment System, or to adopt their own employment system, e.g., the system otherwise applicable to the agency's employees worldwide.

Section 304. Continuation of Canal Zone Merit System.—

This section would continue the Canal Zone Merit System beyond the Treaty effective date if necessary and until such time as the Panama Canal Employment System is established under section 303 of this Bill. This will permit both continuity and an orderly transition in employment practices.

Section 305. Overseas Recruitment and Retention.—

Section 144 of title 2 of the redesignated Panama Canal Code, concerning compensation, is amended by deletion of subsection (d) which establishes a ceiling of 25% on the additional compensation authorized by section 146. Section 146 is then revised to conform to the new Treaty provisions concerning additional remuneration that may be paid as overseas recruitment and retention differentials (a) to persons already employed on the Treaty effective date, and (b) to persons thereafter recruited outside of Panama for a position in Panama. Section 146 is also revised to provide for the possibility of granting additional remuneration in the form of an overseas recruitment and retention differential to medical doctors employed by the

Department of Defense and Panama Canal Commission. The present section authorizes a tax allowance intended to equalize the take-home basic compensation of United States citizens and non-United States citizens and an overseas "tropical" differential, with an overall ceiling of 25%. The proposed revision would allow payment in such amounts as the head of the agency concerned determined should be paid as overseas recruitment and retention differentials. Without this authority to pay incentive differentials, the Panama Canal Commission, as well as other United States Government agencies in the Republic of Panama, might have difficulty in recruiting and retaining both United States and non-United States citizens, particularly in certain critical skills, which are necessary for the continued effective operation of the Canal and essential support activities.

Section 306. Transfer of Federal Employees to Commission.—

This section would authorize heads of federal agencies to enter into agreements to transfer or detail their employees to the new Panama Canal Commission for periods of up to five years. Affected employees would be entitled to reemployment with their original agencies without loss of those pay, seniority or rights or benefits to which they would have been entitled had they remained with such agencies. This provision would help implement Article X(5) of the Treaty, which requires the United States to rotate, with certain exceptions, at a maximum of five-year periods, U.S. citizens and other non-Panamanians hired after the Treaty effective date.

Section 307. Merit and Other Employment Requirements.—

This would amend section 149 of title 2 of the redesignated Panama Canal Code, relating to the merit standard and other employment system requirements. Subsection (a) would authorize the President by regulation to amend or modify the Panama Canal Employment System consistent with section 142(a) as amended by section 303 of this Bill. As in the latter section, the views and recommendations of the new Panama Canal Commission would have to be sought and taken into account.

Subsection (b) combines the subsections (b) and (c) of the present section 149, and makes revisions required by the Treaty. In particular, the merit standard for personnel decisions would be limited by the requirements in Article X of the Treaty establishing certain preferences for Panamanians. Apart from such limitations, however, the merit standard would continue to apply. As with the present Canal Zone Merit System, the Panama Canal Employment System would be required to conform generally to policies, principles and standards established under the Civil Service Act, and could provide for interchange of U.S. citizen employees between this employment system and the competitive civil service.

Section 308. Regulations; Examining Office.—

This section would amend section 155 of title 2 of the present Canal Zone Code, which now authorizes the President to coordinate and promulgate regulations concerning the employment practices of departments and agencies in the Canal Zone. As amended, the section would require interagency coordination only in the event that an executive agency other than the Panama Canal Commission elected to participate in the Panama Canal Employment System under section 142(b) as revised by section 303 of this Bill.

Subsection (b) as amended would authorize the President to establish, in conjunction with the Panama Canal Employment System, a central examining office like the one presently in the Canal Zone. However, such an office would be required to be a part of the Panama Canal Commission and to perform functions relating to recruitment, examination and determination of qualification standards in accordance with the Panama Canal Treaty and related agreements, particularly Article X of the Treaty.

Section 309. Compensation of Military, Naval or Public Health Service Personnel Serving Commission.—Section 201 of title 2 of the Canal Zone Code concerns the compensation of persons in the military, naval or public health services who serve with the Canal Zone Government or Panama Canal Company. The proposed amendment would delete references to the Governor of the Canal Zone and President of the Panama Canal Company and to the Lieutenant Governor of the Canal Zone and Vice President of the Panama Canal Company and substitute references to the Administrator and Deputy Administrator of the Panama Canal Commission.

Chapter 2—Conditions of Employment, Placement, and Retirement

This chapter prescribes special provisions relating to present employees of the Panama Canal Company, Canal Zone Government and other agencies in the Canal Zone, and relating to employees who, under the Treaty and related agreements, are to receive rights or benefits under the Social Security System of the Republic of Panama.

Section 321. Transferred Employees.—This section would add a new section 202 to title 2 of the Canal Zone Code, requiring that, pursuant to Article X(2)(b) of the Treaty, specified terms and conditions of employment applicable to employees of the Canal Zone Government and the Panama Canal Company who are transferred to employment with the Panama Canal Commission be generally no less favorable than those applied to them prior to the Treaty. This protection would also be extended to employees transferred to other U.S. agencies in Panama.

Section 322. Placement.—This section would add a new section 203 of title 2 of the Canal Zone Code, according appropriate placement assistance including priority placement to vacancies with the United States Government in the United States, for United States citizen employees of the Canal Zone Government and Panama Canal Company who on or any time after the Treaty effective date separate from employment for any reason other than misconduct or delinquency and are not placed in other appropriate positions with the United States Government in Panama. Subsection (b) extends the placement assistance contained in subsection (a) to employees of other U.S. agencies in Panama whose positions are eliminated as a result of implementation of the Treaty. Subsection (c) directs the Civil Service Commission to develop and adminster a placement program for all eligible employees who request assistance.

Section 323. Educational Travel Benefits.—This section would add a new section 204 to title 2 of the Canal Zone Code, which would entitle dependents of United States citizen employees of the Panama Canal Commission who are eligible for educational travel benefits, to one round trip each year for undergraduate studies in the U.S. until they reach their 23rd birthday. This benefit to employees is fair and is important to Canal management because it provides incentives for employees to stay in their jobs under the new Treaty arrangements.

Section 324. Adjustment of Compensation for Loss of Benefits.—

The privilege granted by the Treaty to United States citizen employees of the Panama Canal Commission to use the military postal services, sales stores, and exchanges will terminate in five years. Because the loss of these privileges is expected to result in an increased cost of living for the employees, this section would provide that they shall be paid offsetting additional compensation when that occurs.

Sections 325 and 326. Early Retirement Eligibility; Computation.—

Employees of the Panama Canal Company, Canal Zone Government, Panama Canal Commission and any Executive agency in the Canal Zone, who are involuntarily separated or scheduled to be separated as a result of implementation of the Treaty will be eligible to retire if they have 18 years service and are 48 years old. Persons employed by the Panama Canal Company or the Canal Zone Government prior to the exchange of instruments of ratification of the Treaty or prior to its effective date, including such employees who are transferred to the Panama Canal Commission or an Executive agency in the Republic of Panama, and who have at least 18 years of service and are 48 years old or who have 23 years of service at any age elect to voluntarily retire if they do not wish to continue Federal employment in the Republic of Panama. there will be no reduction in the computation of the annuity because of the age at which an employee retires.

Employees of the Panama Canal Company or Canal Zone Government who continue employment with the new Panama Canal Commission or other Executive agency in the Republic of Panama will have their annuity computed at 2½% for each full year they continue in such employment after the effective date of the Treaty up to a maximum of 20 years.

Law enforcement officers and firefighters with at least 18 years of service as law enforcement officers or firefighters and who are at least 48 years of age when separated will have their annuities computed at 2½% for each year of such service (up to 20 years). Employees who separate prior to completing 18 years of law enforcement or fire service and reaching 48 years of age will have their annuities increased by $12 for each month of law enforcement or fire service (not to exceed 20 years) prior to the effective date of the Treaty. Law enforcement officers and firefighters will receive an additional annuity of $8 for each month of such service after the entry into force of the Treaty until they have served a total of 20 years as law enforcement officers or firefighters.

Section 327. Employees of Related Organizations.—

This section is necessary to extend to the court and related employees mentioned in this section the same benefits that the preceding sections would provide for Panama Canal Commission employees. The court and related employees have always been so treated in matters such as these and the policy should continue. Under the Treaty, the court and related functions would be discontinued after the 30-month transitional period.

Section 328. Applicability of Benefits to Non-citizens.—

This section would effect technical amendments to conform certain provisions of personnel law to the new Treaty provisions concerning non-United States citizen employees of the Panama Canal Commission hired after the Treaty effective date who would be covered by the social security system of the Republic of Panama. See, Article VIII of the Agreement in Implementation of Article III of the Panama Canal Treaty of 1977. The amendments would make inapplicable to such persons the provisions of title 5 of the United States Code dealing with compensation for work injuries, retirement, life insurance, and health insurance. Coverage under such provisions would continue for non-United States citizen federal employees who had such coverage immediately prior to Treaty effective date.

Section 329. Non-U.S. Citizen Retirement.—

Subsections (a) and (b) relate to persons separated from employment with the present Canal agencies or the Panama Canal Commission, as a result of the implementation of the new Treaty and related agreements, who become employed under the Social Security System of the Republic of Panama through the transfer of a function or activity or through a job placement assistance program. This provision would implement Article VIII(3) of the Agreement in Implementation of Article III of the Panama Canal Treaty, and would apply regardless of the employee's nationality. In the cases specified in this section, the United States would pay matching funds to the social security system of Panama to aid in the purchase of a retirement equity in the Panama system. The matching funds would come from the United States Civil Service Retirement Fund.

Subsection (c) would implement the requirements of paragraph 2 to Annex C of the Agreement in Implementation of Article IV of the Panama Canal Treaty. That provision requires that non-U.S. citizen employees not covered by the Civil Service Retirement System, and employees paid by nonappropriated fund instrumentalities, be covered by the Panamanian social security system with contributions from U.S. employer agencies. It also requires the United States to request legislation to pay each such employee a retirement similar to that of the Panamanian social security system. Subsection (c) implements these requirements by authorizing the purchase of a retirement equity or supplement for such employees under the Panamanian social security system. The provision will serve to provide retirements to nonappropriated fund employees working at Department of Defense installations (e.g., cafeteria and hospital workers), pursuant to the Treaty. As understood during the Treaty negotiations, the provision would apply retroactively to cover service prior to the Treaty effective date.

Section 330. Technical Amendments.—

This section would make technical amendments necessary to continue the present applicability of provisions concerning leave for jury service, severance pay, relocation expenses and workmen's compensation of federal employees, and to continue the inapplicability of the general law pertaining to overseas differentials and allowances.

Chapter 3—Postal Matters

Section 341. Postal Service.—

This section would provide for the discontinuance of the Canal Zone postal service, as required by the Treaty, but would authorize the Panama Canal Commission to pay outstanding postal savings and money orders and otherwise to handle the liquidation of the service. Since it can be anticipated that mail from the United States and elsewhere will continue to be addressed to the Canal Zone for an indefinite period until the military postal services and the Panama postal service become fully used by senders of mail, the section would provide a procedure intended to assist, to the extent practicable, in the proper routing and distribution of such mail through the military post offices. Subsection (e) contains technical amendments necessary to refect the discontinuance of U.S. postal service in the Canal Zone.

TITLE IV—COURTS AND RELATED FUNCTIONS

Section 401. Continuation of Code and Other Laws.—

This general provision would expressly continue existing law, including large portions of the redesignated Panama Canal Code, for the purpose of preserving the authority that is to be retained by the United States during the 30-month transitional period provided in Article XI of the Treaty. However, this continuation of laws could not be construed as regulating, or providing authority to regulate, matters as to which the United States may not exercise jurisdiction under the Treaty.

Section 402. Jurisdiction during Transition Period.—

This section, after stating a finding that the Treaty prescribes special provisions governing the jurisdiction of the United States during a 30-month transition period, would limit the jurisdiction of the United States courts in Panama as provided by Article XI of the Treaty. Subsection (c) incorporates Treaty definitions of certain terms used in Article XI relating to the jurisdiction of the United States during the transition period.

Section 403. Division and Terms of District Court.—

This section would recognize changed circumstances under the Treaty by repealing provisions establishing geographical subdivisions of the district court within which the court must hold terms. The court would be authorized to designate its places and times for holding terms.

Section 404. Term of Certain Offices.—

This section would reduce the terms of office of the district judge (eight years), United States Attorney (eight years), United States Marshal (eight years), and magistrate (four years), to the period ending thirty-six months after the exchange of instruments of ratification, in the case of any appointment made after enactment of this Bill. The courts and court personnel would no longer function after the 30-month transition period.

Section 405. Residence Requirements.—

This section would repeal present requirements that a district judge, clerk of the court, United States Attorney, Assistant United States Marshal, magistrate and constable shall reside in the Canal Zone.

Section 406. Special District Judge.—

This section would authorize the chief judge of the appropriate judicial district to designate and assign a special district judge to act during the absence, disability or disqualification of the district judge, or when the office of district judge is vacant. At present the President is authorized to appoint a special district judge under similar circumstances, but not in the case where there is merely a vacancy. Experience has shown the need for provision for designation of a special judge whenever the position is vacant, and vesting this authority in the chief judge of the judicial circuit would conform to present practice both in the Canal Zone and in the United States.

Section 407. Magistrates' Courts.—

At the present time there are two magistrates' courts and a district court in the Canal Zone. Under the new Treaty, the courts will continue for only a 30-month transition period, and their jurisdiction will be greatly limited by Article XI of the Treaty. All civil jurisdiction would be gone except for cases pending on the Treaty effective date. Criminal jurisdiction would be reduced to pending cases, and for the most part, to offenses committed by United States citizen personnel. Because it may develop that the workload may be reduced to such a point that it would be feasible to discontinue one or both magistrates' courts, this section would authorize the President or his designee to do so, leaving the district court to exercise all jurisdiction if both magistrates' courts were abolished.

Section 408. Oath.—

This section would supersede a provision of the Canal Zone Code prescribing the text of the oath to be taken by an applicant to the bar of the district court. The prescribed text would no longer be appropriate in some respects and the revised section would authorize the district judge to prescribe an appropriate oath.

Section 409. Transition Authority.—

For the purpose of exercising the authority of the United States under Article XI during the transition period, this section provides that such authority, except as provided in this Bill, other laws, the Treaty or by executive order, shall be vested in the Panama Canal Commission.

Section 410. Special Immigrants.—

This section would permit the immigration into the United States of certain non-United States citizens employees of the United States Government in the Canal Zone. Section 410 would extend special immigrant status to Panama Canal Company and Canal Zone Government employees residing in the Canal Zone on the date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 who have performed faithful service for one year or more, and to employees of the United States Government in the Canal Zone who have 15 years or more of faithful service and are honorably retired prior to the date of entry into force of the Treaty, or who have been faithful employees for 15 years or more on that date and who subsequently retire honorably. Subsection (b) would exempt special immigrants admitted under this section from certain requirements of present law relating to physical health and proof that the immigrant would not become a public charge.

This proposal arises from a desire to provide retired employees and employees presently living under U.S. jurisdiction in the Canal Zone with an opportunity to

immigrate to the United States if they so choose. Many of these persons have been historically affiliated with the United States presence and have not become fully assimilated into Panamanian society. The bulk of those eligible for immigration will be persons retired from their employment with the United States Government.

TITLE V—MISCELLANEOUS PROVISIONS

Section 501. Health Director; Hospitals.—This section would make technical amendments to various provisions of the present Canal Zone Code which now make references to the hospitals, health bureau, and health director of the Canal Zone Government. Since the Canal Zone Government would be discontinued and the health care facilities would be operated by an agency other than the Panama Canal Commission, the references are clarified to fit the new situation. The various provisions concern hospitalization of the mentally ill, autopsies, disposition of bodies, and litigation involving pre-martial examnations. There would probably be little application of these provisions after the Treaty effective date, but there is a potential application in connection with pending cases during the transition period.

Section 502. Disinterment, Transportation, and Reinterment of Remains.—

This section would make appropriations available to the Panama Canal Company, Panama Canal Commission, and other designated United States Government agencies for the costs incurred for the disinterment, transportation, and reinterment of United States citizens buried at Mount Hope and Corozal Cemeteries. The purpose of this section is to implement the reservation to the Resolution of Ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal which authorizes the expenditure of funds for the removal, transportation, and reinterment of the remains of these United States citizens.

Sections 503. Effect Date.—

Certain provisions of the Bill including section 231 concerning the advance establishment of new rates of tolls; sections 321, 322 and 325 concerning rights to benefits, priority placement and retirement annuities of present employees of the Panama Canal Company and Canal Zone Government; section 404 concerning the terms of offices of certain court personnel appointed after the date of enactment of this Bill, become effective on a date other than the general effective date of the Bill. The latter date cannot be presently specified in advance of Senate approval of the Treaties, and the exchange of Instruments of ratification.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. BROOKE. I yield.

Mr. BAKER. Mr. President, I have listened with great care to the remarks of the Senator from Massachusetts, and I am sympathetic to his point of view. As a matter of fact, it will come as no surprise to the Senator from Massachusetts to know, as my friend and colleague from North Carolina (Mr. Helms), who is also on the floor, knows, that early on in this debate on the treaties, and in part as a result of the concern of the Senator from North Carolina and others as well, I insisted that the administration advise us, the Members of the Senate, of the nature of the implementing legislation that would accompany these treaties.

After a great deal of effort and a number of contacts and exchanges of letters, proposals for implementing legislation were submitted. I am aware, of course, that we cannot be sure that this is the final and last form of that legislation, as the Senator from Massachusetts points out. But it was a step forward, and I am pleased that we were able to get at least that far.

I would also think it may be unprecedented, that is, the business of the administration submitting the implementing legislation in advance of the consideration of the treaties by the Senate. I am doubly pleased, though, that it occurred, because when I am queried by many, and by some Members of the other body, as to whether the House has a role in this matter or not, my answer is always:

Of course, the House has a role, because there are a thousand details, no doubt, which must be attended to by legislation, certainly by a package of implementing legislation.

So I reiterate, I have listened with great interest to the description of the reservation the Senator from Massachusetts will propose to condition or posit the ratification documents on the enactment of legislation. It is a matter which deserves the serious consideration of the Senate. I think the Senator from Massachusetts has done a service to this body by bringing this matter to us in this way, and I assure him I will give it the most serious consideration.

Mr. BROOKE. I thank the distinguished minority leader. I have discussed with him in the past, he will recall, my serious concern about the lack of implementing legislation. We could conceivably pass the treaties and then, as has been pointed out by the distinguished minority leader, the House in exercising its responsibility and the Senate exercising its responsibility, could drastictially change the implementing legislation or maybe refuse to pass it. If passage did not occur for some time we would be in an embarrassing position. Therefore, since the very beginning I have been calling for a final draft of proposed implementing legislation. We were assured last fall that we would get that implementing legislation.

Then later on down the road, I was told that the reason we were not going to get the implementing legislation was because the House did not want to consider action on it at this time.

That is not our concern. That is the concern of the House of Representatives. I cannot conceive of why the House did not want to even look at it at that time. At some time in the near future it may have to take action on implementing legislation or the treaties are not going to be worth very much. Obviously, we would not have necessary appropriations for one thing, which would be essential, or any of the other items which would be contained in the implementing legislation.

Then a little further down the road the administration said:

Well, we will send you the proposed implementing legislation, but it will be subject to revision. We do not stand on it as we will send it up to you.

Well, it is not very reassuring, for the administration to say, "We are just going to send you something which is sort of a model but it can be changed, and drastically changed."

Finally, and still further down the road, we received this package, which I am now introducing into the record, of what they will likely propose, but with the caveat, still, that it is subject to revision by OMB.

Presumably, this is the last word of the State Department and the administration on the subject. I do not think, now that there is a unanimous-consent agreement to vote on the second Panama Canal Treaty, as I understand it, on the 18th of April, that they will go any further than they have gone. Therefore, I felt compelled to introduce this reservation at this time.

I am pleased that the minority leader has taken the floor and voiced his opinion about it and will give very serious consideration to it. I think this is a very important matter which must be resolved and should be resolved prior to a vote on ratification of the second treaty. I am grateful, as I have said, that the minority leader feels this way. I urge my other colleagues to look closely at

this reservation, because I think it certainly merits their consideration. I believe it could help us avoid great troubles downstream. I do not want to forecast great troubles, but I would think this would be one way of avoiding great troubles later on. I hope Senators will take this matter seriously. Again I thank the distinguished minority leader.

Mr. HELMS. Will the Senator yield?

Mr. BROOKE. Yes.

Mr. HELMS. I, too, commend the able and distinguished Senator from Massachusetts. As the distinguished minority leader has indicated, he and I have discussed this subject on many occasions. He has been pressing the administration for some sort of information. I shall support the Senator's reservation with enthusiasm, because it is the very least we can do.

Statements have been made on this floor repeatedly that this giveaway, if I may characterize it as such, of the Panama Canal will not cost the people of the United States anything. The Senator has just pulled one threat from the fabric, the $20 million a year interest which will be lost for 22 years, or whatever.

Mr. BROOKE. And there are many other threads which can be pulled.

Mr. HELMS. Exactly. This was discussed at great length in the Armed Services Committee when Governor Parfitt appeared. I questioned him at great length. I had hoped that somewhere along the line Senators would be willing to go back and review that testimony.

The truth is, as the Senator has eloquently stated, that this proposition will, indeed, cost the people of the United States a lot of money.

I commend the Senator. I offer him my assistance in trying to promote support for his reservation.

Mr. BROOKE. Mr. President, I express my gratitude to the distinguished Senator from North Carolina. I am well aware of his very lengthy questioning in the Armed Services Committee on this point. I think we, and the American people have been misled as to what the cost of this is going to be. I have heard people say, "Give them the canal, but do not make us pay for it." The answer has always been, "We are not paying anything. We are not going to pay a dime. It is not going to cost us a dime."

Well, it is going to cost us far more than a dime. I think at least we ought to make the American people fully aware as to what the cost will be, to the best of our ability. The Senator has well described the interest payments issue as pulling just one thread from the fabric. There are many other threads which, in the remaining days as this debate moves along, we will bring forth to show, as best we can, exactly what the potential cost will be to the American taxpayer. If the passage of the treaty is what we want to do, that is one thing, but at least we ought to know what the cost of our decisions to do so will be.

For one, I do not want to be voting on any treaty and subsequently having thrown back at me the false statement that I had said it would not cost a penny, especially if the cost proved to be $1 billion, or conceivably more than that.

I again thank the Senator from North Carolina who did the hard questioning. I think too many of our colleagues did not read the exchange, did not read the answers.

In one of the early debates on the floor which I had with the Foreign Relations Committee personally, with Senator Javits, for example, he admitted that there were going to be some costs to this. He said the record was complete and then changed this statement and said the record was replete. I remember it, because it was quite different.

But they did not have all the facts. They, themselves, at the time on their hearings, believed that there should be proposed implementing legislation to review. I think they believed at that time that they would get it before ratification. The fact is we still do not have it. Therefore, the necessity of filing this reservation.

Again I thank my colleague from North Carolina, and I thank my distinguished minority leader for joining with me.

Mr. SARBANES. Will the Senator yield?

Mr. BROOKE. Yes.

Mr. SARBANES. I do not think it was ever the expectation of members of the committee that we would have implementing legislation in the sense of having it enacted as that would mean the Congress working its own will.

I supported, and I think it makes a contribution, that the administration should submit if not the absolute and final version, something that is so far along the path in terms of what their ideas are, in terms of what the implementing legislation should contain, that we are able to see the structure that they at least are anticipating.

Obviously, we, the Congress, can go on, with respect to the implementing legislation, and do as we choose with it. We could completely change it.

The final package of the administration has no significance in terms of being what will happen other than giving us the best reading we can obtain on what the administration's views are as to what the shape of the legislation should be.

Mr. BROOKE. And which is important.

Mr. SARBANES. I concede it is important. I think the last submission which has just come to us, even though there is the caveat of further final OMB clearance, in my view I receive as representing the considered judgment of the administration as to what should be in the legislation and, therefore, providing us with a basis to which to react in terms of making our own judgments as we look at it in terms of how that affects or may affect the treaty, or how we may want to change the implementing legislation.

In the committee we supported the effort to obtain that submission. I do not think that was coupled with a notion that the submission would actually be passed by the Congress. After all, the Congress has wide-ranging responsibilities to deal with some matters in extended detail.

Mr. BROOKE. I thank my colleague. Like many others in this body, I have not had the opportunity to commend him for the very fine job he has been doing throughout the debate.

Mr. SARBANES. I appreciate the Senator's comment.

Mr. BROOKE. I certainly realize that we would have the opportunity to change any proposed implementing legislation that the

administration would send to the Congress. On the other hand, that is the administration's view, that is the administration's decision, that is the administration's proposal. That is what we will work on. That will be our working paper, though obviously, we will be able to amend, delete, or whatever we choose to do in both Houses of the Congress and it will end in some kind of conference on it, I am sure.

Still, the caveat, to me, is a very significant one. It is subject to revision. The administration is not saying, "This is what you are really going to get in the final proposal. You might get something different from that in the final proposal." I think it is important to note this.

I also would like, frankly, as I have indicated, to see us have the enactment of the implementing legislation prior to exchange of the instruments of ratification. I think that is important. But we differ on that and I do not think this is the time to engage in a lengthy debate on that subject.

At any rate, I do feel compelled now to introduce this reservation. I think not only the opponents of the treaties, because I think it goes beyond that, but I hope the proponents as well as the opponents, will look carefully at the reservation and its significance, both to us and to Panama. I feel that without introducing it, I would be remiss and I think the Senate would be denied an opportunity to work its will on a very significant part of this entire issue.

I thank my distinguished colleague from Maryland.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[From the Congressional Record—Senate, Apr. 6, 1978]

THE PANAMA CANAL TREATY

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No. 2, which will be stated by title.

The second assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st session, the Panama Canal Treaty.

Mr. HELMS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HELMS. Is the Senator from North Carolina correct in his understanding that we are now on article I?

The PRESIDING OFFICER. The Senator is correct.

UP AMENDMENT NO. 17

Mr. HELMS. I thank the Chair.

Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an unprinted amendment numbered 17:

In paragraph 1(b) of article I, immediately after "March 2, 1936," insert "except for the first sentence of Article X thereof,".

Mr. HELMS. Mr. President, the amendment I have just sent to the desk simply lets stand, without termination, one sentence from article X of the 1936 Treaty of Friendship and Cooperation with Panama:

In case of an international conflagration or the existence of any threat of aggressions which would endanger the security of the Republic of Panama or the neutrality or security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests.

This provision, standing alone, allows independent action by each party.

Article X in its entirety consists of only two sentences.

The second one, which I have not incorporated into my amendment because it refers to territory over which we will no longer have jurisdiction reads as follows:

Any measures, in safeguarding such interests, which it shall appear essential to one Government to take, and which may affect the territory under the jurisdiction of the other Government, will be the subject of consultation between the two Governments.

This second sentence likewise shows the right of United States to act in defense of the Canal Zone. It also indicates there will be consultation between both governments when action by one government would affect the territory under the other government's control.

However, letters of understanding between the two governments made it clear that in an emergency, the United States could act independently without consulting with the Government of Panama. My amendment retains this power.

Mr. President, I ask unanimous consent to have these letters printed in the record at this point in my remarks.

There being no objection, the letters were ordered to be printed in the Record, as follows:

The Secretary of State to the Panamanian Minister

DEPARTMENT OF STATE,
Washington, February 1, 1939.

Hon. Senor Dr. DON AUGUSTO B. BOYD,
Minister of Panama.

SIR: I have the honor to refer to the General Treaty signed between the United States of America and the Republic of Panama on March 2, 1936 and to the record of the proceedings of the negotiations leading to this accord. As you may recall, on several occasions during the course of the negotiations, it was found necessary to discuss and to reach a mutual understanding as to the interpretation to be placed upon certain draft provisions eventually incorporated in the signed treaty. These discussions and understandings were, after each meeting, embodied in the duly attested typewritten record of the proceedings of the treaty negotiations.

It seems possible that, following the favorable report at the close of the last session of Congress by the Committee on Foreign Relations of the United States Senate on the General Treaty and accompanying Conventions, the individual members of the Senate in their consideration during the current session of Congress of the Treaty and Conventions, may ask for clarification as to the precise meaning of certain important provisions of the General Treaty which affect the security and neutrality of the Panama Canal. With a view to anticipating these inquiries, and in the hope of avoiding further delay on this account in the consideration of the General Treaty of March 2, 1936, it has seemed to my Government advisable to set forth in an exchange of notes between our two Governments the substance of some of these above-mentioned understandings as mutually reached. I should be grateful, accordingly, if you would inform me whether your Government shares the understanding of my Government upon the points which follow in subsequent paragraphs.

1. In connection with the declared willingness of both the Government of the United States of America and the Government of the Republic of Panama to cooperate for the purpose of insuring the full and perpetual enjoyment of the benefits of all kinds which the Canal should afford them (Article I of the General Treaty of March 2, 1936) the word "maintenance" as applied to the Canal shall be construed as permitting expansion and new construction when these are undertaken by the Government of the United States of America in accordance with the said Treaty.

2. The holding of maneuvers or exercises by the armed forces of the United States of American in territory adjacent to the Canal Zone is an essential measure of preparedness for the protection of the neutrality of the Panama Canal, and when said maneuvers or exercises should take place, the parties shall follow the procedures set forth in the records of the proceedings of the negotiations of the General Treaty of March 2, 1936, which proceedings were held on March 2, 1936.

3. As set forth in the records of the proceedings of the negotiations of the General Treaty of March 2, 1936, which proceedings were held on March 16, 1935, in the event of an emergency so sudden as to make action of a preventive character imperative to safeguard the neutrality or security of the Panama Canal, and if by reason of such emergency it would be impossible to consult with the Government of Panama as provided in Article X of said Treaty, the Government of the United States of America need not delay action to meet this emergency pending consultation, although it will make every effort in the event that such consultation has not been effected prior to taking action to consult as soon as it may be possible with the Panamanian Government.

Accept, Sir, the renewed assurances of my highest consideration.

CORDELL HULL.

The Panamanian Minister to the Secretary of State

[Translation]

LEGATION OF PANAMA,
Washington, D.C., February 1, 1939.

His Excellency CORDELL HULL,
Secretary of State of the United States,
Washington, D.C.

MR. SECRETARY: I have the honor to refer to Your Excellency's valued communication of today's date with respect to the General Treaty signed between the Governments of the Republic of Panama and of the United States of America March 2, 1936 and to the proceedings of the meetings held by the Commissioners of Panama and of the United States of America during the negotiation which preceded the signature of the said Treaty. Your Excellency invites my attention to the fact that during the course of the negotiations and after discussion a mutual agreement was reached with regard to the interpretation to be given to certain provisions which eventually were incorporated in the Treaty. Your Excellency states that these discussions and understandings were, after each meeting, embodied in the typewritten records of the proceedings.

You then give as your opinion that in view of the favorable report presented at the close of the last session of Congress by the Committee on Foreign Relations of the Senate of the United States of America on the General Treaty and the various accompanying conventions, some members of the Senate, during the debates with respect to the General Treaty and the Conventions in the present session of Congress may ask for clarification as to the meaning of certain provisions of the General Treaty affecting the security and neutrality of the Panama Canal. With a view to anticipating such an eventuality, and of avoiding new delays in the consideration of the General Treaty of March 2, 1936, Your Excellency states that it seems advisable to your Government to effect an exchange of notes with my Government for the purpose of reiterating the interpretation given to certain points in the proceedings.

I take pleasure in informing Your Excellency that I have been authorized by my Government to effect this exchange of notes and to clarify the points propounded by Your Excellency, and which, for greater clarity, are set forth in the English language as follows:

[For text, see numbered paragraphs.]

I avail myself of this occasion to renew to Your Excellency the assurances of my most distinguished consideration.

AUGUSTO S. BOYD, *Minister.*

The Secretary of State to the Panamanian Ambassador

DEPARTMENT OF STATE,
Washington, July 25, 1939.

His Excellency Senor Dr. DON AUGUSTO S. BOYD,
Ambassador of Panama.

EXCELLENCY: I understand from the debate in the Senate of the United States yesterday on the treaties signed with Panama, March 2, 1936, that the question was raised as to whether the Assembly of Panama had the notes and minutes of the treaty negotiations before it at the time the treaties were considered and ratified by that body.

I shall thank you to advise me definitely as to whether the notes and minutes of the negotiations were before the Assembly of Panama and were thoroughly understood and considered by the Assembly in connection with its ratification of the aforesaid treaties.

Accept, Excellency, the renewed assurances of my highest consideration.

CORDELL HULL.

The Panamanian Ambassador to the Secretary of State

EMBAJADA DE PANAMA,
Washington, July 25, 1939.

His Excellency CORDELL HULL,
Secretary of State.

EXCELLENCY: I am in receipt of Your Excellency's note of this date in which you state that you understand from the debate in the Senate of the United States yesterday on the Treaties with Panama signed March 2, 1936, that the question was raised whether the Assembly of Panama had the notes and minutes of the treaty negotiations before it at the time the treaties were considered and ratified by that body.

I think that the best answer I may give to Your Excellency is to transcribe textually, in translation, law No. 37 of 1936 which was passed by our Assembly on the twenty-fourth of December, 1936, and which reads as follows:

THE NATIONAL ASSEMBLY OF PANAMA

Decrees

Only article: there are hereby approved and ratified in all their parts the General Treaty, the Radio Communications Convention, the Convention on the Transfer of the stations of La Palma and Puerto Obaldia and the Convention on the Trans-Isthmian Highway, signed in the city of Washington, March 2, 1936, by plenipotentiaries of the Governments of the Republic of Panama and of the United States of America, which is done taking into account the Minutes and the Exchanges of Notes signed on the same date and which contain interpretations and explanations of certain important aspects of the General Treaty and of the Conventions aforementioned.

From the law quoted above Your Excellency will observe that the minutes and the notes were before the Assembly and were considered and understood by it at the same time that the Assembly ratified the Treaty and Conventions above mentioned.

Accept, Excellency, the sentiments of my highest consideration.

AUGUSTO S. BOYD.

Mr. HELMS. Mr. President, this is the concept I believe we must perpetuate in the new treaties if we truly are to be able to defend the Panama Canal. To date it is not so incorporated. To do so is the purpose of my amendment.

Mr. President, proponents of the new treaty will probably say that this is already taken care of by article IV of the Neutrality Treaty, of if not by that article, certainly by the leadership amendment which incorporated the Carter-Torrijos statement, or, if not by that amendment, then most certainly by the so-called DeConcini reservation.

I must respond in the negative to that.

Many Senators feel article IV is vague. That, indeed, was the leadership's rationale for adding the Carter-Torrijos statement. Indeed, it was the very rationale for that statement in the first place because of congressional objections. But many Senators consider the Carter-Torrijos language equally vague.

The pending amendment would eliminate any such vagueness. As an amendment, there would also be no doubt as to its acceptance by Panama if that country ratifies this treaty. It has been shown here by other Senators that Panama pays no heed to reservations. If Panama means what we are supposed to believe Panama means in the Carter-Torrijos statement, certainly Panama would need no new plebiscite to demonstrate acceptance by my amendment. My amendment only states clearly what I maintain is still not firmly established anywhere in either of the two new treaties.

On the other hand, there actually may be some detrimental effect as a result of the DeConcini reservation, now cited in the

amended Neutrality Treaty's resolution of ratification as a "condition":

> Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

That condition has a number of shortcomings when compared with what my amendment would achieve.

Mr. President, let me repeat the pertinent language of the DeConcini condition:

> * * *If the Canal is closed, or its operations interfered with, the United States of America * * * shall * * * independently have the right * * * to reopen the Canal or restore the operations of the Canal, as the case may be.

Mr. President, not "will take," as in the 1936 language I wish to retain, but "shall have the right to * * * take."

Not to take "measures of prevention and defense," as in the 1936 language I wish to retain, but only to take steps of restoration—"to reopen the Canal or restore the operations of the Canal."

Not "in case of an international conflagration or the existence of any threat of aggression," as in the 1936 language I wish to retain, but only in either of the two specific cases where the Canal has actually been closed or its operations have actually been interfered with.

Not "measures of prevention" against "any threat * * * which would endanger the * * * security of the Panama Canal," as in the 1936 language I wish to retain, but only measures after that security had already been violated.

Not "measures of prevention and defense" against "any threat * * * which would endanger the security of the Republic of Panama," as in the 1936 language I wish to retain, but only measures regarding the canal—and, indeed, those enabled only after the damage has been already done.

Mr. President, these are the shortcomings of the DeConcini conditions when compared with the sentence from article X of the 1936 Treaty which I believe for the best interests of both the United States of America and the Republic of Panama, should be permanently retained in force.

Mr. President, while article IV of the Neutrality Treaty and the Carter-Torrijos statement now adopted as an amendment are only vague, the Deconcini reservation or condition may actually be taken as a limiting stipulation restricting United States right to action only to that which may be needed after the canal is actually closed, or its operations actually interfered with.

Mr. President, let me state unequivocally, the Panama Canal might readily be kept open, efficient, neutral, secure, and accessible—to quote the oft-repeated phraseology of the State Department—by Fidel Castro or Leonid Brezhnev.

But I do not think the American people or this Senate would take much consolation in that fact.

We certainly put an entirely different connotation on the word "security" in regards to the Panama Canal than on the word "secure." Security denotes our best interests.

The 1936 language which I wish to retain is unequivocal about the security, both of the Republic of Panama and the Panama Canal, and any threat to their security. Therefore, the language I wish to retain encompasses any action necessary in advance of actual damage to, interference with, or closing of, the Panama Canal.

Any vagueness or possible restrictions on U.S. action are immediately and totally removed by the retention of this single sentence from the 1936 treaty with Panama. This language is certainly not inconsistent with what we have been led to believe by the President of the United States, Mr. Carter, the Department of State, and the leadership in this body, that these are the purposes of article IV of the Neutrality Treaty and the Carter-Torrijos statement now adopted as the leadership amendment to that treaty.

This amendment would simply make those purposes crystal clear and beyond any peradventure, absolute, understandable, believable.

Mr. President, let me address in somewhat more detail the concept of independent, unilateral action by the United States.

Other than that right being expressed in the limited and, I fear, that the word is used correctly, limiting, DeConcini condition, in no place in either treaty is the United States clearly given the right to act independently regarding the canal in the matter of its defense and security.

Article IV of the basic Panama Canal Treaty which is now under consideration does not unmistakably give the United States any such right. Further, that article specifies the establishment of a so-called Combined Board whose members:

> Shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose.

I emphasize the word "all" as I read that article because I want to emphasize that it refers to all matters of protection and defense.

Article IV of the treaty we are now considering speaks still further of "cooperative efforts" and "combined military exercises."

A major purpose in maintaining in force the provision from article X of the 1936 treaty, which this amendment proposes to retain, is to unmistakably give the United States the power to act independently. And unlike the independence achieved by the DeConcini condition to act too late, the power to act independently in advance of any actual damage to or interference with the canal and its operations.

Mr. President, it is noteworthy that the language I wish to retain permanently in force beyond the year 2000 would clearly proclaim our right, indeed, our obligation to defend the Republic of Panama.

This language demonstrates the kind of alliance we currently maintain with other nations, as in NATO, with our support pledged to our allies.

The 1936 treaty terminated the provisions of article I of the 1903 treaty which had obligated us to guarantee Panama's independence, because Panama felt it could insure its own independence from its neighbor Colombia from which she had seceded. That same 1936 treaty, however, enunciated the language of article X I wish to retain.

No one on Earth today could claim with a straight face that Panama could defend herself adequately against the overwhelming might of the Soviet Union or even against the forces of Communist Cuba, now battle tested in Africa.

It is the understanding of the Senator from North Carolina from testimony before Senate committees that only some 2,000 of Panama's 8,000 man Guardia Nacional are actually trained as soldiers. The majority of that force are policemen.

Those 2,000, or the entire 8,000, would be no match for Castro's battle-hardened expeditionary forces.

Mr. President, an ounce of prevention is worth a pound of cure.

I am not asking for anything new in my amendment.

I am not offering new language drafted to achieve my purpose.

Unlike any amendment or reservation offered to date, mine seeks only to continue in force but a single sentence from the three treaties of 1903, 1936, and 1955 now in effect with the Republic of Panama, regarding the Panama Canal.

That single sentence confirms what Panama's Maximum Leader, Omar Torrijos has already proclaimed.

He stated in a speech to his people on October 20, 1977, before the plebiscite that the treaties placed Panama under the protective umbrella of the United States.

Let me quote him:

> We will maintain the force necessary to insure peaceful coexistence, but if we are attacked by superior forces, the United States is obligated to come to our defense. And when I said that we remain under protective umbrella, I say it without shame.

No plebiscite would be needed by Panama because of retention of this sentence as part of the Panama Canal Treaty.

Again, I must refer to the DeConcini condition or reservation.

What have we accomplished by it?

What have we gained by it?

We have only gained the right—assuming Panama will agree to this condition—to move unilaterally after a hostile force has already closed the canal or has actually interfered with its operations.

I submit, this is not much of a right.

It certainly is not sufficient for us to be only able to close the barn door after the horse is stolen.

The American people certainly demand much more.

At the very least, we should demand the right to prevent the canal's closing or any interference with its operations.

That is just what the continuation in force of one sentence from the existing treaties will do. One sentence assures us the right to act unilaterally in advance, to forestall any actual damage to or interference with the canal.

The pending amendment proclaims that we have determined to defend Panama—to keep her free and independent, safe from Soviet domination by Moscow or from Communist domination by Havana, or from any other threat of aggression.

The American people know that as custodian of the canal after the year 2000 Panama must remain free and independent. Her liberty and independence will be as vital to the United States as the thrust we will confer upon her if these treaties are ratified.

Panama could be conquered by a hostile force overnight in this day of sudden Communist takeovers. Czechoslovakia, we must remember, woke up to Communist rule one day without a shot having been fired. Its leader simply went out a window to his death and the Communists were in control.

It could happen in Panama, unless we signify our determination to prevent it happening.

Pilots of the Soviet Union's Air Force fly their MIG's daily over Caribbean waters. Castro would like nothing better than to use his African Expeditionary Forces to take Panama for his masters in the Kremlin.

Mr. President, I urge the adoption of the amendment.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, the first observation I want to make is that it is an interesting exercise in treaty-making or, for that matter any sort of contract making when you come along when a new agreement is being negotiated and you go back to a previous agreement and pick out a sentence that you want out of the previous agreement and then say, "Well, now let us put this into the new agreement."

I would like to negotiate contracts being able to do them that way. I think I would be able to write some pretty good contracts, but I am afraid I would not have any parties willing to agree to the contracts so you would not have two people to strike a bargain and to make an agreement.

As to the 1936 treaty in article X—and that was agreed to between the parties—the agreement that they made was a total agreement contained in full in article X. The agreement thus was not an agreement to the first sentence of article X and ignoring the second sentence of article X. The agreement was to article X in its entirety; article X was a total provision and in fact the second sentence to it, which the distinguished Senator from North Carolina would leave out of his proposal or out of his arrangement, specifically by it own terms refers to measures that might be taken pursuant to the first sentence. So, in effect, you had two sentences intertwined and that constituted the agreement that the parties had made.

So you cannot really come along and take but one of the two sentences and say, "Well, that has been previously agreed to by the parties and there has been no change in the language; we are simply quoting it directly and, therefore, it ought to be agreed to now." What about the other sentence which was an integral part of the agreement and which required consultation between the parties before we were free to take action.

That is the first point.

The second point is, of course, when you negotiate a new agreement its purpose is to replace the previous agreements. That is what you are seeking to accomplish. You are not seeking to carry forward the previous agreements. If you were doing that you would not have needed to negotiate a new agreement.

So, you have to look at the provisions of the new agreement and make your judgment on the basis of the new agreement.

Beyond those two reasons: first that, you cannot, once you have negotiated a new agreement, then come along and try to go back and pull out of a past agreement certain provisions and say, "Well, that language had been previously agreed to by the parties, and therefore it ought still to be acceptable to everyone; hence we are going to insert it into the new agreement." You cannot write agreements that way. The new agreement replaces the old agreement, that is why you make a new agreement.

Second, even if one were going to reach back for prior provisions, you certainly could not reach back and take but one sentence out of an article composed of two sentences when both of those sentences were interrelated one with the other and affected one another, and take one of them and leave the other one and then say, "Well, is there any chance of acceptability or agreement to it by the other party?"

You obviously cannot make contracts or reach agreements in that fashion.

Third, the agreement that was before us, a few weeks ago and that has now been approved by the Senate, by a vote of 68 to 32, the Treaty on the Permanent Neutrality and Operation of the Panama Canal, dealt with this matter in article IV thereof. That article was amended on the floor of the Senate pursuant to an amendment sponsored by the majority leader, Senator Robert C. Byrd, and the minority leader, Senator Baker, and cosponsored by 78 or 79 Members of this body. Article IV of the Neutrality Treaty as originally submitted provided:

> The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

Of course, that basic provision recognized the termination of other treaties entered into by the parties because the two treaties that are before us are creating a new legal arrangement and a new legal framework for the relationship between the United States and Panama.

Now, the amendment that was added was designed to provide some additional clarity to article IV, partly in response to some questions that had arisen over differences of interpretation which had been brought out in the course of the hearings of the Senate Committee on Foreign Relations. That amendment with respect to article IV was inserted at the end of article IV, which I have just read and provides:

> A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:
>
> "Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently

shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

Mr. President, let me just repeat from that amendment some of its very important provisions. This amendment deals with article IV of the Neutrality Treaty in which the United States and the Republic of Panama agree to maintain the regime of neutrality established in the Neutrality Treaty, so that the canal shall remain permanently neutral notwithstanding the termination of any other treaties. The leadership amendment states that the correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality and, consequently, shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

That provision makes it very clear that it is each—I emphasize each—of the two countries which, in accordance with their respective constitutional processes, shall defend the canal against any threat—I emphasize any threat—to the regime of neutrality, and shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

Of course, the second part of the amendment went on to make it quite clear that this does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal will remain open, secure, and accessible and it shall never be directed against the territorial integrity or political independence of Panama.

Now, Mr. President, the provision in the Neutrality Treaty provides to the United States the right to take action against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal, and gives to us, I submit, all of the authority that we need in order to protect our interests with respect to a secure, accessible and neutral canal.

To go back to the 1936 treaty and seek to pull out of it one sentence of an article, leaving the other sentence behind, when the two parties 42 years ago reached an agreement that encompassed both sentences is, in my opinion, not the way to go about treaty-making or arriving at agreements or contracts.

I also think it is important to underscore that the Neutrality Treaty, which was approved by the Senate on the 16th of March by a vote of 68 to 32, and in which the language I have been quoting is contained, that the Neutrality Treaty takes effect simultaneously with the Panama Canal Treaty which we are now considering.

The Panama Canal Treaty, if approved by this body, and the Neutrality Treaty would enter into force simultaneously 6 calendar months from the date of the exchange of the instruments of ratification. So the provisions that are contained in the Neutrality Treaty concerning the authority of the two countries, each sepa-

rately, to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal take effect simultaneoulsy with the Panama Canal Treaty. There have been some suggestion and some reports that seemed to imply that the permanent neutrality treaty takes effect only after the end of the century, and that the Panama Canal Treaty, which we are now considering, governs the entire situation between now and the end of the century. That is not correct. The Panama Canal Treaty which we are now considering is more relevant to many aspects of the relationship over the rest of the century. At the end of the century Panama will assume the full responsibility of operating and maintaining the canal, but both treaties take effect simultaneously, and the provisions of the Neutrality Treaty which I have quoted, which provide this right to take action to maintain the neutrality of the canal, the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal, come into effect simultaneously with the Panama Canal Treaty.

Both treaties, except as their provisions may specifically otherwise provide—there are some provisions in the Neutrality Treaty that take effect at the end of the century, a few limited ones, but the balance of the provisions of the Neutrality Treaty, most of its provisions, as well as the provisions of the Panama Canal Treaty, would take effect simultaneously, and that would be 6 calendar months from the date of the exchange of the instruments of ratification. So the authority which we would have, as I have quoted it, would be effective as of that date.

I submit to the Members of the Senate that in fact the provisions of the Neutrality Treaty, as amended with the leadership amendment that was adopted by an overwhelming margin in this body—there were only a handful of dissenting votes—better protects our ability to act to maintain the neutrality of the Panama Canal than the full provisions of article X of the 1936 treaty. I realize the Senator from North Carolina is taking one sentence and not the other sentence out of article X of the 1936 treaty, but, as I indicated at the outset, that is an incredible way to go about negotiating a contract or trying to reach an agreement. The fact of the matter is that the provisions of the Neutrality Treaty with respect to our right to take action are better than the entire group of provisions that were contained in article X of the 1936 treaty.

The amendment that I referred to, that was made to article IV of the Neutrality Treaty, was adopted in this body by a vote of 84 to 5. That, I think, represented clearly the judgment of the overwhelming preponderance of the Members of the Senate that that amendment was desirable, and that it strengthened the treaty. I submit that our interests are fully protected under those provisions, and therefore that the amendment offered by the distinguished Senator from North Carolina should be rejected.

Mr. HELMS. Mr. President, I have listened with great interest to my friend from Maryland, who is most persuasive but not sufficiently so. As a matter of fact, he has just used precisely the same arguments that I predicted he would in my preliminary remarks.

Some time during the debate on these treaties on this floor, Mr. President, I have thought about a fine old gentleman in my home-

town of Monroe, N.C., named Mose Hawkins, who when I was a boy, was the handyman at one of the local businesses. Mose was hard of hearing, and on Christmas some of us who worked there took up enough money to buy Mose a hearing aid, the first one I'd ever seen.

We presented it with some ceremony. He put it on, and we showed him how to turn up the gain.

He listened and his eyes rolled, but he said nothing. We were accustomed to Mose having a classic comment about almost everything that occurred; but in this instance he said nothing. Finally someone asked, "Well, Mose, doesn't it help your hearing?"

He said, "Yes, sir, it helps my hearing, but it don't help my understanding none."

I have heard the Senator from Maryland, but I must say in all friendliness that he has not helped my understanding all that much.

The Senator mentioned at the outset that this amendment is a novel approach to contract writing or treaty writing. I do not think it is all that novel, because, as I said to the distinguished Senator from Virginia (Mr. Harry F. Byrd, Jr.) a moment ago, if he were preparing to give away his newspaper or his apple orchards down in Virginia, and was paying someone to take them, I doubt that he would expect to have a great deal of difficulty persuading the beneficiary of his generosity accepting a contract satisfactory to Senator Byrd. What bewilders the Senator from North Carolina is that almost every action taken on this floor since the debate first began has been designed to satisfy the dictator Torrijos; and I find myself wondering constantly why that should be. Is there no concern for the American people?

Proponents of these treaties are not proposing to give the Panama Canal to the Panamanian people; they are proposing to turn it over to a Marxist dictatorship. Not only that, they are proposing to commit an enormous amount of American taxpayers' dollars to operating the canal and various other extraordinarily expensive items that we do not even know about yet.

I was very much impressed, late yesterday evening, that the distinguished Senator from Massachusetts (Mr. Brooke) spoke at some length about his concerns that, even now, Congress does not know how much of the taxpayers' money the Carter administration proposes to give away. Certainly the American people do not know; and I rather doubt that very many Americans truly understand that the cost of giving away the Panama Canal could run as high as or perhaps higher than $3 billion between now and the year 2000, not counting the replacement value of the canal and its facilities.

Now, the distinguished Senator from Maryland fell back on article IV of the Neutrality Treaty, just as I had predicted that he would in my opening comments. In doing so, I think he failed to make clear that that article IV of the Neutrality Treaty is so vague that along came the leadership with an amendment to try to straighten it up a little bit. Then came the DeConcini condition, which sounds very good, but which, in the judgment of many of us, failed to do the job, well intended as it was.

(Mr. Melcher assumed the chair.)

Mr. HELMS. All the Senator from North Carolina is saying, and all he is proposing in this amendment, Mr. President, is that we nail down our right to defend and protect this canal prior to its being shut down, prior to its being destroyed, prior to the occurrence of violence. Frankly, I do not see anything wrong with that. I think that is the minimum of what we ought to expect in terms of our rights under this treaty if we are going to charge the American taxpayer with the responsibility of financing the operation and expense of the canal. I do not see anything unusual about picking up one of two sentences out of an article in the 1936 treaty.

I respect my colleague from Maryland. Of course, we differ on this. I anticipate the amendment will not be approved, but I do feel that a record should be made as to whether Senators even care about the rights of the American people. I believe that is a vital question in the closing days of this debate as we give away the Panama Canal—whether Senators really care about U.S. rights in this matter. I look around this Chamber and I see six Senators, including the distinguished occupant of the chair.

Mr. HARRY F. BYRD, JR. Will the Senator yield?

Mr. HELMS. I am delighted to yield to my able friend from Virginia.

Mr. HARRY F. BYRD, JR. I want to say to the distinguished Senator from North Carolina that I hope this amendment will be approved. I concur in the view of the Senator from North Carolina that it is not likely to be acted upon favorably by the Senate. The Senate has voted down virtually every substantive amendment which has been offered.

That was not my real purpose in asking the Senator to yield.

The Senator from North Carolina mentioned that the cost to the American taxpayer, if these treaties are approved, will probably exceed $3 billion.

That is an interesting figure. I just looked up the tax records and the records show that all of the Federal income taxpayers in the State of North Carolina pay slightly less than that amount into the Federal Treasury.

Another way of putting it is that the cost to the American taxpayer will be equal to all of the Federal income taxes paid by all of the people of North Carolina, a State of more than 5 million population and about the 10th or 11th most populous State in our Union.

It seems to me that dramatizes just how large a figure $3 billion is.

Mr. HELMS. I thank the distinguished Senator. Of course, he has pinpointed an aspect of these treaties which ought to be more clearly understood by the people of this country. The Opinion Research Corporation of Princeton, N.J., about 2 or 3 weeks ago reported that about 72 percent of the people in this country were opposed to these treaties. Of course, there are the Gallup Poll and other polls saying it is much closer than that, and some even saying that a majority of the people favor the treaties.

I do not believe those polls were taken in the State of Virginia or the State of North Carolina. Be that as it may, I wonder what any poll would show if the American people truly understood how much it is going to cost them in dollars and cents. The able Senator

from Virginia has made that point graphically clear, and I appreciate it.

Mr. HARRY F. BYRD, JR. In addition to the costs mentioned by the Senator from North Carolina, the amount of property now owned by the American people in Panama, according to the Panama Canal Company, has a replacement value of almost $10 billion. That property is owned collectively by all of the American people. Yet we propose, by enactment of these treaties, to give away all of our military bases, all of our port facilities, and all of the many pieces of property which the American people own in Panama.

Another thing we are doing, if the Senate approves both of these new Panama Canal treaties, is we are assuming the obligation and the responsibility to defend the canal, but we are giving away the tools with which to accomplish that purpose.

Mr. HELMS. The able Senator is exactly right.

Mr. HARRY F. BYRD, JR. The ramifications of these new treaties are far greater than appear on the surface. The proponents say, "There is nothing to worry about because we reserve the right to ourselves to defend the canal." But in reserving to ourselves that right, and assuming that obligation, we deny ourselves the use of the military bases which are necessary if we are going to properly and adequately defend that great international waterway.,

Mr. HELMS. I thank the Senator for his helpful comments. He will recall that he and I met with Governor Parfitt, the present Governor of the Canal Zone, who appeared before the Armed Services Committee. We went into some detail at that time as to the projected costs of this proposed giveaway of our Panama Canal. There were expressions of amazement around the committee table as his testimony proceeded.

I remember Senator Cannon asking a number of relevant questions about it. Although Senator Cannon voted for the Neutrality Treaty, I was nonetheless grateful that he raised many relevant questions about this aspect of the treaties.

Mr. President, I would like to ask for the yeas and nays on the amendment, but I suspect we will need more Senators than are present to achieve a sufficient second.

Nonetheless, let me go through the parliamentary exercise and ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

Mr. SARBANES. Will the Senator defer his request for a quorum?

Mr. HELMS. Certainly.

Mr. SARBANES. If I may speak briefly to his amendment, we might then be able to obtain the yeas and nays. I will make a motion with respect to his amendment at that time.

Mr. President, I want to mention again the amendment which was added by a vote of 84 to 5, the amendment offered by the majority leader (Mr. Robert C. Byrd) and the minority leader (Mr. Baker), which provides to us and to Panama, to each country, the right to defend the canal against any threat to the regime of neutrality, and the right to act against any aggression or threat directed against the canal.

So it provides the right to anticipate a danger, not merely to respond to an event that has occurred, because it gives us the right to act against any threat directed against the canal. Therefore, the point which the Senator from North Carolina was raising is fully addressed in the amendment which this body has adopted and which is now part of the Neutrality Treaty.

Second, in the course of the statement, there was reference to the fact that, under the Panama Canal Treaty which we are now considering, concerning protection and defense of the canal, the United States and Panama, through a combined board, will consult and cooperate on all matters pertaining to the protection and defense of the canal. Emphasis was placed on the word "all" matters pertaining to the protection and defense of the canal. A greater emphasis should have been placed on the words "consult and cooperate," because, as the Panama Canal Treaty makes very clear, the United States of America shall have primary responsibility to protect and defend the canal, and the combined board, which is a consultation device between the two countries, is an effort to coordinate policies.

It does not undercut or weaken our prime responsibility. In fact, in the very same paragraph in which the provision is made to facilitate the participation and cooperation of both parties, both the United States and Panama, in protecting and defending the canal, by this combined board through consultation it is provided:

> Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the Armed Forces of the United States or the Republic of Panama.

So the identity or lines of authority of our Armed Forces are maintained and our position as the one with the prime responsibility to protect and defend the canal is maintained. This means that we have the right to station, train, and move military forces as described in the agreement implementing this article in order to carry out that responsibility.

So the real emphasis here should not be on the word, "all," but on the word, "consult," coupled with the fact that our right to act and the identity of our lines of authority are maintained. That is the position in which the U.S. Armed Forces will be during the period of time in which they will be present pursuant to the Panama Canal Treaty.

Mr. ROBERT C. BYRD. Will the Senator yield so the Senator from North Carolina may ask for the yeas and nays at this time?

Mr. SARBANES. I yield.

Mr. HELMS. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficent second? There is a sufficent second.

The yeas and nays were ordered.

Mr. SARBANES. Mr. President, I am prepared to move if the Senator from North Carolina is.

Mr. HELMS. I wonder if we could have an agreement to accommodate the Senators who are downtown at a meeting? It would be satisfactory for me to vote now but I would like to accommodate them.

Mr. SARBANES. Yes.

Mr. ROBERT C. BYRD. May we suggest voting at 1:50? Then, in the meantime, we could possibly set this aside and go to another matter.

Mr. HELMS. Yes, that is entirely satisfactory to me. Whatever will accommodate our colleagues.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur in relation to the amendment at 1:50 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair will note that the yeas and nays were ordered on the amendment.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. SARBANES. Mr. President, if it is in order, I move now to lay the amendment on the table and ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. Presient, may I make this suggestion, that the Senator from Maryland be recognized at 1:50 to make a motion to table?

The PRESIDING OFFICER. Is there objection? The Chair hears none.

It is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order at this time to order the yeas and nays on the motion to table, which will be made at 1:50 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficent second? There is a sufficent second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, I yield the floor.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

[Mr. Helms addressed the Senate in connection with the introduction of a bill at this point. His remarks appear in today's Record under Statements on Bills Introduced.]

Mr. HARRY F. BYRD, JR. Mr. President, as the Senate continues debate on the proposed new Panama Canal Treaties—this being the 32d day—I thought I would review the major arguments for and against the treaties and see if any have been disproven.

One of the major objections to relinquishing U.S. control over the Panama Canal is that the canal is an important defense and economic asset of the United States.

This was one of the first and most persistent objections of those who oppose surrending control of the canal to Panama.

The White House and the State Department sought to offset this argument by denigrating the economic and military importance of the canal.

In a factsheet put out by the White House last July it was asserted that the Panama Canal no longer has an important strategic role because the United States has a two-ocean Navy and because our aircraft carriers are unable to transit the canal.

In recent months, however, the White House and the State Department have stopped using this argument because it has been disproven. The canal is extremely important to the national security interests of the United States.

In testimony before the Senate, members of the Joint Chiefs stated categorically that the canal was extremely important militarily.

With our Navy down to half its size of 10 years ago, with less than 500 ships, the canal has gained renewed military importance. In any military crisis there will be a need to transfer significant naval assets from one ocean to the other. On the words of Gen. V. H. Krulak, USMC (Retired):

> It is only because of the . . . [Panama Canal] . . . that we are able to risk having what amounts to a bare-bones, one-ocean Navy.

The canal has also been shown to be economically important and the State Department itself now predicts an increase in canal traffic in the years between now and 2000.

When the argument of the declining importance of the canal ran into trouble the Carter administration changed its tack.

Admitting that the canal was important, the new argument was that use is more important than ownership and that we will have greater assurance of free access to the canal if we turn the canal over to Panama.

Opponents of the treaties have no quarrel with the statement that use is more important than ownership. However, opponents of the treaties do take issue with the assertion that the canal would be more secure in the hands of Panama with the U.S. military presence removed.

Even if eliminating a U.S. presence would reduce somewhat the threat of sabotage to the canal, at the same time it would significantly increase the vulnerability of the canal.

Without U.S. military bases, and without the protective buffer of the Canal Zone, the canal will be much more vulnerable to sabotage or attack.

In the words of Adm. Thomas H. Moorer, former Chairman of the Joint Chiefs and, as such, our senior military officer, we would be divesting ourselves of all the tools necessary to adequately defend the canal.

Another matter which has been of great concern to opponents of the treaties has been their expected cost.

Secretary of State Vance and other administration officials have stated that the proposed canal treaties would not be costly and would not require any congressional appropriations.

Secretary Vance in testimony before the Senate Foreign Relations Committee on September 26, 1977 stated flatly that "the treaties require no new appropriations, nor do they add to the burdens of the American taxpayers."

President Carter echoed this statement on December 28, 1977 when he said: "We wanted a treaty that did not put a financial burden on the American taxpayer, and we got it."

These statements, however, were clearly inaccurate.

The canal treaties will require appropriated funds for the relocation of U.S. military forces (an estimated $42.9 million) and for the

payment of early options retirement for U.S. employees who will be displaced from their jobs (estimated by Governor Parfitt of the Panama Canal Company to be at least $165 million).

In addition, the canal treaties may require substantial appropriations to meet other obligations depending on future economic trends and depending on how one interprets certain provisions of the treaties.

Under article XIII of the Panama Canal Treaty the United States is obligated to turn over the canal to Panama in the year 2000 "free of liens or debts."

One logical interpretation of this provision of the treaty is that the United States would be required to make up any deficits incurred by the proposed Panama Canal Commission which had not been settled by the year 2000.

Gov. Harold R. Parfitt, Governor of the Canal Zone and President of the Panama Canal Company, agreed with this interpretation in recent testimony before the Senate Armed Services Committee stating that it was "possible or even probable" that such a payment would be required.

This interpretation has been disputed by the State Department, but the issue remains clouded.

Should Governor Parfitt's interpretation—and that of many others—prevail, then there is no way of telling how much this could cost the American taxpayer.

Nor is this the end of the potential costs of the treaties.

There may be an additional U.S. liability of up to $220 million, which also hinges on how one interprets a part of the Panama Canal Treaty.

Article XIII of that treaty provides for a $10 million annual payment to Panama from the effective date of the treaty until the year 2000. This amount is supposed to come out of surplus revenues.

The question becomes: What happens if there is no surplus, or if the surplus is less than $10 million?

If this happens in one year, then the obligation to Panama carries forward to a subsequent year. But what if we come right up to the year 2000, and there remain sums unpaid to Panama under the $10 million a year provision, because of insufficient surpluses?

Elmer Staats, the Comptroller General of the United States, answered that question during testimony before the Senate Armed Services Committee. He said:

> Under our interpretation, if no payments were made during the lifetime of the treaty, a lump sum payment to Panama of over $200 million could be required at termination of the treaty.

Mr. SARBANES. Will the Senator yield on that point?

Mr. HARRY F. BYRD, JR. Yes, I am glad to.

Mr. SARBANES. I had an exchange much earlier in the debate with another Senator concerning the quotation of Comptroller General Staats which the Senator from Virginia just made and which is taken, I believe, from the summary of the Armed Services Committee.

There is a problem here with respect to the use of the word "our" rather than the use of the word "one."

In the testimony that Comptroller General Staats gave, as it appears in the hearings, the word is "one," not "our." In other words, Comptroller Gerneral Staats does not put it forward as his view but as a view. At the time he states that it was "one view," and subsequently there has been that misprint to "our view" and that has created some confusion on this issue.

I concede that Comptroller General Staats said that there was an interpretation—one interpretation—but he did not make it his interpretation.

Mr. HARRY F. BYRD, JR. I think the committee, in listening to the Comptroller General, clearly got the impression that it was his own view.

If there is an error in the transcript, in saying "our interpretation," and it should have been "one interpretation," I do not think that is a significant error; because I believe the Comptroller General was conveying the impression to the committee that this would be an appropriate interpretation of the treaties.

Nevertheless, it is a point that is of considerable importance, it seems to the Senator from Virginia. Vast sums of American tax dollars are involved.

The State Department, of course, disagrees with the above interpretation. Nevertheless, it is a wide difference of opinion.

Mr. SARBANES. I do think it is a point that should be addressed. The only point I wanted to make is this: On page 379 of the hearings of the Committee on Armed Services, of which the very able Senator is a distinguished member, Comptroller General Staats says "under one interpretation," and in the summary report of the committee, that has been written as "under our interpretation."

I do not think he took it as his interpretation. He said there were some ambiguities. He said that under one interpretation there could possibly be this cost. He then noted that the State Department said they hold a different interpretation.

Further on, he said:

> One approach to that would be to make certain that State's interpretation is clearly understood. We believe that it should be spelled out in implementing legislation.

This is Comptroller General Staats talking.

I just wanted to address that one point, because it has come up before.

Mr. HARRY F. BYRD, JR. I thank the Senator from Maryland. I believe it is appropriate that the Senator from Maryland make clear the view he places on it.

Mr. President, I will repeat the answer of Comptroller General Staats:

> Under our interpretation, if no payments were made during the lifetime of the treaty, a lump sum payment to Panama of over $200 million could be required at termination of the treaty.

The State Department, however, disagrees with this interpretation and maintains that under those conditions nothing would be owned to Panama.

This is not an insignificant difference of opinion and it is all the more disturbing since the Senate has heard testimony that the

Panamanians interpret this provision of the treaty to mean that the money would be owed to them. To quote Senator McIntyre:

> The Panamanians have let it be known to Senators that should they not receive any surplus payments by the year 2000, the U.S. Government would be obligated to a 220 million dollar lumpsum payment.

Still another cost to the American taxpayer may result if these treaties are ratified.

There is no provision in the Neutrality Treaty that Panama will adequately maintain the canal and related facilities.

The State Department apparently assumes that enlightened self-interest will force Panama to maintain the canal but there is no way to be sure that future Panamanian Governments will not defer needed maintenance in order to spend additional funds on more visible and politically popular social programs.

Should that occur, the United States would be forced into the awkward choice between allowing a needed facility to deteriorate or offering to assist Panama economically in order to free Panamanian resources for needed canal maintenance.

One can envision the Panamanians using such leverage to their economic advantage. The reasonably natural thing for them to do, as a matter of fact.

Yet another treaty-related cost to the taxpayer, which also would require appropriation of funds, would be foreign aid payments to Panama.

The Carter administration, outside the terms of the treaties, has pledged its best effort to secure from the Congress approval for additional U.S. assistance in the amount of $345 million to build up Panamanian military forces and strengthen that nation's faltering economy.

This aid promise would be in addition to existing U.S. aid programs to Panama, a country which already has received more foreign aid per capita from the American taxpayers than any other nation.

Mr. President, I think that is worth emphasizing. The Republic of Panama already has received, through the years, more foreign aid per capita from the American taxpayers than any other nation.

In fact, as a result of the U.S. presence in Panama, Panama has the highest per capita income of any country in Central America and has the fourth highest in all of Latin America, in which there are 18 countries. So Panama has fared quite well by American presence in Panama.

Looking at all these firm and contingent costs of the treaties which I have enumerated, I believe the conclusion is inescapable that these agreements represent a burden upon the taxpayers of the United States—and very likely a substantial burden.

To these already substantial costs must be added the value of the canal assets themselves.

These facilities, now owned by the United States, which would be transferred to Panama, include military bases, airfields, port facilities, marine fuel storage facilities, ship repair facilities, and public service improvements such as roads and services.

According to figures submitted by the Panama Canal Company these facilities now have a book value of nearly $1 billion and a replacement value of $9.8 billion.

Clearly, these treaties are expensive and will continue to be a burden in the years ahead.

One final objection which treaty opponents have put forward is that the proposed treaties were hastily drafted and are ambiguous and imprecise.

We have seen clear evidence that Panamanian officials have taken a different interpretation from that of the Carter administration on several important parts of the two treaties.

The differences were so glaring, in fact, Omar Torrijos returned to Washington where he and President Carter issued an unsigned clarifying statement intended to put to rest any misunderstanding.

This unsigned statement has now been made a part of the Neutrality Treaty by Senate action but still confusion remains.

There is documented evidence that Panamanian leaders continue to interpret the treaties and the subsequent Carter-Torrijos understanding differently than their American counterparts.

In a speech before the Senate on March 6, the distinguished Senator from Michigan (Mr. Griffin) demonstrated clearly the continuing differences in interpretation between Panamanian officials and the Carter administration on important defense matters.

The Carter administration is telling the American people that the United States will have the unfettered right to defend the canal against any threat even after the year 2000.

However, as Senator Griffin has amply demonstrated, Panamanian spokesmen continue to assert that the United States can defend the canal after the year 2000 only if requested to do so by Panama or when such action is agreed to by Panama.

Clearly, conflicting interpretations still exist on this and other important parts of the treaties.

I believe it would be ill-advised for the United States to agree to treaties which are so ambiguous.

One purpose of the new treaties is to create more friendly relations between the United States and Panama but with the ambiguity of the treaties it seems to this Senator that the treaties could very well have a reverse effect, that with the ambiguities which exist there could be continuing conflict as to just what various sections of the various treaties actually mean.

If the Republic of Panama is not now friendly to the United States, it certainly should be. As I mentioned earlier, that fine little country of 1.7 million persons has received more foreign aid per capita than any other nation in the world. The United States has supplied foreign aid over a long period of years to more than 100 different countries, but Panama has received from the American taxpayers in foreign aid more dollars on a per capita basis than any other country in the world.

So I say that the United States has been fair and has been tremendously helpful to Panama through the years. The Panama Canal has been good for the United States, it has been good for the world, and it has been good for Panama. And because of American presence in Panama and because of the way that the United States has handled the Panama Canal operations over a long period of time, through two World Wars, through the Korean war, and through the Vietnam war, kept the canal operating during all of that time, Panama has benefited tremendously from all of that,

and as a result Panama has the highest per capita income of any Central American nation and the fourth highest of all of the 18 Latin American countries.

In summary, I believe that the major objections of treaty opponents have well stood the test of extended Senate debate:

The canal has been proven to be militarily and economically important to the United States.

Logic dictates that the canal is less vulnerable with U.S. military forces present than without them.

The treaties will require the appropriation of tax moneys and could, in fact, require additional appropriations in future years if the canal operation were to run a deficit.

Lastly, the treaties continue to be interpreted differently in Panama than they are interpreted by the United States.

I believe that these objections are more than sufficient to warrant a vote against these treaties.

I do not oppose, Mr. President, any change in the existing treaty with Panama. I do not oppose any change in the treaty of 1903. I am willing to recognize that a major revision in that treaty relationship could serve the best interests of both countries.

But I am not convinced that the treaties now before the Senate for ratification meets that criteria. Panama is to receive great benefit from the treaties. The United States, on the other hand, is on the giving end of every aspect of these treaties. We are giving away property, we are giving away bases, we are giving away rights, that we have had through the years, and for that we get a promise that Panama will keep the canal open.

These treaties have serious flaws, and I believe that they are so serious as to make the treaties totally unacceptable.

The pending treaty should be defeated and then, if President Carter wishes, new treaties could be negotiated, taking into consideration the justified concerns of the American people.

Mr. President, I have a table citing cost estimates to the American taxpayer resulting from the proposed Panama Canal treaties.

I ask unamimous consent that this table be printed in the Record.

[There being no ojection, the table was ordered to be printed in the Record, as follows:]

Costs to the American Taxpayer and Consumer Resulting From Proposed Panama Canal Treaties

Certain costs:	
Replacement cost of facilities	$9,800M
Military relocation costs	43M
Early retirement costs for canal employees	165M
Foregone interest payments to U.S. Treasury	440M
	10,448M
Potential costs:	
Contingent surplus payments to Panama	220M
Additional foreign aid	345M

Canal operating deficits	[1] 1,160M
Consumer costs resulting from toll increases	[2] 1,200M
	2,925M
Total of certain and potential costs	13,373M

[1] Senate Armed Services Committee estimate of potential deficit based on a cumulative toll increase of 75 percent (estimated to produce maximum revenue).
[2] Senate Armed Services Committee estimate of potential increased cost of treaties to be borne by U.S. consumers.

Mr. Sarbanes addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES.Mr. President, I say to the very able Senator from Virginia that I have listened to his very thoughtful statement. There is not sufficient time now before the scheduled vote to respond to each of his points so I shall simply make two comments.

One is to say to the very able Senator from Virginia that, while we are on different sides of the issue, I do very much respect the thoughtfulness with which he puts forward his position and his concerns. Secondly, he made the point that logic dictates that we are in a better position to protect the canal with our troops being present than without them. Of course, our troops will be present until the end of the century under the treaties before us.

Furthermore, I think another important consideration in judging our position is whether we will be operating in a hostile environment or a friendly environment. We ought never to lose sight of the fact that the nature of our relationship with the Republic of Panama and with the people of Panama is very important to our ability to use the canal in a peaceful and constructive way. And if we can arrive at treaty arrangements which are satisfactory to both parties, protect our interests, and develop a relationship of mutual respect and friendship between the two countries, I submit that this will be the most constructive and the most positive way to insure our continued use of this canal, which is fundamentally what we want. The canal does not have much value if you cannot use it.

The value of the canal is in its use, and if we can insure and maximize our opportunity to use it under circumstances in which we have a friendly environment and a positive relationship, we should seize that opportunity. it is my strong view that this is what these treaties provide.

But I do want to say I respect the thoughtfulness with which the Senator advances the arguments on the other side.

The PRESIDING OFFICER. The hour of 1:50 having arrived, under the previous order, the Senator from Maryland is recognized to offer a motion to table the pending amendment.

Mr. SARBANES. Mr. President, I move to table the pending amendment offered by the Senator from North Carolina (Mr. Helms).

The PRESIDING OFFICER. Under the previous order, the yeas and nays having been ordered, the question is on agreeing to the motion of the Senator from Maryland to lay on the table the amendment of the Senator from North Carolina. The clerk will call the roll.

[The assistant legislative clerk called the roll.]

[Mr. Sasser assumed the chair.]

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Arkansas (Mr. Bumpers), the Senator from Iowa (Mr. Clark), the Senator from Alaska (Mr. Gravel), the Senator from Montana (Mr. Paul G. Hatfield), and the Senator from Washington (Mr. Magnuson) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. Clark) and the Senator from Washington (Mr. Magnuson) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Massachusetts (Mr. Brooke), the Senator from Kansas (Mr. Dole), the Senator from Utah (Mr. Hatch), the Senator from California (Mr. Hayakawa), the Senator from Kansas (Mr. Pearson), and the Senator from Connecticut (Mr. Weicker) are necessarily absent.

I further announce that, if present and voting, the Senator from Utah (Mr. Hatch) would vote "nay."

[The result was announced—yeas 54, nays 33, as follows:]

[Rollcall Vote No. 81 Ex.]

YEAS—54

Anderson	Haskell	Moynihan
Bayh	Hatfield, Mark O.	Muskie
Bellmon	Hathaway	Nelson
Bentsen	Heinz	Nunn
Biden	Hollings	Pell
Byrd, Robert C.	Huddleston	Percy
Case	Humphrey	Proxmire
Chafee	Inouye	Ribicoff
Chiles	Jackson	Riegle
Church	Javits	Sarbanes
Cranston	Kennedy	Sasser
Culver	Leahy	Sparkman
Danforth	Long	Stafford
Durkin	Mathias	Stevenson
Eagleton	Matsunaga	Stone
Ford	McGovern	Talmadge
Glenn	McIntyre	Wallop
Hart	Metzenbaum	Williams

NAYS—33

Allen	Griffin	Randolph
Bartlett	Hansen	Roth
Burdick	Helms	Schmitt
Byrd, Harry F., Jr.	Hodges	Schweiker
Cannon	Johnston	Scott
Curtis	Laxalt	Stennis
DeConcini	Lugar	Stevens
Domenici	McClure	Thurmond
Eastland	Melcher	Tower
Garn	Morgan	Young
Goldwater	Packwood	Zorinsky

NOT VOTING—13

Abourezk	Dole	Magnuson
Baker	Gravel	Pearson
Brooke	Hatch	Weicker
Bumpers	Hatfield, Paul G.	
Clark	Hayakawa	

[So the motion to lay on the table was agreed to.]

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. LEAHY. Mr. President, I move to lay that motion on the table.

[The motion to lay on the table was agreed to.]

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the Panama Canal Treaty.

Mr. ROBERT C. BYRD. Mr. President, I hope that the respective cloakrooms will call Senators to tell them that if no amendments are called up in the relatively immediate future, the Chair will be asked to proceed on to article III.

How much time have we spent in this present quorum call?

The PRESIDING OFFICER. Fifteen minutes.

Mr. ROBERT C. BYRD. Fifteen minutes on a quorum call. I think we have been in a state of absence of a quorum for longer, though, if I recall, so I hope that Senators will call up their amendments in view of the fact that we will vote on the treaty on the 18th and we will go out as the Committee of the Whole and go on to the Resolution of Ratification on the Friday preceding that Tuesday. Senators will want to have ample time to call up their amendments to all of the articles, and for the protection of the Senators who might be caught at the last minute desiring to call up amendments and no time remaining for debate, I hope that Senators who do have amendments at this point can come to the floor and call them up so as to make it equitable, fair, and just on all Senators.

The PRESIDING OFFICER. The Chair is advised that there have been two 15-minute quorum calls.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, I suggest the absence of a quorum hoping that the cloakrooms will help us to get a Senator on the floor with an amendment to article II if there be such an amendment and if not, the Chair, I presume in due time, will proceed to article III.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

[The second assistant legislative clerk proceeded to call the roll.]

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for a quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ARTICLE III

CANAL OPERATION AND MANAGEMENT

Mr. ROBERT C. BYRD. Mr. President, may we proceed to article III and have the clerk state it?

The PRESIDING OFFICER. The clerk will state article III.

[The assistant legislative clerk proceeded to read article III.]

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that further reading of the article be dispensed with so that Senators may proceed to call up amendments thereto.

The PRESIDING OFFICER. Without objection, it is so ordered. Article III is as follows:

ARTICLE III

CANAL OPERATION AND MANAGEMENT

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

(a) Use for the aforementioned purposes, without cost except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;

(d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) Regulate relations with employees of the United States Government;

(f) Provide supporting services to facilitate the performance of its responsibilities under this Article;

(g) Issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and

(h) Exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove the Panamanian national from membership on the Board, the United States of America shall agree to such a request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama

shall propose another Panamanian national for appointment to such position by the United States of America.

4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth in the Annex. Also set forth in the Annex are procedures for discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.

5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operating areas and in housing areas set forth in the Agreement in Implementation of Article III of this Treaty and occupied by both United States and Panamanian citizen employees of the Panama Canal Commission: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars ($10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustments of the annual payment should be made because of inflation and other relevant factors affecting, the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal service, courts and licensing, in accordance with this Treaty and related agreements.

7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at birth, management levels of the Panama Canal Commission, as provided for in paragraph 3 of this Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid Commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.

9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to this Article, and the rights and legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in Implementation of this Article, signed this date.

10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

The PRESIDING OFFICER. The Senator from Alabama.

UP AMENDMENT NO. 18

Mr. ALLEN. I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

[The assistant legislative clerk read as follows:]

The Senator from Alabama (Mr. ALLEN) proposes an unprinted amendment numbered 18:

Amend article III paragraph 3(a) by adding at the end thereof the following sentence "All of such members shall be confirmed by the United States Senate before entering upon the performance of their duties as such member."

Mr. ALLEN. Mr. President, I have been absent from the Chamber for the last 45 or 50 minutes. I had been asked to address a large group of young people from all over the country. I might state that I found them somewhat more receptive to my views with respect to these treaties than have been the majority of the Members of the U.S. Senate. They looked with considerable more favor on the amendments that I have been offering than have the Members of the Senate who have, with great regularity, been voting against my amendments and amendments offered by other Senators, irrespective of their merits.

I would have thought that there being a number of amendments at the desk, other Senators would have availed themselves of that opportunity of calling up their amendments to be acted upon here in the Senate.

[Mr. Huddleston assumed the chair.]

Mr. ALLEN. Be that as it may, the leadership has consistently insisted that there treaties be rubberstamped by the Senate. They have called upon the big majority of the Senators they have here in the Senate to vote down, without exception, the amendments offered by Senators who wished to strengthen there treaties or in the alternative to defeat them and, in doing so, Mr. President I feel that the leadership and the majority of the Senate, who are following the leadership, are causing the Senate go abdicate its great constitutional role of advising the President with respect to treaties that are submitted to the Senate for advice and consent or in the alternative advice and nonassent.

In that regard, Mr. President, I believe we are making a grave mistake in failing to shape these treaties to provide for the strongest and best possible defense by the United States of the canal and the Canal Zone; that we are refusing to give adequate protection to the American taxpayer, and we are content to leave the taxpayer in the unenviable position not only of giving the canal away but to pay hundreds of millions of dollars to the Panamanians for taking the canal off our hands.

There omissions or defects or shortcomings of the treaties could be—not just as to the treaty already approved—eliminated or greatly improved. But does the leadership advise the Members of the Senate to vote their convictions, to pay little or no heed to what they say are the views of the Panamanians with respect to amendments, and be interested only in making better treaties of these treaties providing for a more adequate defense of the canal after the year 2000, to protect the American taxpayer?

These treaties, it is said, have been under negotiations for almost 13 years. Very little headway was made until the last 6 months, I believe, of the treaty negotiation when Mr. Linowitz was added as a negotiator, and I believe, under some obscure or possible little-used provision, he did not have to have Senate confirmation. He could have a 6-month appointment and avoid the requirement of Senate confirmation.

Well, the report is, Mr. President, that things moved very rapidly in the last few days of that 6-month period of Mr. Linowitz's tenure

in office, and they threw together a treaty that was so full of defects and omissions and lack of safeguards for the American people, so ambiguous, that both leaders, the majority leader and the minority leader, said as the Neutrality Treaty or the defense treaty, starting in effect with the year 2000, that it could not be passed in the Senate because it did not provide adequate defense rights to the United States for the defense of the canal after the year 2000.

So they hit on the idea of taking this memorandum entered into between the President and the dictator that gave their construction of what the defense rights of the United States were.

They did not bother to sign the agreement, and when Mr. Torrijos went back to Panama he said that this did not give the United States any rights. It just gave the United States a duty to defend the Canal when and if he called on us to do so. That was greatly different from the interpretation we placed on that. Notwithstanding that, the leadership amendment merely lifted this memorandum up, which is not a new provision, new words, it merely is a construction of the words that were already in the treaty.

The memorandum became the leadership amendment, and it fell far short of providing adequate defense of the canal. When we offered amendments to strengthen our defense rights, they were turned down, and the highest vote that those who offered such amendments were able to receive was 42 votes, on an amendment which I offered that would have forbidden the Panamanian Government to call into Panama troops from foreign nations who might possibly confront our own troops there. That provision was especially needed for the next 22 years, since, under the Defense Treaty, Panama is not allowed to bring in any troops starting with the year 2000. Why would they need foreign troops now in Panama, other than U.S. troops, when the United States is there to defend the canal? Why would they need the right to bring in more troops from foreign countries into Panama, when they will not have that right at all when they will be defending the canal on their own, starting in the year 2000?

All these efforts to perfect these treaties have failed, and I am wondering when we are going to reach the point—I guess on the 18th, or the 13th, I guess, is the last day we can offer amendments to the treaty; the rest of the time will be on the resolution of ratification and possible reservations thereto—I am wondering when those of us who are going to continue to try to improve the treaties are going to get the message that they are not going to allow any amendments, no matter how good.

The distinguished senior manager of the bill (Mr. Church) was very frank in his attitude that they are not going to accept any amendments. The distinguished majority leader (Mr. Robert C. Byrd) said on television a couple of weeks ago that he was going to keep an open mind on amendments; but thus far his mind has not opened up far enough to allow the admission of even one amendment, no matter how good it was or is. He even voted against—as did a number of Senators who, in 1975, cosponsored a resolution saying we would not give up the canal and saying that if any such treaty was presented to the Senate before it could become effective, Congress would have to approve the disposition of our property.

That was completely ignored in the vote; eight Senators who voted for the Neutrality Treaty had said, by joining in this resolution, that they would not support a Panama Canal Treaty, and then proceeded to do it; and then as to the provision for congressional action, those same eight Senators who voted for the treaty were on this resolution that provided for a congressional act before the treaty could go into effect. All that was disregarded.

I do not quarrel with a Senator who changes his mind on an issue; but to change your mind on what the Constitution says, and what the meaning of a constitutional provision is? There seems very little reason to change your view on a constitutional issue; but that is what we are facing.

Coming now, Mr. President, to this specific amendment: I must say it seems quite logical to me, and quite necessary in the proper operation of the canal during the 22-year interim period, to provide something about the approval of these members of the Panama Canal Commission by the U.S. Senate. Right now, the Panama Canal is being operated by what is called the Panama Canal Company, and I am going to give the names of the people who operate the Panama Canal Company. Everything the Panama Canal Company has is going to be transferred over to the Panama Canal Commission, which will operate the canal for the next 22 years—operate it under the policy, however, of not hiring Americans to work on the canal, but under a policy requiring a rapid reduction of the number of Americans who are now working on the canal—operating it not for the benefit of the United States, but for the benefit of Panama, in that Panama is going to receive her approximately $100 million and the United States a great big fat zero: Not even interest on the $319 million that is still owed to the Treasury on the original construction cost of the canal; we are not even going to be getting any interest on that.

So even though, as I see it, they are mandated during the 22 years to put into effect an anti-American employment policy—think of that. Talk about how we humiliated Panama back in 1903. Talk about humiliation: This American-Panama Canal Commission is mandated to reduce the number of American employees of the canal—and there are about 3,000 of them—to show the gate to 20 percent of them, about 670, and they are mandated to employ no more from now on unless the ones that they employ have some special skill that is not available in Panama. That might be four or five or six jobs, because they say the Panamanians can operate it right now. I guess there might not be any that would lack special skills. So we cannot employ any Americans, and if this treaty is adopted, of those who are already employed, 20 percent have to go in 5 years.

So whom are we writing this treaty for? Where were our negotiators when this treaty was written? Were they in the next room? It does not look like they were at the negotiating table, to allow a provision like this to come into the treaty. Where were the labor unions that were supposed to represent the best interests of those employees down there? I understand all of them are organized; where are the labor unions, in sticking up for their members?

Where is the Senate leadership? They are rejecting these amendments; that is where they are. Where is the administration? Why, they are rejecting these amendments; that is where they are.

Suppose the reverse of this situation had been true. Suppose we had said, "Well, for the next 22 years, since we are not going to deliver the canal to you outright for 22 years, we are just going to operate it for your benefit, we won't even siphon anything off, everything goes to you, and we guarantee you against there being any debt against the canal when you take over"—if we had said to the Panamanian negotiators, "OK, you are going to get the canal in 22 years if the Senate approves this treaty, and they do not require the House to act on the issue; you are going to get it in 22 years, but in the meantime the United States is going to operate the canal, and these 80 percent of the employees that are Panamanian are going to have to go, because America is going to operate the canal for the next 22 years. The Panamanians are going to have to be phased out."

That would not have sounded too unreasonable to me, if it said that we have the operation, control, and ownership of the canal for the next 22 years. Why would they not want to put U.S. citizens into the jobs? But we do not do that; we do just the opposite of that.

We say:

> Yes, we are going to turn the canal over to you in 22 years, but in the meantime we are going to turn it over to you during this 22 years years, because you already have 80 percent of the employees. We are going to fix it where, in pretty rapid fashion, you are going to get it all. And it will not take 22 years to do it. In the first place, we are going to freeze employment against the United States citizens. There will be no more of them. Put up a sign that Americans need not apply, that there are no jobs for Americans during this 22 years, and, thereafter also, of course.

So we freeze American citizens out of their jobs. We bar their sons from obtaining employment. As there is attrition among employees, they will be replaced by Panamanians. That is during these 22 years that we are supposed to control, operate, and own the canal. They are strange doings, Mr. President, strange negotiations.

So we are going to turn the canal over to an American commission. We are going to tell the Panama Canal Company, "All right, transfer all the assets to the Panama Canal Commission."

Who are we going to name to the Commission? It is an American Commission, so who will they name to the Commission?

In the first place, they have an administrator of the canal and a deputy or assistant administrator. Until the year 1990 the administrator will be an American and the deputy administrator will be a Panamanian. But in 1990 the roles reverse and Panama will get the administrator and we will get the deputy administrator. It will all be controlled by this Commission.

Let us look at it. Who is on the Commission? Well, it does not say. It does not provide any qualifications for the members. It does not say they have to be qualified electors, men or women of good character, ability, or loyalty. They are just named. Nine of them are named. Five must be nationals of the United States: four must be nationals of Panama.

How do we go about choosing the Panamanian four? Well, they are chosen from a list of four submitted by Panama. There is no requirement for lack of criminal record. There is no requirement for honesty. There is no requirement of integrity. There is no requirement for ability. Just name them. Is there any control over whether they are qualified to serve in this important capacity? Not a bit. Not a bit.

It appears they could get people from Panama under indictment for drug trafficking, and, I guess, if they are inmates of prisons. There is nothing said. They just have to be Panamanian nationals, that is all. The United States has absolutely no voice in who is chosen or the manner of people who are chosen.

There will be five Americans and four Panamanians on a U.S. commission.

Mr. President, the Senate of the United States has to approve every commission that is issued to an officer in the armed services of the United States. If a man is promoted from second lieutenant to first lieutenant, he has to be approved by the Senate of the United States.

Not one word is said about the Senate of the United States approving these nine commissioners.

What could be wrong with requiring just a little bit of check on these nine commissioners, whether they be Americans or whether they be Panamanians? Why should the leadership, why should the administration, why should the managers of this treaty, object to Senate confirmation of these nine commissioners? That is all this amendment provides. But I predict that the leadership is going to turn thumbs down on it and say, "No, we cannot take this amendment. It is too good an amendment. We cannot take it. It will improve this treaty. We want to guard against that by all means."

Mr. President, in the past I have seen the Senate turn down constructive amendments.

We do see an interesting situation here where constructive amendments by any standard you might choose to use, Mr. President, are rejected by the leadership. So what is the system now? What is the system now on approving those who go to make up the Panama Canal Company, which will be succeeded by the Panama Canal Commission?

They have an unusual arrangement. I think it might be interesting to Members of the Senate, who I am sure have not bothered to check into this, or very few have, if any. Who makes up the Board of the Panama Canal Company? This might be interesting for the record. Are they approved by the U.S. Senate?

Mr. President, I ask unanimous consent that when I have completed reading from this list of the members of the Board it be printed in full in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ALLEN. The members of the Panama Canal Company do not happen to be people who are outside the public service. They already hold jobs with the Government and this is an added duty that is placed on them. Nothing is said about the qualifications of these members of the to-be-formed commission. Nothing is said about that at all. I assume that they could make sure that the

interests of the large financial institutions that have a heavy stake in this treaty because of the $100 million a year coming from Panama, which would just about service the external debt of Panama—it is about $1.5 billion; and $100 million a year would just about service that debt. I think if this amendment fails, I shall offer an amendment saying that no employee or former employee of any of the big international banks can be members of this commission. I think that would be a constructive amendment.

Let us see who is on there now:

Clifford L. Alexander, Chairman, Secretary of the Army. He has to be confirmed by the U.S. Senate;

Lucy Wilson Benson, Under Secretary of State for Security Assistance. She has to be confirmed by the U.S. Senate;

Richard N. Cooper, Undersecretary of State for Economic Affairs. He has to be confirmed by the U.S. Senate;

Charles R. Ford, Deputy Assistant Secretary of the Army for Civil Works. He is acting. He has not yet been confirmed, but his position, when he becomes actual Secretary, does require confirmation. As of today, he has not been confirmed, but his position, that gives him possible ex-officio rights—I am not sure—does require confirmation by the Senate;

David E. McGiffert, Assistant Secretary of Defense for International Security Affairs. He has to be approved by the U.S. Senate;

Ersa H. Poston, Commissioner of the Civil Service Commission, has to be approved by the U.S. Senate;

Admiral Owen W. Siler, Commandant, U.S. Coast Guard, has to be approved by the U.S. Senate;

Anthony M. Solomon, Undersecretary of the Treasury for Monetary Affairs. He has to be approved by the U.S. Senate;

Terence Todman, Assistant Secretary of State for Inter-American Affairs. He has to be approved by the U.S. Senate;

Harold R. Parfitt, Governor of the Canal Zone (ex-officio). He has to be approved by the U.S. Senate.

So, Mr. President, this treaty radically changes the method of choice of these members of the Commission: four Panamanians without any security check, without any character check, without any loyalty check. They are just named from a list of four furnished by the Government of Panama. I trust the dictator's brother will not be on that list. I hope we could have assurance from the leadership that that would not take place.

What does the amendment do? The amendment merely provides that these members of the Commission shall be approved by the U.S. Senate. If every second lieutenant moving up to first lieutenant has to be approved by the Senate, why should not these important positions have to be approved by the Senate? It is a great big omission.

Generally, Mr. President, when you have a statutory position created, you have in that statute some qualification for the person who is to qualify for that job. Even a Senator has to have a certain age requirement and have been a citizen of the United States for a certain length of time, and be a resident of the State from which he is elected. There is not one single requirement of these Commissioners; not one.

Oh, they say, we are going to provide legislation covering that; just give us a few weeks and that will be straightened out. The time to straighten it out is when you have the treaty under consideration, because you cannot, by legislation act, vary the provisions of a treaty. A treaty is something that is entered into between two or more entities or persons. One party to a treaty cannot amend it after it has been entered into. Our only chance to amend it is right now, before the resolution of ratification is passed in the Senate.

If we want to beef up this Commission, we ought to provide some sort of qualification for these people. Would you put on the Commission people who are not qualified to serve, know nothing about the canal, come down from the outer parts of Panama, maybe never having seen the Panama Canal? That does not seem to me to be the right way to handle this.

Mr. President, that is all this amendment would do, put into motion a similar system to what exists at the present time. Every one of the members of the Panama Canal Company Board of Directors occupies a position that requires confirmation by the Senate, so why should this successor company be any less qualified or any less checked upon?

Mr. SARBANES. Will the Senator yield on that?

Mr. ALLEN. I am about to finish my remarks. Then I shall be glad to yield the floor.

We know, Mr. President, that confirmation by the Senate is not any guarantee that unqualified people will not be named. We know that. That is not peculiar to this administration or the last administration. I dare say every administration in our history has appointed unqualified people to positions, even though Senate confirmation is required. Lots of times, Senate confirmation is a pro forma affair, I note to my chagrin, and doubtless, due to my own participation on occasion.

But that does not provide a sure guarantee that we are going to get qualified people on this Commission. But it would allow us to weed out people without character, people with criminal records, people with no patriotism, people who may have led riots.

We have no control whatsoever. Panama nominates them. The United States names them. That is the procedure. There is no check on them, no security check. They could be some of the very ones they say are hovering around down there ready to blow up the canal. We do not know.

Let us be sensible about this and put in some little check, not much, but a little bit of check. It would allow the Senate to run a security check on a nominee. I say that with respect to American appointees as well as Panamanian designees.

Mr. President, I do not feel this is an unreasonable amendment. I am hoping the leadership will accept the amendment.

I might say, Mr. President, as to this innocuous amendment, an amendment that though innocuous has a constructive end and a constructive goal, how could it be objected to by the administration? Do they want to leave this big gap in the treaty? Do they want to fill that Commission with unqualified people?

This does not say who the American members are going to be appointed by.

This so-called American committee is going to have four Panamanians on it, five Americans, none of them confirmed, mandated to an anti-American employment policy.

Some American Commission, I say, Mr. President. And this is the Commission to which the treaty entrusts the operation, management, and control of the vital and important Panama Canal.

We would not turn the management of a Main Street grocery store over to nine people without checking on them a little bit and here we turn a $10 billion operation—I use that figure because it has been stated that that is the replacement cost of the Panama Canal and its facilities—we turn a $10 billion operation over to people who may have no qualifications whatsoever for their job.

Especially is that true of the four Panamanians that we know nothing about. Those names will be furnished us by dictator Torrijos, I assume.

I believe this amendment is going to be a test of whether the administration is going to stonewall against all amendments to this treaty, just as they have stonewalled against all amendments to the other treaty.

I might say, Mr. President, that on the other treaty they exhibited such arguments as, "Oh, well, we have got to respect Panama's sovereignty. We can't do anything to interfere with their dignity. We can't insult these people down there."

But this, Mr. President, is where this treaty provides for giving property of a valuation of $10 billion to Panama and then providing some few measures, some few conditions, some limitations upon the liability of the American taxpayer, upon the Panamanians for accepting this gift.

So how could we possibly be said to be impugning their dignity or interfering and casting aspersions upon their sovereignty? How can that be said? How can that argument be made against this constructive amendment?

Mr. President, I am hopeful that the amendment will be agreed to. I would hope that the leadership, the managers of the treaty, would accept the amendment or give some valid reason why they would object to these people being approved by the U.S. Senate.

That is the issue, Mr. President. I yield the floor.

EXHIBIT 1.—BOARD OF PANAMA CANAL COMPANY

Clifford L. Alexander (Chairman), Secretary of Army.
Lucy Wilson Benson, Undersecretary of State for Security Assistance, Science and Technology.
Richard N. Cooper, Undersecretary of State for Economic Affairs.
Charles R. Ford, Deputy Assistant Secretary of the Army for Civil Works (Acting—not yet confirmed as of 4/6/78).
David E. McGiffert, Assistant Secretary of Defense for International Security Affairs.
Ersa H. Poston, Commissioner of Civil Service Commission.
Adm. Owen W. Siler, Commandant, U.S. Coast Guard.
Anthony M. Solomon, Undersecretary of the Treasury for Monetary Affairs.
Terence Todman, Assistant Secretary of State for Inter-American Affairs.
Harold R. Parfitt, Governor of Canal Zone (ex officio).

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. MCGOVERN. Mr. President, as I have listened to the Senator from Alabama here this afternoon, it has occurred to me that of all the amendments that have been offered to this treaty over the last

nearly 2½ months of debate that we have been wrestling around with this subject, if there is any one of them that may be the most michievous and frivolous, this ought to get the prize.

If the Senator from Alabama can convince the Senate that a nine-member board that was designed to permit each country to have some voice in the supervision of the Panama Canal Commission should be modified in such a way that the U.S. Senate can reject the appointments that are submitted to that board by Panama, I think we would probably be successful the next time Alabama plays Notre Dame in convincing Notre Dame that they ought to let the Alabama coach decide which Notre Dame players are permitted on the field. It makes almost as much sense.

The whole purpose of what our negotiators have arranged, in terms of this 5-to-4 board, which gives the United States a clear majority automatically. We can outvote the four Panamanians on any issue. I assume we would have enough intelligence to pick five members of that Board who would not be cajoled into something against the interests of this country by the kind of people the Senator from Alabama is talking about.

He is going on the presumption that the Government of Panama may have some vested interest in putting a criminal on that Board to represent their country or someone who wants to sabotage the canal.

Why that would be the case is completely beyond my comprehension since Panama, from here on out, if we ratify these treaties, will have an even greater interest than they have in the past in the successful operation of that canal.

But why anyone supposes that the five American members on that Board, who have, clearly, a majority, would permit themselves to be bamboozled, intimidated, and overruled by the four Panamanians, should this unlikely occurrence take place and we get unqualified people named in Panama, is beyond my comprehension.

Of course, the whole purpose in giving Panama the opportunity to recommend four members to the board is so that we will have some input as to their thinking on issues that affect the canal.

The whole purpose of this treaty, I assume, is to try to bring about a better atmosphere in Panama among the people of that country as to the operation of this canal, which cuts across the center of their country, some 10 miles in width.

As a matter of fact, under the present supervision of the canal—and it is supervised by the Canal Company—we also have a board named by the President of the United States, presumably the same as the board that is going to be created under the treaty. The appointment of none of those people is confirmed by the Senate. So far as I know, there never has been any consideration that those members have to be approved by the Senate of the United States.

So one has to ask why we are changing an arrangement that has worked pretty well with regard to the handling of the board; why it is now suddenly necessary to pass judgment in the Senate on these nine people who are going to serve on the board.

I say this to my colleagues in the Senate: I do not see how this amendment can be construed as anything other than an insult to the national independence and the sovereignty of the people of Panama. Why do we think that it enhances the stature of the

United States to treat other people in the condescending way that this amendment has in mind?

Panama is not a very big country, but it is a proud country. It is proud of its sovereignty and its independence. I do not see how any reasonable person could seriously suggest that before they can be represented on this joint board, in which they already have given us the majority vote on a 5-to-4 basis, they should surrender their own right to decide which of their citizens should occupy their four designated places on this board.

Mr. President, there is another real danger that I see in this amendment. It is one that has concerned me a great deal from the beginning of this debate on February 8. It is this: If we were to adopt this amendment offered by the distinguished Senator from Alabama, we would create the opportunity here for at least four more filibusters on this Panama Canal issue, which already has been almost beaten to death. Here we are, having started the debate in the Senate on February 8, still debating it on into April, with the final vote not slated before the 18th of April. We have spent almost 2½ months on this one issue.

I am sure the impression must go out to the people of this country, as they listen to this debate day after day, week after week, month after month, that this is the most important issue before the United States in the year 1978. So far as I am concerned, if I were asked to compile a list of the 10 most important problems facing the American people today, I certainly would not put the Panama Canal on that list.

Nothing we do here in terms of the transfer of this canal is going to take place before the year 2000, in any event. Even in the year 1978, this canal is too small to handle our big ships. We cannot send our big oil tankers through there. We cannot send our major military vessels through the canal. As a matter of fact, only about 4 percent or 5 percent of all American shipping ever will go through the Panama Canal; and doubtless by the year 2000, it will be even more obsolete for a major part of our shipping.

Beyond all that, there is nothing in this treaty that denies us access to that canal for whatever time we want to use it. Quite to the contrary, we have guaranteed access by treaty—not only to the use of that canal from here on out, but also, by the actions of the U.S. Senate, we now have made clear that we have the right to use our military forces, if necessary, to see that the canal remains open permanently.

So I think that during the last 2½ months we have blown this issue up out of all proportion to its real significance to the American people. One of the costs of this prolonged debate, and the reason why I am going into this, is that I think the Senator is setting the stage here for four more filibusters, when we have to pass judgment on the moral character of four Panamanians who will be suggested for service on this board.

One of the reasons why I go into this is that I think we have paid an enormous cost in backing up all kinds of important problems on which we have taken no action in the Senate this year. We have taken no action to speak of on the problems of unemployment that face this country. Once in a while there is a passing reference to the fact that there are 7 million, 8 million, or 9 million Americans

who cannot find a job. But we really do not do anything about it. We talk about it as a problem, but then we keep debating the Panama Canal.

We talk about the rising problem of inflation that worries every family in this country, and we wring our hands about the fact that the President has not done better in dealing with the problems of inflation, but we do not do anything. We go on talking about the Panama Canal, as though that is the most crucial problem facing the county.

The President told us months ago—more than a year ago—that we had an energy crisis in this country that was so serious that, in order to address it properly, it would take a commitment that is the moral equivalent of war; but we have not done anything about energy. We act as though the question of who is going to serve on the Panama Canal Board is a lot more important than the question of whether our energy supply is going to be dealt with.

I wonder what our fellow citizens out across the country think about our scale of values and about our judgment and our sense of priorities when, day after day, this debate drones on about the future of that ditch across the center of Panama, and meanwhile nothing is done on energy, nothing is done about jobs, nothing is done about inflation.

Fifteen years ago, we had a report presented to this country on the crisis in the cities, in which we were told that the major cities in this country were deteriorating to the point where they represented a threat to the security of our entire society. Very little progress has been made in addressing that problem. I hear very little discussion on the floor of the Senate about the crisis of the cities. There may be a certain amount of hand-wringing about it, but nothing is done to deal with the problem.

Over the last few months, the Capitol has been overrun by concerned farmers. The only reason they have gotten anywhere is that they have not been sidetracked by the Panama Canal debate. They have stayed here and gone to our offices. Many of them have told me that they think the problems of the American farmer are just as important as the question about who is going to have the technical, legal control of the Panama Canal in the year 2000. Many of them will say they are going to be broke before the end of 1978 if we do not do something. They cannot wait until the year 2000.

These farm people have been successful in getting the ears of Members of Congress because they have been willing to stay here and talk with us, even at a time when we are absorbed with this discussion over the Panama Canal.

I could go on with a great many other issues we have not addressed, which are backed up behind this seemingly endless discussion on the Panama Canal. Nothing is done on the question of labor reform; nothing is done on the question of tax reform. There is no real attention to the problems of the reform of our tax structure.

Near the end of the last session we hastily—and, in my judgment, ill-advisedly—increased social security taxes. Now I read that we are considering undoing that and perhaps looking at the President's proposed tax reduction bill as an offset.

In any event, all these problems are backed up behind the deliberations on the Panama Canal. Now the Senator from Alabama wants the Senate to have four more filibusters, I presume, on the moral and ethical and intellectual qualifications of the four Panamanian members on this advisory board—the nine-member board. I suggest that by the time we got through that, we probably never would get to any of these problems—inflation, jobs, energy, the cities, the farm crisis. We are going to spend the remainder of the year just talking about which Panamanian is most qualified to serve on this board.

Mr. President, in my judgment, this amendment is a frivolous and mischievous proposal. I have a high enough regard for the intelligence of the Senator from Alabama to believe that he understands that the amendment cannot possibly be considered seriously by the Senate of the United States, and it is simply one more effort in a long series of efforts to keep us preoccupied with the problems of Panama, rather than getting on to the real issues of concern to the country.

So I have no doubt that the amendment will be rejected. I hope it will be rejected.

It can only be construed as one more insult to this little country of Panama that has been abused so much already on the floor of the U.S. Senate.

Let me just say before I yield the floor that I had assumed that the principal reason for this treaty that we are now debating is to improve relationships between the United States and Panama. Otherwise, I do not see any point in the treaty. We might just as well stay with the 1903 treaty, if it were not for the fact that we are sensitive to the fact that there is great and growing opposition in Panama to having a major part of their territory legally controlled by a foreign power, and so recognizing that over the last 13 years we have laboriously and painfully negotiated a process under which by the year 2000 we can relinquish control of the canal and at long last turn it over to the country in whose territory it lies, almost 100 years after the first treaty was negotiated in 1903. I would hate to see us undo what little good will may be left in this exercise, and I am afraid we have already undone much of the good will that the treaty could have brought about in Panama by further encumbering this treaty with an insulting amendment of this kind.

Mr. President, I yield the floor.

[Mr. Allen addressed the Chair.]

The PRESIDING OFFICER. The Senator from Alabama (Mr. Allen).

Mr. ALLEN. Mr. President, I am somewhat intrigued by the remarks of the distinguished Senator from South Dakota when he said that you would think that this Panama Canal Treaty is the most important issue pending in the Senate at this time. Of course, it is the pending question. The pending question is the amendment of the Senator from Alabama. There is no other question pending at this time other than the amendment of the Senator from Alabama.

And the choice of bringing up the Panama Canal Treaty some 2 months ago, as the distinguished Senator pointed out, was not the choice of those 32 Senators who have been seeking to improve

these treaties or in the alternative to defeat them. I daresay that not one single one of those 32 Senators who voted against the Neutrality Treaty, so-called, requested the leadership to bring up these treaties, not one.

The choice was made by the leadership, and I might say the joint leadership. The choice was made by the joint leadership, but when you speak of the joint leadership, the biggest portion of that leadership, of course, is the majority leadership, and the minority leadership, more or less, goes along for the ride because the decision is made by the majority leadership. But the joint leadership and the administration evidently thought the Panama Canal treaties were the most important issue. It is the administration and the leadership that placed top priority on these treaties, not these 32 who sought to strengthen the treaties or, as I say, in the alternative, to kill them. So the choice was not made by any of those 32. We had no power. We have no control over the flow of legislation. The leadership said they wanted to bring this measure up the first or second day. The Senator from Alabama said there would be no filibuster, and there has been no filibuster.

And as to the first treaty, a reasonable time was agreed upon to vote; and as to the second treaty, a reasonable time was agreed upon in which to vote.

The distinguished Senator said we are keeping important legislation from coming up, and he mentioned the energy bill. If the Senator had been here yesterday and heard the colloquy between the Senator from Alabama and the majority leader, it was agreed that if any emergency legislation came into position to be acted upon by the Senate this matter could be laid aside to take up such matter, and the farm bill was mentioned. The distinguished Senator was talking about the farmer saying that the farmers' problems ought to be set ahead of the Panama Canal Treaty, and I agree with that. I am told an agreement has been reached, or is being reached, to bring the farm bill up to tomorrow under a time limitation.

So, the consideration of this treaty at this time was not decided upon by anybody other than the leadership and the administration.

To charge those who are seeking to strengthen these treaties with improperly bringing up a matter that ought to have been brought up later, if ever, is certainly somewhat unfair, it seems to the Senator from Alabama, because the leadership brought it up and we merely acquiesced in the decision of the leadership. No effort was made to prevent it from coming up. I assume that the matter could have been delayed in being brought up.

If any emergency issue comes before the Senate this matter can be set aside and that matter can be considered. But the energy package is not ready for consideration by the Senate as the distinguished Senator well knows. They have been tied up for 6 months or more, and there is no great sign of progress. I am persuaded to believe even if they did come out with something it would not be worth a row of pins.

It has been whittled down so there is practically nothing in it and what is there, it seems to me, is not in the best interest of our country. About all we have remaining is the tax proposal on well-

head tax on oil. So do not worry too much about that. It is not going to solve our energy problem and nobody expects it to.

The distinguished Senator was talking about four more filibusters. In the first place there has not been one filibuster and I was wondering how in the world the Senator was talking about four more filibusters with respect to the treaty. Lo and behold, he is talking about four alleged filibusters on these four Panamanian nominees.

The four Panamanian nominees under the amendment of the Senator from Alabama would have to be confirmed by the Senate, but the distinguished Senator did not say anything about the five Americans who are also going to have to be confirmed, and the Senator overlooks the fact that this is not a Panamanian commission. We are not requiring, or the amendment does not require, confirmation of Panamanians to a Panamanian commission. It requires Senate confirmation of appointments of Panamanians and Americans to an American commission.

Why, it is a great departure, Mr. President, from custom to allow foreigners to be on an American commission. Is it unreasonable to expect some little character check, some little ability check by the Senate? It would be a casual enough check, I daresay, if the past is any precedent for the present or the future. It would not be much more than a casual check. So I do not see that the Panamanians could feel insulted. If they do not want to serve, if they do not want to stand some little scrutiny by the Senate, ask Mr. Torrijos not to put the name on the list. I daresay he can find 4 Panamanians or 400 Panamanians or 4,000 Panamanians who would stand the scrutiny of the U.S. Senate.

So we are not talking about confirming Panamanians to a Panamanian commission. I assume that would be unacceptable. But how could they object as a condition precedent to going on an American commission and have the U.S. Senate take a look at their qualifications, their character, and their ability?

As I pointed out, it is not more than is done at present with the Board of Directors of the Panama Canal Company. These people, apparently in an ex officio capacity, serve on this Panama Canal Company Board. But the positions they hold that entitle them to serve on the Board are Senate confirmation positions. So what objection could they have to following precedent?

As I say, if a second lieutenant has to get the approval of the U.S. Senate, why should not the managers of a $10 billion business enterprise be confirmed by the U.S. Senate? The same rule for Americans as for Panamanians. Do not ask to serve if you do not want to. Do not ask to serve if you are not willing to have your record scrutinized by the Senate. How could that be an imposition on Panama? It could not be.

It just gets back to the original question: Is the leadership going to stonewall against all amendments as they have done for the last 2 months?

[Mr. Kennedy assumed the chair.]

Mr. ALLEN. They have not allowed a single amendment. Talk about this time that is spent, if the leadership had been willing to accept four, five, or six amendments to this treaty—even, I dare say, three amendments—we could get an early vote on the treaty.

But all they will agree to are reservations, feeling that they impose no barrier to acceptance by the Panamanians; that they do not have the weight and effect of amendments.

The DeConcini reservation was offered first as an amendment, and it was stonewalled against and defeated.

Mr. President, how do Senators who do not bother to stay on the floor, find out what amendment is pending, what the argument is? Why, they go to the managers of the treaty and they say, "What kind of vote is this? Is this an 'aye' vote or a 'no' vote?"

When they are advised as to what kind of a vote this is, they will proceed to vote.

Mr. SARBANES. Mr. President, will the Senator yield on that point?

Mr. ALLEN. Yes.

Mr. SARBANES. They also go to the Senator from Alabama, I have been privileged to observe, and are, therefore, able to obtain from both the managers of the bill and the Senator from Alabama or some of his colleagues on the opposing side their view or perspective on the particular matter that is pending before the body.

Mr. ALLEN. That may well be. Just because that is true does not change the fact that Senators are not here to listen to the debate. I notice that some 57 apparently get advice from the managers of the treaty and only about 37 get advice from the Senator from Alabama, I will say.

Mr. SARBANES. Well, the Senator from Maryland obviously does not want to draw any conclusions as to why some Members seem willing to take the advice and counsel of the managers of the bill and other Members seem willing to take the advice and counsel of the Senator from Alabama with respect to various issues.

Mr. ALLEN. Yes.

Mr. SARBANES. Hopefully their willingness to take advice runs to the merits of the advice being proffered.

Mr. ALLEN. No, I rather think not. I think it runs to the fact that they are committed to the policy of the leadership to stonewall against all amendments, to seek to force the Senate to rubberstamp these treaties. That is what is involved. So the distinguished managers of the bill do have apparent control of anywhere from 57 on up to 68 Senators who vote at their behest. That does not have bearing on the value of the amendment no matter how good it is, because it is going to be stonewalled against, based on the past experience.

I am looking forward to the time when those in the leadership who said they have an open mind on amendments will allow their minds to open up wide enough to allow the entry of a constructive amendment, and I submit that the amendment pending is a constructive amendment that merely provides for U.S. Senate confirmation of the nine members of the Panama Canal Commission, whether they be Americans or they be Panamanians. The same thing is provided for all members no matter what their nationality.

Inasmuch as they are now required to be appointed, subject to Senate confirmation——

Mr. SARBANES. Mr. President, will the Senator yield on that point? That is not correct. Now the Senator has just made the assertion that the members of the Board of the Panama Canal

Company are now required to be appointed subject to Senate confirmation.

Mr. ALLEN. I just read it off to the Senator.

Mr. SARBANES. I know the Senator read it off, and that is the point I seek to address. It so happens——

Mr. ALLEN. Wait until the Senator's turn to address that.

Mr. SARBANES. But the Senator ought not to make a bald assertion that is not supportable.

Mr. ALLEN. I will read the support, if the Senator will please allow me to continue holding the floor.

Mr. SARBANES. Mr. President, if the Senator will yield I would save him some time.

Mr. ALLEN. I am not going to yield, no, sir. I am going to answer the Senator's assertion that the members of the Panama Canal Company are not approved by the U.S. Senate.

Mr. SARBANES. Are not required to be approved. It so happens the present members all hold other offices for which they were confirmed.

Mr. ALLEN. I have stated as much and read them off.

Mr. SARBANES. For those other offices they are confirmed.

Mr. ALLEN. If the Senator will kindly allow me to finish with my statement, I will be glad to yield the floor to him. I hope he will not insist on speaking when he does not have the right to the floor.

Mr. SARBANES. I certainly would not do that, I say to the Senator.

Mr. ALLEN. Sir?

Mr. SARBANES. I certainly will not do that.

Mr. ALLEN. I am glad to hear that since the Senator does not have the floor.

I certainly made that statement in giving this list. If the Senator did not hear me I feel constrained then to read off the list, and I have stated that these apparently are—they hold these positions ex officio as a result of their appointment to other positions. I have read them off, and I am going to read it again because apparently the Senator from Maryland did not hear or did not understand what the Senator from Alabama was reading.

This is a list of the Board of the Panama Canal Company, the present operator of the canal, which is to be succeeded by the Panama Canal Commission, at which time all of these American appointees lose their positions. Let us see how many of them there are. There are 10.

They get the gate, like the Americans employed down in the Canal Zone.

These are the members of the Board of the Panama Canal Company:

Clifford L. Alexander, chairman, Secretary of the Army. The Secretary of the Army has to be confirmed by the Senate.

Lucy Wilson Benson, Under Secretary of State for Security Assistance, Science and Technology—another Senate confirmation position.

Richard N. Cooper, Under Secretary of State for Economic Affairs, a position that requires Senate confirmation.

Charles R. Ford, Deputy Assistant Secretary of the Army for Civil Works, acting, not yet confirmed.

Here is one that has not yet been confirmed, not because his position does not require confirmation, but because he has just been named as acting; his nomination has not yet been sent up to the Senate, but he is acting in that capacity. He is also on the Board of the Panama Canal Company.

I read on:

David E. McGiffert, Assistant Secretary of Defense for International Security Affairs. That is a position which requires Senate confirmation.

Ersa H. Poston, Commissioner of the Civil Service Commission. That position requires Senate confirmation.

Admiral Owen W. Siler, Commandant, U.S. Coast Guard. The position requires Senate confirmation.

Anthony M. Solomon, Under Secretary of the Treasury for Monetary Affairs, a position requiring Senate confirmation.

Terence Todman, Assistant Secretary of State for Inter-American Affairs, a position requiring Senate confirmation.

Harold R. Parfitt, Governor of the Canal Zone, ex officio, who has to be confirmed by the U.S. Senate.

So all the members of the Panama Canal Company except, one, who is just in an acting capacity, hold positions that require confirmation by the U.S. Senate. But no such requirement is made for the nine Commissioners to be named on the approval of this treaty. The only requirement is that five be Americans and four be Panamanians: No standard of ability, no standard of character, no standard of experience, no standard of anything except to be an American in five cases and a Panamanian in four cases.

Since this is an American Commission and not a Panamanian Commission, and since we are supposed to operate the canal for another 22 years, why would there be any objection to a Panamanian or an American serving on an American Commission being confirmed by the U.S. Senate? That is all this amendment would provide.

Mr. President, I yield the floor.

Mr. SARBANES. Mr. President, I think it is probably one indication of the fact that we are getting into the closing days of the debate that the able Senator from Alabama, who ordinarily, I think, seeks to sharpen and clarify issues, is in this case beclouding and obfuscating the issue.

The distinguished Senator has read a list of the present members of the Panama Canal Commission.

Mr. ALLEN. Company.

Mr. SARBANES. Company, I stand corrected. The Board of Directors of the Panama Canal Company. And he has asserted, on the basis of that reading, that members of the Board are required to be confirmed by the Senate.

Now, that is not correct. It so happens that all of the current members of the Board are Government officials who have had to be confirmed by the Senate because of their other Government positions. But the members of the Board of Directors of the Panama Canal Company do not now have to be confirmed by the Senator. Far example, at the end of fiscal year 1976, there were 12 members of the Board of Directors of the Panama Canal Company, 9 of them private citizens who passed through no Senate confirmation. Three

of the members had been confirmed by the Senate, not because they were members of the Board of Directors of the Panama Canal Company, but because of other positions which they held in the Government. One was, for instance, the Assistant Secretary of State for Inter-American Affairs, just as the current Assistant Secretary of State for Inter-American Affairs is a member of this Board. To become the Assistant Secretary of State for Inter-American Affairs requires Senate confirmation; but to be a member of the Board of Directors of the Panama Canal Company does not require Senate confirmation.

So with respect to the list which the Senator read—and, of course, even he concedes that one of the members of the Board of Directors of the Panama Canal Company has not yet had Senate confirmation for this other Government position—and the only reason he was able to say with respect to the others that they had Senate confirmation was because they had other positions in the Government that require it. Private citizens could just as easily have been appointed under the law and served as members of the Board of Directors of the Panama Canal Company without any Senate confirmation. So it is important to understand that there is no present requirement that members of the Board of Directors of the Panama Canal Company be confirmed by the U.S. Senate, and that only as recently as the 1976 fiscal year, 9 of the 12 members of the Board at that time were private citizens, with no Senate confirmation whatever.

Second, I think it is some indication that we are into the closing days of the debate, that perhaps some of the sensibilities that we ought to reflect are being overlooked. It has been charged, in the course of arguing this amendment, that Panama will appoint people to this body with criminal records, or under indictment. It was even asserted at one point that they could be in prison.

I suggest that we ought to accord to Panama and its people the same respect we would expect them to accord to us. In fact, I would suggest that the name of Great Britain or France or some large country's name should be substituted, if such a argument is to be made, to see whether one would make the same assertion in such case, or whether it is simply a case of picking on a small country.

What would we say if the assertion were being made, on the part of the Panamanians, with respect to the sort of people we would place on a commission of this sort, if they were to assert, "Well, you know, the Americans are going to pick people under indictment, people who could be in prison, or people without any moral character"? Just stop and think about that for a moment. I think the same respect that we would think they should accord to us we should accord to them.

Finally, Mr. President, this is a bad amendment because, on those matters of which we retain jurisdiction and can change by statute—and that would clearly apply to the five American members of the new Commission—we should not seek to place those matters into a treaty with another country, which would mean we could only change it through treaty change, when we can control the matter entirely by statute.

I will say to the Senator from Alabama it is my intention to take that approach toward amendments which may be offered, which

seek to take a subject matter over which we can exercise control by statute and to place it in the treaty we are making with another country. Why should we do that, if we are really concerned about maintaining the maximum amount of control in our own hands? Why should we lose our control by statute where we can do it this way next year and if, 3 or 4 years from now, we decide we want to do it some other way, we can do it in some other way; if we want to add a requirement, we can add a requirement; if we want to take away a requirement, we can take away a requirement. When we have that kind of control, why should we take that subject matter, put it into a treaty with another nation, and give them some control over a matter which is otherwise completely within our own discretion? It defies commonsense, it defies logic, and, most important of all, it runs counter to what is in our best interest.

For those reasons, amongst others, Mr. President, I oppose this amendment because I think it is a bad amendment. In other words, I do not oppose it to stonewall it. I do not oppose it, as the Senator earlier in the debate once asserted, either because it is frivolous or it goes to the heart of the matter. I think those were the two reasons he said were being brought forth. I responded then as I respond now, that, no, I oppose these amendments because they are harmful amendments. Contrary to the assertion that they are constructive amendments, they are, in fact, harmful amendments.

For that reason, this amendment ought to be rejected by the Senate.

Mr. ALLEN. Mr. President I do not know why the distinguished Senator from Maryland, whom I admire and respect so much, who has done such a great job having managed the consideration of the treaties before the Senate would have misconstrued what I said about who the Panamanians might appoint to this commission.

I stated there was no check on them. It might appear that they could appoint people who had criminal records, who were under indictment, who were not people of good character. It is to ward against that possibility, not that certainty. But if there be no possibility of that sort, then I do not see why the distinguished Senator would object to a provision that all of the members of the commission would need Senate confirmation. It imposes no additional burden on the Panamanians. There is nothing different from what is imposed upon the Americans.

The same statements could be made as to both, that they both would be confirmed by the Senate. Nothing is added. Nothing is placed on the Panamanians which is not also placed on the American members on the board.

On the matter of the confirmation of the present members of the board of the Panama Canal Company, I made that implicitly clear. I read the list of the members of the present commission, and I read the position that they had in the government service. I did not state, as the distinguished Senator seemed to imply, that it was necessary, because of their position on the Board of the Panama Canal Company, that they had to be confirmed. I did not read the list once but I read it twice, giving the exact positions of the present members of the Panama Canal Company Board. I did not state that their position on the Board required Senate confirmation, but I did state that the positions they hold, through which, ex

officio, apparently, they serve on the Board, did require Senate confirmation.

Mr. SARBANES. Will the Senator yield at that point?

Mr. ALLEN. Yes. Although I did not bother the Senator, I will be glad to yield.

Mr. SARBANES. I do want to try to clarify this particular point. It is my understanding that the only person who serves on the Board of the Panama Canal Company ex officio is the Governor. The other members that the Senator has read are not there ex officio. They were simply placed there. They happen to hold other positions requiring confirmation. Generally over the history of the Panama Canal Company, most of the members of the board of directors have been private persons who have never received Senate confirmation.

Mr. ALLEN. I thank the Senator for that amount of clarification. All I am stating is that these people occupy these positions that require confirmation by the Senate. The fact that they also hold these other positions does not make incorrect my statement that they do hold positions that require confirmation by the Senate.

I will say the fact that we have not found any amendments that are constructive enough to be accepted by the leadership certainly would indicate that the best efforts of some 30 Senators to provide constructive amendments have been in vain. I guess there is always a difference of opinion as to what is a constructive amendment. I feel this is a constructive amendment. I feel that the members of a board which is running a $10 billion business ought to be confirmed by the U.S. Senate. I have drawn as a parallel the fact that a second lieutenant in the army on his promotion to first lieutenant has to receive confirmation from the U.S. Senate. Why not a member of a board running a $10 billion business? Should we not know that he knows something about canal operations? Should he know something about business operations? Should it not be known that he has no conflict of interest?

I am satisfied that some of the big international banks are going to want to be represented on this board.

Maybe Senators do not know but under the present arrangement for an annuity Panama receives some $2.3 million from the United States. Do Senators think that goes to Panama? That goes to a New York bank. My authority for that is a representative of the U.S. Treasury testifying before the Committee on the Separation of Powers. So New York banks get the $2.3 million that the United States pays to Panama now, and they hand it out where they think it will do the most good, I will say. Senators can imagine where that would be.

I would imagine that the same system is going to apply when Panama starts getting $100 million a year, as Minister of Economics Barletta said Panama would be getting. That is my authority for that statement.

These people are going to be handling hundreds of millions of dollars a year in tolls. Should we know who they are; what they are; what they stand for; and what their background is?

I believe that is essential. I believe that makes good sense.

Mr. HELMS. Will the Senator yield?

Mr. ALLEN. I am glad to yield.

Mr. HELMS. I might add parenthetically that relevant to this is the fact that Ambassador Linowitz, who is a member of the executive committee of one of those New York banks the Senator is referring to, was given a sort of back-door appointment to be our negotiator for these treaties. He never appeared before the Senate to be asked any questions. I regretted that. So I commend the Senator on his amendment.

Mr. ALLEN. I thank the Senator. It is quite obvious that the amendment has logic behind it.

Do you know the main reason this amendment is going to be defeated? It runs counter to the leadership policy of stonewalling against all amendments. That is why.

It runs contrary to the leadership's requirement that this treaty be rubber-stamped, I say to the distinguished Senator from Massachusetts (Mr. Kennedy), who is so ably presiding over the Senate at this time.

The PRESIDING OFFICER. And unable to speak for himself.

Mr. SARBANES. Unfortunately.

The PRESIDING OFFICER. The Senator from Maryland, I am sure, will respond for me.

Mr. ALLEN. Members of the Senate are being asked to abdicate our position of shaping these treaties and come up with a treaty that makes the most sense, that protects the interests of the American people, that would assure the most efficient operation of the canal. I believe this would be a helpful and a constructive safeguard to assuring that we do have a competent commission to run this $10 billion enterprise now owned by the United States, but soon to be owned by Panama.

I yield the floor.

[Mr. Javits and Mr. Church addressed the Chair.]

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, the pros and cons of this amendment have been debated at length. There is no reason to protract the argument any further. For that reason, I move to lay the amendment on the table.

[Mr. Thurmond and Mr. Javits addressed the Chair.]

Mr. THURMOND. Mr. President, I should like about 3 minutes, if the Senator will withhold that motion.

Mr. CHURCH. I withhold the motion, but before yielding to the Senator from South Carolina, I yield first to the Senator from New York.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. Thurmond addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Idaho yield further, or is he yielding the floor?

Mr. CHURCH. The Senator from South Carolina, I understand, has a short statement he wishes to make in support of the pending amendment, after which I shall move to lay the amendment on the table.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise in support of the unprinted Allen amendment.

Paragraph 3 of the treaty sets up the Panama Canal Commission as the U.S. Government agency that will run and operate the canal. It calls for the appointment of nine members to the Board to supervise the Commission, five of whom shall be American nationals and four of whom shall be Panamanian nationals.

Senator Allen's amendment requires that these nine members shall be confirmed by the Senate prior to assuming their duties.

I am sure the administration will be opposed to this amendment. They even found a way to keep the Senate from confirming one of the chief negotiators who negotiated this giveaway treaty. I am sure the administration has no intention of allowing the Senate to have any choice in determining whether or not the members of this Board are qualified to run the canal.

This is a good amendment. We are talking here about the Board which will operate, maintain, and set tolls for the canal. Four of these individuals will be Panamanian. I cannot see how any U.S. Senator would be opposed to requiring these people to face Senate confirmation.

Decisions made by this Board will determine whether or not the canal will remain self-sustaining. Nothing in this treaty requires these people to meet any standard of competence, honesty, or integrity. I think it is only right that we here in the Senate should be able to say yes or no to any individual nominated to be a member of this Board. However, I am sure the leadership will do as they have done on all previous meritorious amendments and stonewall it. It is too bad that well-meaning people cannot improve a treaty which is so poorly negotiated, so poorly written, and so heavily favorable to Panama.

I urge my colleagues to at least allow the Senate to have some say in who will run this canal, if these treaties are ratified, before we give it completely to Panama in the year 2000.

I thank the distinguished Senator.

Mr. CHURCH. Mr. President, I move to lay on the table the amendment.

Mr. SARBANES. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

[The yeas and nays were ordered.]

The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Indiana (Mr. Bayh), the Senator from Delaware (Mr. Biden), the Senator from Arkansas (Mr. Bumpers), the Senator from Nevada (Mr. Cannon), the Senator from Iowa (Mr. Clark), the Senator from Missouri (Mr. Eagleton), the Senator from Alaska (Mr. Gravel), the Senator from Montana (Mr. Paul G. Hatfield), the Senator from Washington (Mr. Magnuson), and the Senator from Georgia (Mr. Talmadge) are necessarily absent.

I further announce that, if present and voting, the Senator from Washington (Mr. Magnuson), and the Senator from Iowa (Mr. Clark) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Massachusetts (Mr. Brooke), the Senator from Rhode Island (Mr. Chafee), the Senator from Kansas (Mr. Dole), the Senator from Arizona (Mr. Goldwater), the Senator from Michigan (Mr. Griffin), the Senator from Utah (Mr. Hatch), the Senator from California (Mr. Hayakawa), the Senator from Kansas (Mr. Pearson), the Senator from Texas (Mr. Tower), and the Senator from Connecticut (Mr. Weicker) are necessarily absent.

I further announce that, if present and voting, the Senator from Utah (Mr. Hatch) would vote "nay."

[The result was announced—yeas 53, nays 25, as follows:]

[Rollcall Vote No. 82 Ex.]

YEAS—53

Anderson	Hathaway	Moynihan
Bellmon	Heinz	Muskie
Bentsen	Hodges	Nelson
Burdick	Hollings	Nunn
Byrd, Robert C.	Huddleston	Packwood
Case	Humphrey	Pell
Chiles	Inouye	Percy
Church	Jackson	Proxmire
Cranston	Javits	Ribicoff
Culver	Kennedy	Riegle
Danforth	Leahy	Sarbanes
DeConcini	Long	Sasser
Domenici	Mathias	Sparkman
Durkin	Matsunaga	Stafford
Glenn	McGovern	Stevenson
Hart	McIntyre	Wallop
Haskell	Metzenbaum	Williams
Hatfield, Mark O.	Morgan	

NAYS—25

Allen	Johnston	Scott
Bartlett	Laxalt	Stennis
Byrd, Harry F., Jr.	Lugar	Stevens
Curtis	McClure	Stone
Eastland	Melcher	Thurmond
Ford	Randolph	Young
Garn	Roth	Zorinsky
Hansen	Schmitt	
Helms	Schweiker	

NOT VOTING—22

Abourezk	Clark	Hayakawa
Baker	Dole	Magnuson
Bayh	Eagleton	Pearson
Biden	Goldwater	Talmadge
Brooke	Gravel	Tower
Bumpers	Griffin	Weicker
Cannon	Hatch	
Chafee	Hatfield, Paul G.	

[So the motion to lay on the table was agreed to.]

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to table was agree to.

Mr. CHURCH. I move to lay that motion on the table.

[The motion to lay on the table was agreed to.]

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. ROBERT C. BYRD. Mr. President, would the Chair, for the convenience of the Senate, state the agreement with respect to the Bartlett amendment that will be offered on tomorrow?

The PRESIDING OFFICER. The Executive Calendar states that at 12 noon on Friday, April 7, 1978, the Senator from Oklahoma (Mr. Bartlett) be recognized to call up an amendment to article XIII of the Panama Canal Treaty, and that debate on the amendment be limited to 3 hours, to be equally divided and controlled, respectively, by the Senator from Oklahoma (Mr. Bartlett) and the Senator from Idaho (Mr. Church).

Mr. ROBERT C. BYRD. I thank the Chair.

Then, Mr. President, it is correct, is it not, to state that even though there are 3 hours available to both sides for debate on the amendment by Mr. Bartlett, the vote on the Bartlett amendment may very well occur prior to the expiration of those 3 hours if part of the time is yielded back by either or both sides; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. So Senators are on notice then that a vote could occur in relation to the amendment at some point between 12 o'clock noon and 3 p.m. tomorrow.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, on February 8 of this year the Senate went into executive session to consider the first of the two Panama Canal treaties. This has been a new and historic experience for many of us. We have been able to consider these treaties in great detail, with every Senator being given the opportunity to question and to explore every facet of the documents before us. In the truest sense of the word, I think that has been and continues to be, even though I must say that many things that have been said, have been said, have been said, have been said and have been said, but even though there has been much repetition and redundancy, I believe it has been a great debate. I believe that each of my distinguished colleagues, no matter what his position may be or may have been on the matter before us, can take great pride in the fairness and, as a general rule, I think the reasonableness of the debate and the manner in which the debate has been conducted.

The procedures that have enabled the Senate to work its will have been well demonstrated by the Senate in the weeks since February 8.

I hope that I speak for every Member of the Senate when I express the gratitude of myself and the Senate to National Public Radio's Linda Wertheimer, who has made a historic achievement in helping many of our fellow citizens to follow this debate and to understand what is happening here on the floor of the Senate. For

the first time in the history of the Senate, since 1789—and during the first 15 years of the Senate's history, the Senate met behind closed doors; of course, there was no radio, because they did not have radio back in those days, but even the doors were closed. But now, for the first time in history, live broadcasts have been made from the Senate floor.

National Public Radio has been able to provide coverage of Senate debates and action with sensitivity, with professionalism, with accuracy, and with great understanding. When I have listened from time to time in the evenings, as I know my friend from Hawaii has—my lovable, gentle friend, my friend who is always so cooperative and helpful, Spark Matsunaga—to the condensation of the debates that had occured during the day, I know my friend from Alabama (Mr. Allen) would agree, although we have been on opposite sides of the debate, that that condensation at 9:30, which runs for an hour, which selects the highlights of the day and gives an accurate description of the development of that day, the rollcall votes—it goes behind the rollcall votes and analyzes them, and Linda has done a great job in this respect—has, I think, enlarged the understanding on the part of the American people not only as to the contents of the treaties, as to the history of the 1903 treaty, and as to the implications of either rejection or ratification of the treaties, but also I believe that it has enhanced, or I want to think it has enhanced, the Senate in the opinions of the American people as they have listened to the debate and as they have listened to this excellent analysis of what has transpired.

I have a feeling that the Senate has enhanced its understanding with the American people by virtue of this audio transmission of the debates, and I think this is in no small degree due to the intelligence and the devotion to duty of a fine journalist and commentator, Linda Wertheimer. The people of the United States, who have been given such an excellent opportunity to hear their Government at work—to hear at work; when they visit the gallery they see it at work, but through National Public Radio they have heard the Senate at work, and they owe Linda Wertheimer a debt of gratitude. Quietly and modestly, she has given them a guided tour of the U.S. Senate in historic action.

Mr. MATSUNAGA. Will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. In just a moment.

On Tuesday, April 4, the Washington Post published a brief article about Mrs. Wertheimer and the extraordinary job she has done. I am sure that Senators have read the article, but I believe that it ought to be preserved in that great document, the CONGRESSIONAL RECORD, and I would hope that Senators who have not read it will read it. I think it is worthy of being placed in the Record, I ask unanimous consent that the article be printed in the Record at this point.

[There being no objection, the article was ordered to be printed in the Record, as follows:]

LIVE FROM THE SENATE GALLERY, IT'S LINDA WERTHEIMER

(By William Gildea)

Sen. Orrin Hatch (R-Utah) is delivering a 90-page speech on the Senate floor against the Panama Canal treaty.

Gallery visitors come and go. Reporters come and go. Senators come and go. Even Sen. Paul Sarbanes (D-Md.) who is minding the store for the pro-treaty forces, is relieved by Sen. Donald Riegle (D-Mich.). Practically the only person to endure is Linda Wertheimer. and she doesn't simply endure, she seems to thrive as the debate reaches its 28th day.

"I've heard more of the debate than the senators have, I'm sure of that," she says.

Seated in the front row of the gallery, Wertheimer yesterday welcomed National Public Radio listeners as the historic broadcasts from the Senate chamber resumed. This is the first time a Senate debate has been broadcast live.

She came on after a switch from the Rayburn building, where NPR's Nina Totenberg had been broadcasting the beginning of the Tongsun Park public hearings. Wertheimer quickly caught her listeners up on what Hatch was saying.

People are listening to the debate by the millions; an estimated 14 to 15 million had heard part of it up through the vote on the first treaty last month. And the number of Wertheimer fans continues to swell.

She tells this story. One day, while her sister was visiting the dean's office at New Mexico State, where she is studying, the dean had his radio turned on.

"That sounds like my sister," said Wertheimer's sister.

"That's Linda Wertheimer," said the dean, a Wertheimer fan.

"Then it is my sister."

Wertheimer smiles. "I guess the dean was a little astounded," she says.

Other listeners with a special significance for her have offered congratulations on her coverage. Janet Murrow, Edward R. Murrow's widow and a member of the NPR board, sent her a complimentary letter. The same day Pauline Frederick came into the NPR offices on M street and congratulated her. Ed Murrow on radio and later Pauline Frederick reporting on television from the United Nations were Wertheimer's heroes when she was growing up in Carlsbad, N.M.

She listened to radio as a youth because there was no television signal in Carlsbad. She says when she was about 15—she's 35 now—a TV tower was finally put up. But one cold day it iced over and toppled to the ground, leaving Carlsbad without television a while longer.

She went east to college, to Wellesley, and through an exchange program involving the school, got a job after graduation in 1965 with the BBC in London, as a production assistant. From there, she moved to WCBS radio in New York, as a producer. Nine years ago, she married Fred Wertheimer, a vice president of Common Cause, and moved to Washington.

In 1971, finally, she got on the air—with NPR.

Looking back, she says it's probably just as well it took a while. "Age makes your voice richer," she says, "so when you turn 30 you're in better shape when you're 23."

Her reporting from inside the Senate chamber not only has been a broadcasting first but also her most taxing assignment by far. She's been on the air almost 200 hours, some days from 10 a.m. to 7:30 p.m.

At the end of the live broadcast, she jumps into a car driven by her engineer and is taken to the M Street studio, where she hurriedly prepares an hour-long wrapup which she co-anchors with Robert Siegel starting at 9:30. One cluttered office has a piece of paper stuck to the door inscribed "Canal Zone Room."

To survive this ordeal, she's gone into a kind of training. "It takes not just endurance but concentration," she says. "I eat high-protein breakfast. Steaks, chicken. During the day I take breaks for five or 10 minutes every once in a while. I live off slices of pound cake and Coca-Cola. I bake angel food cakes with lots of eggs."

But because political reporting is what she's always wanted to do, she hasn't tired of the routine. "It's a fortuity for me," she says. "I suppose there are those who would find it a torment."

There is repetition—"When some senators take up certain themes you feel you could deliver the speech yourself." And the broadcasts have lengthened the debates because senators have wanted to explain things for the listening audience. "Once, a 'secret session' was proposed," she says, "and Birch Bayh went into a long discussion of what that meant, so people wouldn't think it was a coverup."

But she thinks the broadcasts have made the issues clearer to a wide audience.

The broadcasts also apparently have made an impression on at least two television networks. Wertheimer says she's had "a couple feelers. I wouldn't like not to take a step were it there to be taken," she says, but she's happy where she is.

Yesterday, when she passed back to Totenberg at the Park hearings, Hatch was still talking. Last night she would have the pleasure of boiling him down to one hour for the wrapup show.

Mr. ROBERT C. BYRD. Now I yield to my friend from Hawaii.

Mr. MATSUNAGA. I thank the distinguished majority leader for yielding, and I most wholeheartedly agree with our distinguished leader that National Public Radio has done a great service for the American people and for this country, in that it has brought to the people of America the proceedings in the Senate, something which had never been done before.

I can state from my own experience in going to Chicago to speak to a group, for example, a business executives group, that nearly every one of them, out of the 160 who were present at that meeting, told me that they have their radios tuned in all day, and many of them commented that—

You should do this with all other bills as well, so that we would know what goes on is that great body of yours.

I think, really, that respect for this body has been elevated by the fact that National Public Radio has taken the proceedings of the Senate to the people, and I will say this too: I agree wholeheartedly, again, with the distinguished majority leader that the commentators over that public radio have done an excellent job. When not on the floor, I have my own little radio tuned in to National Public Radio in my office; on my way to work and whenever I have an errand in town or am traveling in my car I have my radio in my car tuned in to National Public Radio, and I must say they have done an excellent job.

Of course, that speaks highly for them to continue to do so, and I think we ought to consider favorably any request to broadcast any proceedings in this body.

I might say also, as a freshman Member, that never did I really fully appreciate the term applied to this body as "the greatest deliberative body in the world" until I came here and until I participated in the debate, especially on the Panama Canal treaties.

Over in the House of Representatives, in which I served for 14 years, they have what is known as a "5-minute rule," and I could never really satisfy myself that I had said all I wanted to say in the 5 minutes. Of course, we could put into the Record what we had not enough time to say. But here, in the greatest deliberative body in the world, we have the great Senator from Alabama, for example, saying one thing, saying another thing, and saying the first thing again, and saying the second thing again——

Mr. ROBERT C. BYRD. And saying it well.

Mr. MATSUNAGA. And saying it extremely well, and doing it to the point that he convinces perhaps 32 other Members of the Senate, and this is certainly a great body, when I now fully appreciate why they refer to the Senate of the United States as the greatest deliberative body in the world, and I rise to concur again with the distinguished majority leader on the great service that National Public Radio has performed in not only letting the people of this great country of ours know the facts of the issues involved in the Panama Canal treaties, but also in elevating the status of the Senate in the eyes of the people it represents.

I thank the distinguished majority leader for yeilding.

Mr. ALLEN. Will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. I commend the distinguished majority leader for his statements. Thoughout this entire debate I have sought on many occasions, not privately with the Senator but here on the floor, to get him to agree with positions I have taken with respect to the treaties. I have had very little success in that area. But now I find myself in complete agreement with the distinguished majority leader with respect to the role played by National Public Radio. I commend him for his fine complimentary reference to Miss Linda Wertheimer and the fine job that this medium has done in carrying these debates for the very first time to the American people.

I have read in the press that the audience of the National Public Radio has been increased by some 500 percent as a result of the radio carrying these debates. So the people are interested in what is going on in this branch of their Government. They feel that a great public service is being rendered to the people by these debates being carried on the radio.

I recall quite well, and the distinguished Senator and I both serve on the Rules Committee which must make the decision about carrying debates on radio or television, that I expressed the opinion, as the distinguished Senator recalls, that I would not have favored the commercial media being given the opportunity to carry these debates. I felt that they would carry what they wanted to carry. They would do the editing and present whatever picture they wanted to present to the American people. But public radio has pretty well carried this debate from gavel to gavel. In this way the American people have been given an opportunity to determine which position they approve with respect to the treaties.

I believe public radio has given the opposition to the treaties, those who have sought to improve the strengthen the treaties or, in the alternative, to defeat them, a valuable opportunity to carry our case to the American people. Very definitely it has not been carried by the standard media of print or electronics. There has been an almost complete blackout of news coverage, which is the way of the national media—to take its position, its view on an issue, and flood the American people with information supporting their view but to give practically no coverage to those who have a position different from the media.

I hope the distingushed majority leader will take the intitiative in providing coverage of other outstanding issues, important issues. I know it would get some what monotonous to the American people if all debates were carried.

I believe the Senate has put its best foot forward, figuratively speaking, in the conduct of these debates. There have been very few periods of quorum calls and delay. As a general rule, Senators have been ready, willing, and anxious to go forward with the debate.

I believe a great contribution has been made to the public debate on these issues, whichever way they go. I feel a great service has been rendered. I thank the Senator.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Alabama. I yield to the Senator from Louisiana.

AMENDMENT NO. 99

Mr. LONG. Mr. President, I have prepared a condition which I believe this treaty should contain, which would assure to the United States, that in negotiating for a new canal it would have the right to negotiate with any nation, starting with Mexico, and including Colombia. I have discussed this with the managers of the treaty and they have indicated that they would be willing to agree to this condition.

I discussed it with various legal authorities to see whether it was necessary that this provision be an amendment, whether it had to be a reservation, or whether it had to be a condition. I am told that in view of the fact that the treaty says that unless the parties agree, neither of them can negotiate with another country about constructing another canal, that all it requires is a condition, whereby the parties, in the exchange of documents, agree to waive this provision. So the treaty contemplates it.

That being the case, this condition is all that is necessary for the parties to agree at the time of the exchange of documents to waive that provision of paragraph 2, article XII. I send the amendment to the desk, Mr. President, and ask that it be printed on behalf of myself and Senators Nunn, DeConcini, Talmadge, and Cannon.

The PRESIDING OFFICER. The amendment to the Resolution of Ratification will be received and printed, and will lie on the desk.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. LONG. Yes.

Mr. ROBERT C. BYRD. So that Senators, the listening public, and the press will understand, the Senator has sent to the desk an amendment to the resolution of ratification which he intends to call up at such time as the Senate reaches the resolution of ratification. That amendment constitutes a condition to the resolution of ratification. Is that correct?

Mr. LONG. Yes.

Mr. THURMOND. If the distinguished Senator will yield, personally I strongly favor the provision the Senator is offering. I am just wondering if it should be made a part of the treaty as an amendment to the treaty.

Mr. LONG. As I understand, the United States and Panama can agree any time to waive this provision. That is all that is necessary. It would be just like saying there is no real need of passing a constitutional amendment if we can achieve the same thing with an act of Congress. All we really need is what I have introduced. Therefore, I see no point in requiring Panama to vote on it, though they can. The Government of Panama can agree to waive that provision. It says in the treaty they can waive it.

Mr. THURMOND. Yes, if both countries agree, Suppose Panama does not agree and we would take the notion that we would want to build one elsewhere?

Mr. LONG. Then we do not exchange the documents and do not consummate the treaty.

Mr. ROBERT C. BYRD. I compliment the Senator from Louisiana on the approach he has taken. It is effective. I dare say this will probably get a lot of support. I realize the goal the Senator seeks to achieve in this legislative way. I think it is a much better approach

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than to attempt to amend the treaty. It will achieve the same goal. For the reasons the Senator has so eloquently stated, I feel inclined at this point to support him.

Mr. LONG. As far as this is concerned, all I seek is to simply get the results. I want the United States to have the privilege of negotiating with any country in Latin America about a new treaty. I think we need that leverage.

Mr. ROBERT C. BYRD. Exactly.

Mr. LONG. I know the representatives of the United States wanted the provision in the treaty that would say the United States and Panama would not negotiate with anyone else. They think that is a good provision. I do not think so. I have tried to make that clear in my views. My impression is that the managers of the treaty would be willing to accept this condition which I have sent to the desk. If they do, I am advised that will solve the problem, and I believe it does. It is a simple proposition. It says that unless the parties agree otherwise that you cannot negotiate with other countries, it is simply agreed that you can.

Mr. MATSUNAGA. Will the Senator From Louisiana yield?

Mr. LONG. I yield.

Mr. MATSUNAGA. I commend the Senator from Louisiana for offering his condition to the resolution of ratification. This is the proper approach, as the distinguished majority leader has stated.

Article XII, paragraph 2 of the treaty itself, as the Senator from Louisiana knows, already provides for the waiver. But the condition which the Senator from Lousiana offers will make crystal clear that article XII, paragraph 2, means what it says. I shall join the Senator from Louisiana in voting for approval of his amendment.

Mr. LONG. I thank the Senator.

I yield to the Senator from Alabama.

Mr. ALLEN. I thank the Senator. I believe my question would constitute a comment and I shall wait until the Senator yields the floor, then I shall ask for the floor.

Mr. ROBERT C. BYRD. Mr. President, will the Senator get the floor and yield it to me?

Mr. LONG. I yield the floor.

Mr. ALLEN. Mr. President, I yield to the distinguished Senator from West Virginia.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. ALLEN. Mr. President, I am, of course, interested in the reservation offered by the distinguished Senator from Louisiana. Looking at the cosponsorship of the reservation, I see the distinguished Senator from Louisiana, the distinguished Senator from Georgia (Mr. Nunn), the distinguished Senator from Arizona (Mr. DeConcini), the distinguished Senator from Georgia (Mr. Talmadge), and the distinguished Senator from Nevada (Mr. Cannon)—all great Senators, all my close personal friends. All of them, I think, possibly with the exception of Mr. Talmadge, might be called the great reservationists, because I believe I have seen

most of these names, except maybe that of the Senator from Louisiana and the Senator from Georgia, on other reservations.

I would have hoped that an effort would be made to agree to an amendment carrying out these same provisions. But there seems to be a great fear among some Senators of amendments to the treaty. Yet the distinguished Senator from Louisiana said that this takes an agreement between two parties, and, really, that is all that an amendment would take. But it looks like the agreement has been made that the distinguished majority leader is going to support this reservation. It is pretty easy to get a reservation adopted, but it is awfully hard to get an amendment adopted. I assure the distinguished Senators that an amendment carrying out this same provision will be offered. I hope that the reservationists, who are on this reservation, would seek a little higher level of amendment; that is, an amendment to the treaty. If they want this provision, in the best possible language and best possible effect, then they would vote for it as an amendment to the treaty. I do hope that the distinguished Senator from Louisiana, inasmuch as he has advocated this principle, and I commend him for it—I think it is certainly right to knock out this provision that prevents us—as a matter of fact, I have heretofore offered an amendment on the floor striking this provision out. But I did not get much support, because it was an amendment to the treaty.

Of course, when we get down to reservations, they are a dime a dozen, Mr. President. They can be obtained quite easily. But the test is going to come when those who say they stand for this principle are going to have an opportunity to vote for an amendment that will really mean something. Such an amendment will be offered between now and the 13th, or certainly on the 13th. It will be debated and the Senate will be given an opportunity to do something that will really amount to a real amendment of the agreement.

I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. Mr. President, let nobody be under any illusions. The condition that the distinguished Senator from Louisiana wishes to add to the resolution of ratification will result in precisely what the Senator seeks to achieve. It will be just as effective, just as effective as would an amendment to the treaty. I must say to those in the Senate who are bound and determined to get an amendment into the treaty, some kind of an amendment. I do not care; you could take 10 of their amendments and they still would not vote for the treaty. They still would would not vote for the treaty. I respect them. They are against the treaties and they will kill them one way or the other if they can do it.

So let us not be fooled by all of the preachment about amendments, amendments, the leadership is stonewalling, the leadership is stonewalling. May I say to my friend from Alabama, I heard him today in his eloquent manner as I listened to public radio.

Mr. ALLEN. I have not had the privilege of listening to public radio.

Mr. ROBERT C. BYRD. In my office I have had the privilege of listening to national public radio. He wondered why Senators came

to the floor and voted against amendments when they have not been here to listen to the arguments. Well, with National Public Radio, we can be in our offices off the floor and we can hear every word and hear it clearly. We can get the inflection on each word more precisely than we can if we sit here on this floor. With all the noise of other Senators around us talking and whispering and the noise of pages running here and there, noises from the gallery, noises from the rear corners of the room, we cannot always hear precisely what is being said by the distinguished Senator from Alabama in his eloquent, forceful, persuasive way. But to sit in our offices we can hear every word, and we can turn up the radio louder, or we can turn it down.

We can call the situation of our constituents who are listening, who are visiting in our offices, we can say. "That is Senator Allen speaking on the amendment." And we can sit there with our constituents and listen together. Then, when the rollcall comes, we can march into the Chamber, and we do not have to come to the managers of the bill. We do not have to go to Senator Allen and find out what it is all about, because we come with full knowledge of what it is all about.

So, may I assure my friend from Alabama that his cogent arguments have been heard, they have been weighed. And just because, on occasion, we are not sitting here watching the Senator, enraptured by his eloquence, we are still in our offices listening to that inimitable medium of National Public Radio conveying the voice, the stentorian voice of the Senator from Alabama, all over the country. And it is even being translated into Spanish to the people in Panama.

Mr. ALLEN. Just as are the Senator's remarks now.

Mr. MATHIAS. Will the Senator yield?

Mr. ALLEN. I believe I have the floor. I do not want to interrupt the distinguished majority leader. He is making quite an oration here.

Mr. MATHIAS. I just wanted to embroider on his theme for 1 second.

Mr. ALLEN. When he has ceased interrogating me, then I shall yield to the distinguished Senator.

Mr. ROBERT C. BYRD. Mr. President, I have never imposed on the distinguished Senator from Alabama. His courtesy and charitableness to the leadership are so well known as not to be necessary to mention.

I enjoy hearing his flailing of the leadership. He lays the heavy wood on the leadership. He takes the leadership out behind the woodshed. It reminds me of when I was a boy.

I was speaking to someone on my staff today about getting a paddling. The only paddling I ever got was for throwing a spitball—and I got a paddling. I should have had it. It did me good.

So the distinguished Senator from Alabama, in all good humor, gives the leadership a little paddling every day. Every day, and it does us good.

Mr. ALLEN. I might say to the distinguished Senator from West Virginia, if he will excuse me, I have the floor and I wish to respond.

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. Piecemeal.

I would say that just as the Lord loves those whom He chasteneth, so the Senator from Alabama loves the leadership, whom he sometimes, as the Senator says, chasteneth.

So it is no indication that the Senator from Alabama does not love the distinguished majority leader and the distinguished minority leader when he does talk about the leadership stonewalling these amendments and demanding that the Senate rubberstamp these treaties, because he thinks the facts bear out that contention of the Senator from Alabama.

Mr. ROBERT C. BYRD. I am sure the Senator would not attempt to misrepresent what the facts are and he does believe that. But Preston County, W. Va., is a great buckwheat-growing country and I have never seen a buckwheat cake so thin it did not have two sides.

So, there are two sides to this business about the leadership stonewalling and the leadership rubberstamping.

But sometimes I even listen to the Senator and I head for the door. The public radio is on. I am getting a blow-by-blow account from the floor. Sometimes when the distinguished Senator from Alabama starts laying the hickory to the leadership, I put my coat on and I head for the door. I think that I will just go in and sit and listen to the Senator as he takes me out behind the woodshed. Then I think, well, it is all in a day's work and I take my coat off and I go back and sit down.

Mr. ALLEN. I thank the Senator for his charitable nature. But I think the Senator would concede the Senator from Alabama has discussed the leadership as much in his presence here on the floor as he has while the distinguished majority leader was listening to the debate on public radio. He has not refrained from expressing his opinion about the leadership's position even though the leaders were here.

Mr. ROBERT C. BYRD. No. But when the leaders are here, the Senator from Alabama says it with a smile.

Mr. ALLEN. Well, says it with the same smile when the Senator has gone.

Mr. MATSUNAGA. Will the Senator yield?

Mr. ALLEN. Yes.

Mr. MATSUNAGA. I thank the distinguished Senator for yielding.

Mr. ALLEN. I thank the distinguished majority leader for the very friendly exchange.

Mr. MATSUNAGA. Mr. President, I was not at all surprised to hear the Senator from Alabama say that he has not heard public radio, because he has been on the giving end of it right throughout.

I, for one, and I am sure even the distinguished majority leader, will volunteer to take his place for a while, while he goes into an office and turns on public radio.

I have already stated to the Senator from Alabama that when I spoke to a distinguished group of business executives in Chicago, I came back, and inasmuch as the Senator from Alabama sits at a desk adjoining mine, I said to him, "You know, I spoke before a business executive group and one of them told me that he listened to the radio all day long and his hero is Jim Allen."

I said, "Oh, are you opposed to the treaties?"

He said, "No, I am for the treaties."

I could not figure that one out, until today I cannot figure it out, why the hero is one who opposes the treaties and this fellow told me he was for the treaties.

I thought I might throw that out on the floor and maybe the Senator from Alabama can give an answer tomorrow.

Mr. ALLEN. Maybe if we keep on talking we can convince him. That is what we are hoping to do, just like we hope we can convince the distinguished Senator from Hawaii (Mr. Matsunaga).

I might say, I am privileged to sit at the distinguished Senator's right hand.

Mr. MATSUNAGA. That is correct.

Mr. ALLEN. I am at his right hand and I enjoy that seat with my distinguished friend.

Mr. MATSUNAGA. And I sit at his left. I suppose I am further to the left than he is to the right, so that makes some sense.

I thank the distinguished Senator for yielding.

Mr. ALLEN. I thank the distinguished Senator from Hawaii.

Mr. President, I yield the floor.

[From the Congressional Record—Senate, Apr. 7, 1978]

PANAMA CANAL TREATIES

Mr. STEVENS. Madam President, while the distinguished majority leader is here I wish to ask another question. At a previous time there was a situation where we sought production of a letter that concerned the Panama Canal treaties. The press now reports that there are two letters being circulated by the Government of Panama. One apparently a letter that seems to be semipublic, at least, although the Senator from Alaska has not received a copy of it yet that is reportedly being circulated by Panama at the United Nations discussing the DeConcini reservation; and a second letter sent by the Panama leader, General Omar Torrijos, to certain heads of state that apparently has not been made public as yet.

I wonder if the distinguished majority leader would do the Senate the courtesy of requesting the Department of State to produce those letters, so that we might consider them in the course of this debate.

Mr. ROBERT C. BYRD. I shall be glad to do that. I have been made aware of the letters. I have a feeling that the State Department will make them available without the request, but I shall do that.

Mr. STEVENS. I thank the Senator. I know I am one of those in the strange position of being in favor of a new relationship with the Government of Panama, but very disturbed about the Panamanian domestic procedures that are available to the current head of state in Panama should he choose to circumvent the reservations, declarations, or understandings agreed to by the Senate.

I attempted to document that situation with regard to the previous treaty, which has been given advice and consent by the Senate, and the amendment that I shall call up to article XIV again deals with the problem of what happens if Panama, through its own domestic procedures chooses to disregard a reservation or amendment attached to the resolution of ratification by the Senate of the United States and delivered to Panama.

My amendment would have the effect of determining that should General Torrijos, using the powers that he has in Panama, disregard the DeConcini reservation or other reservations or amendments to either of the resolutions of ratification, that action would, in effect, abrogate the two treaties involved, and declare it the U.S. position that the existing treaty relationship with Panama remain in effect.

I know this will be very controversial, but again I think it is important for us to know exactly what position General Torrijos has taken, not only in the public letter but, if possible, in connection with the letter that has reportedly been sent by the Panama leader to the heads of state.

It appears to me that he is trying to create an international climate in which he can disregard the conditions placed upon the ratification of these treaties by the U.S. Senate through either the leadership amendment or reservation such as the DeConcini reservation.

Mr. ROBERT C. BYRD. Mr. President, in response to the request from the distinguished Senator from Alaska, Mr. Stevens, I would like to have printed in the Record the letters and documents he

referred to earlier. These have been supplied to me by the State Department. Included is the United Nations documents based on the letter from the Permanent Representative of Panama to the United Nations to the United Nations Secretary General. I am also including a translation of the letter sent by General Torrijos to various heads of state. This translation of the Torrijos letter does not contain the full text of all the documents referred to therein, as these are contained in the United Nations documents.

Finally, Mr. President, I ask unanimous consent to have printed in the Record a statement released by the Panamanian Foreign Ministry today which is directly relevant to the earlier communications from the Panamanian Government and to various press reports.

There being no objection, the material was ordered to be printed in the Record, as follows:

IMPLEMENTATION OF THE DECLARATION ON THE STRENGTHENING OF INTERNATIONAL SECURITY

(Letter dated 28 March 1978 from the Permanent Representative of Panama to the United Nations addressed to the Secretary-General)

I have the honour to send you herewith the note verbale from this mission dated 28 March 1978, together with the following documents:

(a) Resolution of ratification of the Treaty concerning the permanent neutrality of the Panama Canal, adopted by the United States Senate on 16 March 1978 (see appendix I);

(b) Statement by Senator Dennis DeConcini (see appendix II);

(c) Statement by Senator Edward Kennedy (see appendix III);

(d) Communique from the Ministry of Foreign Affairs of Panama, issued on 27 March 1978 (see appendix IV).

In compliance with instructions from my Government, I request you to have the note verbale and the above-mentioned documents distributed as documents of the General Assembly under item 50 of the preliminary list.

JORGE E. ILLUECA,
Ambassador, Permanent Representative.

ANNEX: NOTE VERBALE DATED 28 MARCH 1978 FROM THE PERMANENT REPRESENTATIVE OF PANAMA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of the Republic of Panama to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that His Excellency Brigadier General Omar Torrijos Herrera, Head of Government of the Republic of Panama, has addressed a letter to the Heads of State and Heads of Government of the States members of the international community.

General Torrijos's letter and the documents enclosed make reference to the vote which took place on 16 March 1978 at the United States Senate on the Resolution of Ratification of the Treaty concerning the Permanent Neutrality of the Panama Canal. In this resolution, approval to the ratification was granted subject to a number of amendments, conditions, reservations and understandings, inserting among them a pre-condition to American acceptance of the Neutrality Treaty, known as the "DeConcini Amendment" (see clause (b)(1) in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3857–3858 (appendix I)).

According to its proponent, the "DeConcini Amendment" is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government", pretending that said amendment must be construed to permit the United States to intervene in Panama in the event of labour unrest, strikes, a slow-down, or under any other pretext labeled as interference with Canal operations (see text of Senator Dennis DeConcini's statement before the United States Senate on 16 March 1978

inserted in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3817–3818 (appendix II)).

Not only does the amendment make no reference to the regime of neutrality, but, as stated by Senator Edward Kennedy, who opposed the DeConcini Amendment, "Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory." Now Panama is asked, in Kennedy's words, "to accept an amendment which has the ring of military interventionism—not just during this century, but for all time" (see text of Senator Edward Kennedy's statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States Congressional Record, vol. 124, No. 38, p. S3824 (appendix III) and the attached text of the communique of the Panamanian Ministry of Foreign Relations, dated 27 March 1978 (appendix IV)).

Since the Treaty provides for accession by all States to the Protocoal whereby the signatories would adhere to the objectives of the Neutrality Treaty and agree to respect the regime of neutrality, the Panamanian Head of Government has considered it his duty to address this latter to the Heads of State or Heads of Government of the States members of the international community that in so many instances have offered their solidarity and support to the Panamanian nation in its long struggle to reach a peaceful solution to the Panama Canal question based on the recognition of her sovereignty over the totality of its national territory.

APPENDIX I: RESOLUTION OF RATIFICATION OF THE TREATY CONCERNING THE PERMANENT NEUTRALITY OF THE PANAMA CANAL ADOPTED BY THE SENATE OF THE UNITED STATES OF AMERICA ON MARCH 16, 1978

Resolved, (two-thirds of the Senators present concurring therein), that the Senate advise and consent to the ratification of the Treaty Concerning the Permanent Neturality and Operation of the Panama Canal, together with the Annexes and Protocol relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-fifth Congress, first session), subject to the following—

(a) Amendments:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

" 'Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional process, defend the Canal against any threat to the regime of neutrality and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

" 'This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.' "

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in the case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.' "

(b) Conditions:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interferred with, the United States of America shall have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in this Treaty shall preclude Panama and the United States from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or maintenance of defense sites after that date in the Republic of Panama that Panama and the United States may deem necessary or appropriate."

(c) Reservations:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States by the American Battle Monuments Commission, including the display of the flag of the United States, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

(2) The flag of the United States may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

(3) The President—

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consisted with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States; and

(B) shall have announced, immediately after the date of exchange of the instruments of ratification, plans, to be carried out at the expense of the United States Government, for—

(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and

(ii) transporting to the United States for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i); and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B)(i) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) Understandings:

(1) Paragraph 1(c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

(1) the costs of operating and maintaining the Panama Canal;

(2) the competitive position of the use of the Canal in relation to other means of transportation;

(3) the interests of both Parties in maintaining their domestic fleets;

(4) the impact of such an adjustment on the various geographical areas of each of the two Parties; and

(5) the interest of both Parties in maximizing their international commerce.

The United States and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this Treaty" in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes take unilateral action to defend the Panama Canal against any threat, as determined by the party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxiliary vessel of the United States or Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in the annexes or the Protocol relating to the Treaty, or in any other agreement relating to the treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

(5) The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

Appendix II: Statement Made by Senator Dennis DeConcini in the Senate of the United States of America on March 16, 1978

Mr. President, I thank the Chair for his indulgence in calling the Senate to order.

For the last three (3) months, I have argued that the treaties as drafted did not appear to contain sufficient safeguards for the United States. But I have also stated publicly that I believed a new treaty with Panama was essential: that history had bypassed the era of simple colonialism when large powers bullied the small. Until recently, I believed that it would be possible for the Senate to make some constructive amendments to the treaty that would satisfy the needs of Panama—but not at the sole expense of the American people. However, as every member of this Chamber knows, the administration was unwilling to accept the slightest changes in the text of the agreement.

Because of this recalcitrance, I suspect that a number of potential supporters of the treaty were lost. Together with Senator Ford, I offered a number of amendments to the treaty. When it became clear that no amendments except the so-called leadership amendments would be accepted, I began to search for alternatives that would accomplish the desired objectives.

After extensive consultations with experts from the executive, Congress, and the academic community, I became convinced that it would be possible to achieve a clearer understanding of American rights and responsibilities under the treaty through the device of an amendment to the resolution of ratification in the nature of a condition precedent to American acceptance of the treaty itself. Such a condition will be binding on the Republic of Panama.

Therefore, I have recast my amendments in this form. I have assured the President that if my amendment No. 83 to the resolution of ratification is accepted by the Senate that I will vote in favor of the Neutrality Treaty. In turn, the President assured me yesterday in a meeting we had at the White House that he would accept and support my amendment. To the best of my knowledge, that is how things stand as of this moment.

I would like to stress that I am offering this amendment in the name of the people of Arizona. Like Senator Ford, I too have crossed my State and spoken personally to hundreds, perhaps thousands of concerned citizens. As a whole, my constituents do not approve of the Panama Canal treaties. However, they are willing to accept their necessity if American rights to insure open and free access to the canal are clearly spelled out. That is all my amendment intends—but that much at least is essential.

AMENDMENT NO. 83 AS FURTHER MODIFIED

Mr. DeConcini. Mr. President, I would like to call up my amendment No. 83, as modified. I would ask, Mr. President, to further modify such amendment. A few of these changes are purely technical and drafting changes.

The PRESIDING OFFICER. The Senator will suspend until the clerk states the amendment.

Mr. DECONCINI. Mr. President, I have the clarified drafted change amendment that I would ask the clerk to state.

The PRESIDING OFFICER. The clerk will state the amendment.

The second legislative clerk read as follows:

The Senator from Arizona (Mr. DeConcini) and Mr. Ford propose amendment numbered 83, as further modified, as follows:

Before the period at the end of the resolution of ratification, insert the following: "subject to the condition, to be included in the instrument of ratification of the Treaty to be exchanged with the Republic of Panama that, notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be".

Mr. DECONCINI. Mr. President, the changes are technical and draft changes. The one substantive change is to include the phrase "according to its constitutional processes," after the words "to take such steps as it deems necessary" and before the words "including the use of military forces."

I send to the desk a clean copy and I thank the Chair and the clerk for reporting the same.

I also would like to ask that Senator Cannon, Senator Chiles, Senator Nunn, Senator Long, Senator Talmadge, Senator Paul Hatfield, and Senator Hayakawa be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

The purpose of this amendment is quite simple, Mr. President. It is designed to establish a precondition to American acceptance of the Neutrality Treaty. That precondition states that regardless of the reason and regardless of what any other provision of the Neutrality Treaty might say or what interpretation it might be subject to, if the Panama Canal is closed, the United States has the right to enter Panama, using whatever means are necessary, to reopen the canal. There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as to the means necessary to insure that the canal remains open and accessible.

A good deal of the discussion involving the Panama Canal treaties has centered upon threats to the canal which might come from third parties—more specifically—the Communist countries. While this concern is certainly justified, I have been equally bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly government; political riots or upheavals—each of these alone or in combination might cause a closure of the canal. In February 1975, for example, there was a "sickout" which disrupted the efficient operation of the canal. Yet as I read the treaties, there does not appear to be any specific guarantee that a disruption of the canal arising out of internal Panamanian activities can be swiftly and adequately dealt with.

Although General Torrijos has brought a welcome degree of stability to Panama in recent years, it can be argued that the history of Panama is one of substantial political instability and turmoil. Under normal circumstances, the United States would not or should not contemplate intervening in the internal affairs of another nation. However, there are extremely unique and special circumstances surrounding the relationship between the United States and Panama. Since the beginning of this century, the United States has exercised de facto sovereignty over the Panama Canal Zone, and has been responsible for the defense and operation of the canal. We have maintained this control over the canal for one very simple reason: The Panama Canal is vital to the security, economic and military of the United States. This fact must be recognized in any treaty which contemplates a fundamental change in the American-Panamanian relationship.

The amendment contains a very specific reference to the use of military force in Panama. I believe these words are absolutely crucial because they establish the American right—which I am not convinced is adequately provided for either in the body of the treaty or the leadership amendment—to take military action if the case so warrants. It further makes it clear that the United States can take military action on Panamanian soil without the consent of the Panamanian Government.

The question of consent is also crucial. Since the main thrust of this amendment is directed toward situations in which the canal is closed because of internal difficulties in Panama—difficulties like a general strike, a political uprising, or other similar events, the consent of the Panamanians to take action would not make sense. If America is to have any rights at all under this treaty, it must have the right to act independently to protect the canal and to keep it open.

I believe that the question of an attack on the canal by a third party aggressor is adequately dealt with in the treaty. There seems to be little question that under such circumstances the United States does have the right to act with the Panamanians to protect and defend the canal. Thus, my concerns have centered around two problems. The first is the one expressed in the amendment now on the floor. The other is the question of a continued military presence.

We have just adopted an amendment by Senator Nunn that I had the privilege of cosponsoring. It provides that the United States and Panama may conclude an agreement providing for a continued American military presence in Panama after the year 2000. This change is important because it may be vital to both countries to provide for such presence while at the same time not disrupting the regime of neutrality that is established.

It was my desire, and the desire of Senator Nunn, to allow for a continued presence without a new treaty that would, by its very nature, call into question the regime of neutrality. It is much more appealing to have that right embodied in the very document that creates the regime of neutrality. Therefore I compliment the Senator from Georgia in his efforts to gain acceptance of the military presence reservation.

I hope the Senate will support the amendment I offer to the resolution of ratification providing for America's right to keep the canal open. I am also happy to announce that the President of the United States has endorsed this change, and has indicated that he believes it to be a constructive step in fulfilling the goals of the Neutrality Treaty.

I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the canal. It recognizes the very special relationship that the Panama Canal has to American security.

I certainly hope, Mr. President, that if this right is attached to the treaty it will never need to be exercised. Yet, it is important that the American people know that should the need arise, the United States has sufficiant legal sanctions to act.

Mr. President, I commend this change to my colleagues and urge their support.

Mr. President, I ask for the yeas and nays on this amendment.

Appendix III: Statement Made by Senator Edward Kennedy in the Senate of the United States of America on March 16, 1978

MILITARY INTERVENTION IN PANAMA

Mr. President, we have before us an amendment to the resolution of ratification of the Panama Canal Neutrality Treaty which would permit the "use of military force in Panama" by either party, "if the canal is closed or its operations interfered with."

I am opposed to this amendment. It stirs up what is already an emotional issue in Panama, without adding to rights of the United States already recognized by the treaty.

From the outset, the people of Panama—and all of Latin America—have rightly opposed U.S. military intervention in their internal affairs. That is why the negotiators, the administration, and the Senate leadership have all carefully defined and limited the expression of our military rights to the defense of the neutrality of the Panama Canal. Even the reservation on defense arrangements, adopted by the Senate yesterday, provided that Panama and the United States could jointly—I emphasize jointly—agree to America military deployments, after the year 1999, which facilitate performance of "responsibilities to maintain the regime of neutrality" over the Panama Canal.

Now we have an amendment which starkly insists on our right to use military force in Panama—always the most sensitive issue from its standpoint as a small, proud, sovereign state.

Now we have an amendment which makes no reference to the regime of neutrality which it is our responsibility to defend.

Now we have an amendment which could—but must not—be construed, instead, to permit the United States to intervene militarily on almost any pretext. A strike, a slowdown, even inefficient operation of the canal could—but must not—be used as a pretext to use force, in order to "restore the operations of the canal".

Mr. President, Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory. Now we are asking Panama to accept an amendment which has the ring of military interventionism—not just during this century, but for all time.

I recognize that acceptance of this amendment may facilitate ratification of the Panama Canal Treaties. If the amendment is accepted, I believe that our Nation is honorbound to strictly limit its interpretation and not, as General Torrijos warned in Washington last October, to allow the treaties to "become an instrument of permanent intervention" in Panama.

Fortunately, our right of military action continues to be defined by article IV of the Neutrality Treaty, as amended by the Senate.

This is our right "to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal".

This is our right to assure "that the canal will remain open, secure and accessible".

This is not a right to take action "against the territorial integrity or political independence of Panama", prohibited under article IV of the treaty.

This must not be a right to intervene in the Panama Canal on any pretext labeled as interference with canal operations.

With these understandings, Mr. President, we can hope to avoid continuing confrontations between Panama and the United States. Without them, we can look forward to a continuation of the unfairness and the resentment which has characterized our treaty relationship since 1903.

Appendix IV: Communique From the Ministry of Foreign Affairs of Panama, Issued on March 27, 1978

In our communique issued on 16 March, we expressed the decision of the Government not to issue any statement regarding what the Senate had agreed to in relation to the Treaty concerning the permanent neutrality and operation of the Panama Canal. We gave as the reason for such a decision the fact that the Panamanian people had approved two treaties, that is to say, the Neutrality Treaty and the Treaty on the Panama Canal. Until the Senate decides the fate of the latter, it will not have responded to the decolonization programme approved by the Panamanian people.

We also stated in the above-mentioned communique that the Government as a whole would study the conditions under which the Senate had given its advice and consent to the Neutrality Treaty and those that it might attach to a decision on the Treaty on the Panama Canal. We have begun that process. But inasmuch as the liberation process is a national undertaking and since, before taking any decision, each citizen must have full knowledge of all the understandings of the Senate regarding the treaties, the Ministry of Foreign Affairs has deemed it appropriate to publish the text of the Senate resolution concerning the Neutrality Treaty without waiting for the official text to be delivered to us through the usual channels.

We are living a crucial moment in our history. Now, more than ever, our country demands from its sons serenity, dignity and a sense of national unity.

Panama sees its futures with the serenity of a country engaged in an irreversible process of decolonization.

We must remember that only the peoples that love freedom can be free. Panama has opted for its definitive freedom. In this process we have the decisive support of the peoples of the whole world, as was seen from the session of the Security Council held in Panama in March 1973. On that occasion the world, faced with the veto of the United States delegation, vetoed the United States for not removing the causes of the conflict engendered by the presence of a foreign Government within Panamanian territory.

We recommend to our fellow citizens to study objectively the documents published today in Spanish and English, so that they might assist the Government in taking the most patriotic decision which, as stated by General Omar Torrijos Herrera,

Head of the Government of Panama, will be taken within the framework of a great national consensus.

APRIL 7, 1978.

MR. PRIME MINISTER: On March 16 of this year the Senate of the United State gave its approval by a vote of 68 to 32 to the Treaty of Permanent Neutrality an Operation of the Panama Canal. The Senate included, as part of the referenced treaty, the statement of understanding reached between ourselves and President Carter on October 14, 1977.

This statement of understanding gave to both countries the ability to defend the canal against threats and aggressions to the canal including (threats) to the peaceful transit of vessels through the canal. The referenced statement, incorporated by the Senate in the Neutrality Treaty with our previous assent, expressed the following: (there follows excerpt of leadership amendment to article IV starting with "this does not mean, nor shall it be interpreted . . .)

The principles contained in the statement described above derive from the mutual recognition of the existence of generally accepted norms of international law which are effectively consecrated in multilateral international agreements. Examples which can be cited are the charter of the United Nations (article II, paragraph 4); The charter of the organization of American States (article XVIII) and the inter-American treaty of reciprocal assistance (article I). Despite the referenced statement of understanding and the recognized principles of international law, the document of ratification which states the following: (DeConcini reservation quoted in full). To determine the meaning (Alcance) of this amendment it is sufficient, in our judgment to transcribe the reasons which Senator DeConcini made in support of his proposals (here followed extensive extracts from Senator DeConcini's remarks in the Senate of March 16). Because of the support which your people and government have given to the Panamanian cause and because in accordance with Article VII of the Neutrality Treaty Panama and the United States are open for adherence by all the states of the world to the objectives of said Treaty, we have considered it our duty to inform you of this situation about which we have already publicly expressed our deep concern.

Solidarity,

OMAR TORRIJOS HERRERA.

STATEMENT FROM PANAMANIAN FOREIGN MINISTRY

The Ministry of Foreign Affairs informs that the decision of the Panamanian Government as expressed through the letter sent by General Torrijos to President Carter and the Communique issued by this Ministry to the effect of not making statements regarding the approval or rejection of the Treaties together with this amendment reservations and understanding continues to be the official position of the Panamanian Government until the United States Senate finishes the discussions and votes on the second Treaty regarding the Panama Canal.

The present statement is made because our Government believes that the Panamanian people voted on two Treaties and not just one. It is also made to deny news to the effect that our Government has already taken an official position regarding the approval or rejection of the Neutrality Treaty. Said information built on speculation have been spread abroad by foreign news services with the purpose of confusing and distorting the firm position of the Panamanian Government on this important issue.

APRIL 7, 1978.

PANAMANIAN OBJECTIONS SHOW TREATIES SHOULD BE RECONSIDERED

Mr. DOLE. Madam President, the DeConcini reservation adopted by the Senate on March 16 contained the very important guarantee that:

If the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional process-

es, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

It was essentially the same as a treaty amendment I had offered a few days before, which was rejected after the Senate leadership argued that the guarantee was already "understood" in the treaties, and that any such amendment was out of the question.

A few days afterwards, a leading Government-controlled newspaper in Panama, Critica, suggested that the DeConcini reservation was unacceptable.

Madam President, I ask unanimous consent that the quote from that article be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

3. Government-controlled Critica, often a sounding board for Government of Panama policy, spoke clearly in its editorial March 28 on the constitutional requirement for a new plebiscite in Panama. According to Critica: "We want to be absolutely clear with regard to the reservations, understandings and amendments to the treaty which the American Senate has just approved. We consider that in the light of our constitutional statute which provided for a plebiscite to approve or disapprove the Torrijos-Carter treaties, any additions to those treaties made by the American Senate will have to be submitted to a Plebiscite in Panama.

4. Critica continues: "Some of those amendments are acceptable, such as the one agreed to by President Carter and General Torrijos before the confirming plebiscite. But there is one, because it affects the sole responsibility of Panama in the operation of the Canal after the year 2000, that cannot be accepted and even more so when the armed intervention of the United States is caused by the temporary closing of the canal, something which has happened more than once to its current owners."

Mr. DOLE. Madam President, General Torrijos has said as much in letters to the United Nations, the Organization of American States, and to European leaders.

Madam President, I ask unanimous consent that following my remarks a copy of that letter be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOLE. Madam President, it shows, in effect, that Panama is not prepared to abide by this critical guarantee, which is so important to future American security interests. And it shows that there is no consensus, or agreement between our two governments on important aspects of these treaties.

The Torrijos government could take the initiative to reject the Neutrality Treaty, because of the DeConcini reservation, although I doubt it. But even when the Torrijos government formally ratifies the treaty, it seems clear to this Senator that these guarantees will not be honored in practice. If both popular opinion and government sentiment are opposed to the reservation, we cannot depend upon its being honored at the crucial moment when it is most needed.

This is one reason why the treaties should be rejected by the Senate now, and negotiations begun anew.

DEMONSTRATIONS TODAY

It is my understanding that there will be large demonstrations in Panama today against these treaties—particularly against the DeConcini reservation to the Neutrality Treaty. That reservation is very important to U.S. security. But many Panamanian people do

not like it. If another plebiscite were held in Panama today, it might well be rejected.

Consequently, I do not think we can expect that the Panamanian people will strictly observe, or readily consent to our defense rights during the next 22 years, even if the Panama Government ratifies the treaties. That is what concerns me most.

ATTEMEPT TO CONCEAL TREATY PROVISIONS

The Panama Government recognizes the popular dissatisfaction with the Neutrality Treaty in Panama, as it was passed by the Senate on March 16. That is why General Torrijos tried to keep the facts from his people as long as possible. The final version of the Neutrality Treaty, with our Senate modifications, was not publically disseminated in Panama until March 27, fully 11 days after we approved the treaty, and then only under pressure by local groups.

The DeConcini reservation was printed incorrectly the first time, giving it a less "threatening" appearance.

Opening day for Panamanian universities has been delayed by the government for several weeks, until April 17, to keep a lid on the extremely volatile situation. Student activists in Panama are, of course, among the leading treaty opponents.

TYPE OF TREATY MODIFICATION IS IMPORTANT

The objections to the DeConcini reservation show just how vital it is that we make all Senate modifications by concrete treaty changes, rather than by "understandings." Only amendments make textual changes in the treaties. They may require a new plebiscite in Panama, but that at least puts the Panamanian people on record as supporting or opposing the changes.

There are fundamental hazards in putting our trust in sideline "understandings" which might be quietly accepted by the Torrijos government today, but disavowed and ignored by the Panamanian people later on, perhaps under a different government.

The Senate majority and minority leaders, along with the floor managers of this treaty, assured us only last month that this and other treaty modifications were "unnecessary" because U.S. defense rights were already "understood." They said it was "redundant" to spell out those rights because President Carter and General Torrijos already had implicit understandings along these lines.

Well, the loud outcry and strenuous objections of the Panamanian people—and of General Torrijos—show that these guarantees were not understood. Either General Torrijos tried to pull a fast one on his own people, or else on us.

Therefore, Madam President, I feel we should reject these treaties now. There has been no consensus—no agreement—between Panama and the United States on vital defense aspects. It is time to go back to the negotiating table and discuss these matters in more detail.

EXHIBIT 1

APRIL 7, 1978.

MR. PRIME MINISTER: On March 16 of this year the Senate of the United States gave its approval by a vote of 68 to 32 to the Treaty of Permanent Neutrality and Operation of the Panama Canal. The Senate included, as part of the referenced

treaty, the statement of understanding reached between ourselves and President Carter on October 14, 1977.

This statement of understanding gave to both countries the ability to defend the canal against threats and aggressions to the canal including (threats) to the peaceful transit of vessels through the canal. The referenced statement, incorporated by the Senate in the Neutrality Treaty with our previous assent, expressed the following: (there follows excerpt of leadership amendment to article IV starting with "this does not mean, nor shall it be interpreted . . .")

The principles contained in the statement described above derive from the mutual recognition of the existence of generally accepted norms of international law which are effectively consecrated in multilateral international agreements. Examples which can be cited are the charter of the United Nations (article II, paragraph 4); The charter of the organization of American States (article XVIII) and the interamerican treaty of reciprocal assistance (article I). Despite the referenced statement of understanding and the recognized principles of international law, the document of ratification which states the following; (DeConcini reservation quoted in full). To determine the meaning (Alcance) of this amendment it is sufficient, in our judgment to transcribe the reasons which Senator DeConcini made in support of his proposals (here followed extensive extracts from Senator DeConcini's remarks in the Senate of March 16). Because of the support which your people and government have given to the Panamanian cause and because in accordance with Article VII of the Neutrality Treaty Panama and the United States are open for adherence by all the states of the world to the objectives of said Treaty, we have considered it our duty to inform you of this situation about which we have already publicly expressed our deep concern.

Solidarity,

OMAR TORRIJOS HERRERA.

THE PANAMA CANAL TREATY

Mr. MORGAN. Madam President, with regard to the Panama Canal treaties and the actions of General Torrijos, as reported in the morning press, let me say that, first of all, as a supporter of the new Panama Canal treaties and as one who voted for the first one, I am disturbed by the actions of General Torrijos.

However, I do not think that the so called DeConcini amendment did anything that the Neutrality Treaty did not already do. That is, under the Neutrality Treaty, as I understand it, the United States is at liberty, after the year 2000, to take whatever action we think is necessary to maintain the neutrality of that canal, whether it is military or otherwise. I believe that spelling out the military aspect was expressing the wishes of the American people to make it clear that we did reserve that right.

Unless facts are developed before the next vote, I intend to vote for the first of the Panama Canal treaties. However, I wish to make it clear that the Constitution places the responsibility upon the Senate of the United States to advise and to consent with respect to any treaties that ae entered into; that we are not required, by the Constitution or otherwise, to accept any treaties that are submitted to us by the executive branch; that it is our responsibility to try to act in a manner that we believe is in accordance with the national security interests of the United States.

In my opinion the first treaty, the neutrality treaty, represented the consensus of the U.S. Senate that that treaty, as adopted, which included the so-called DeConcini amendment, was in the best interests of the United States. Once we have ratified these treaties—if we do ratify the first treaty, and I think we will—they will represent what we in the U.S. Senate, as representatives of the

people of the United States, believe to be in the best interests of this country.

If the officials and the Government of Panama do not want to accept that, so be it. But I do not think that we, as Members of the Senate, can afford to be dictated to be General Torrijos or anyone else.

I want to make clear that I believe a new relationship is necessary with Panama; and I said so publicly 8 months before this treaty came out, after I returned from a visit to Panama on other business.

I wish to reiterate and to make clear that it is the Government of the United States that should determine what treaties this country will enter into. It is up to Senators, as representatives of the people of this country, to decide how far we will go; and once we have gone that far, if the Panamanians do not want to accept it, that is their prerogative.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. Stone). Without objection, it is so ordered.

THE PANAMA CANAL TREATY

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No. 2, which the clerk will state.

The second assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, The Panama Canal Treaty.

The Senate resumed the consideration of the treaty.

The PRESIDING OFFICER. The Senator from Oklahoma.

AMENDMENT NO. 41

Mr. BARTLETT. Mr. President, I call up my amendment No. 41 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Oklahoma (Mr. Bartlett) on behalf of himself and Mr. Hansen proposes amendment No. 41.

At the end of paragraph 4(c) of article XIII, add the following: "Nothing in this subparagraph may be construed to commit the United States of America to pay any part of such unpaid balance to the Republic of Panama after the date of the termination of this treaty."

The PRESIDING OFFICER. The time for debate on this amendment is limited to 3 hours, equally divided and controlled by the Senator from Oklahoma (Mr. Bartlett) and the Senator from Idaho (Mr. Church).

The Senator from Oklahoma (Mr. Bartlett) is recognized.

Mr. BARTLETT. Mr. President, article XIII, section 4(c) of the proposed Panama Canal Treaty provides that the Panama Canal Commission to be created by the new treaty will pay a sum of $10

million a year out of surplus revenues to the Government of Panama. This so-called contingency payment is above and beyond other payments to be provided by section 4 to the Government of Panama.

In addition, section 4 provides that, in the event insufficient surplus is generated each year to make a $10 million contingency payment, the obligation to make that payment will carry over into subsequent years, thus increasing the chances that the Government of Panama will get each of its contingency payments as soon as possible and in less inflated dollars. What is unclear is whether Panama can be certain of getting all of its 22 years' worth of contingency payments.

Article XIII, section 1 of the Panama Canal Treaty reads as follows:

> Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree.

Thus, article XIII, section 1 makes it clear that the canal must be turned over free of debt, unless otherwise agreed, thus implying that the accumulation of contingency payment debts, if considered an obligation of the Panama Canal Commission, would become a just debt of the United States and would be payable by the United States upon termination of the Panama Canal Treaty on December 31, 1999.

While such an interpretation is consisistent with the language of the treaty, and consistent with the expectations of some Panamanians as reported to our committee, it is inconsistent with the notion that the contingency payment is to come only out of toll revenues and is not to involve appropriated funds.

The State Department has said that the United States will have no obligation to pay this accumulated contingency payment debt after 1999. However, this interpretation does not spring from the text of the Treaty in a clear and lucid manner. None other than H. R. Parfitt, the Governor of the Panama Canal Zone and President of the Panama Canal Company, and Mr. Elmer B. Staats, the Comptroller General of the United States, have commented specifically on the ambiguity inherent in this section of the treaty. Both indicated that differences of opinion existed in Panama as to whether the Goverment of the United States would be obligated to pay that part of the 22 years' worth of $10 million annual contingency payments which the Panama Canal Commission might not have been able to pay out of generated revenues.

In an effort to clarify this issue, I sent a telegram to General Torrijos on February 1, 1978, asking for his interpretation of this part of the Panama Canal Treaty. I received no direct answer to this telegram, but I did receive a reply to a second telegram I sent of February 22. The Panamanian Ambassador to the United States sent me a letter dated March 6 explaining that General Torrijos had asked that I be given a copy of a statement made by his Minister of Planning and Economic Development to an audience in San Francisco.

To that audience, this Panamanian economics minister, Dr. Nicolas Barletta, said that the United States would have no commit-

ment to make good on the contingency payments after 1999. In his opinion, there was little reason to be concerned because Panama fully expects that the Panama Canal Commission will generate sufficient revenue to make good on the contingency payment.

This may be an unwarranted assumption. Examination of the draft implementing legislation shows that the requirement for a $10 million contingency payment will not be considered in setting toll rates, and the low priority for payment given the contingency payment, relative to other ongoing debts of the Panama Canal Commission, makes it clear that there is little chance that Panama will receive any significant payments out of revenues. Thus, even if the Government of Panama, under whatever regime might exist, did not maintain in 1999 that the United States has a legal obligation to make good on the contingency payments, there is ample reason for them to argue that the United States has a moral obligation to make good on all or part of this debt.

Because I believe it is important to resolve this issue now, before hard feelings over the contingency payments develop between the United States and Panama, I would like to explain my amendment and justify it in detail.

The original language of section 4(c) provides payments to Panama as follows:

An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts made pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficent to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

My amendment would make the following changes:

Viz: At the end of paragraph 4(c) of Article XIII, add the following: "Nothing in this subparagraph may be construed to commit the United States of America to pay any part of such unpaid balance to the Republic of Panama after the date of the termination of this Treaty.".

The ambiguities in article XIII which my amendment seeks to correct were identified quite clearly in the Armed Services Committee hearings. In fact, the issue predated those hearings as was made clear in prepared Senate testimony by the Comptroller General of the United States. I quote:

Last November in our testimony before the House Subcommittee on the Panama Canal, we noted the possible ambiguity concerning the treaty-specified payment to Panama of up to $10 million if operating revenues exceeded expenditures. Under one interpretation, if no payments were made during the lifetime of the treaty, a lump sum payment to Panama of over $200 million could be required at termination of the treaty.

The Department of State, however, has said that the proposed Commission is obligated to make this payment only to the extent that operating surpluses exist during the treaty life and that there will be no obligations by either the Commission or the U.S. Government to pay Panama any unpaid cumulative balance after December 31, 1999. Accordingly, the Panama Canal Company has excluded this amount from all of its cost projections, including those we used.

At this point in Mr. Staats' statement the distinguished senior Senator from the State of Nevada correctly identified the problem when he said:

That is a unilateral statement on the part of the Department of State. There is nothing in the Treaty to clearly spell that out.

The Comptroller General could only agree with Senator Cannon. I quote:

Mr. STAATS. As was indicated this morning, the Panamanians have a different interpretation with respect to that. You could, under one interpretation, provide that the roll over take place up to 1999, but not carry over into the year 2000 when the property would be transferred. Under those circumstances, if there were profits, some or all of it could be paid but the question is whether or not there is an obligation on the part of the U.S. Government, and there is no doubt about it, if this [is the] interpretation that Panama has made, then it will have to come out of the Federal Treasury unless it is otherwise provided for in the toll base.

Mr. Staats urged that ambiguities concerning the contingency payment be eliminated and hoped that the operation of the contingency payment might be clarified in the implementing legislation. And he went on:

Furthermore, there should be a clear understanding with Panama on the treatment of this obligation, particularly in view of the treaty language which requires mutual agreement.

I would like to read that again as this comes from Mr. Staats:

Furthermore, there should be a clear understanding with Panama in the treatment of this obligation, particularly in view of the treaty language which requires mutual agreement.

This theme was continued during the questioning of Governor Parfitt:

Senator MCINTYRE. I understand that Torrijos or somebody down there is saying that if they don't get the $10 million by the year 2000, they will expect 22 times $10 million, or $220 million in payment. Do you know of this?

Governor PARFITT. I think that alludes to the fact that the treaty does say in any given year to the extent you don't pay the surplus it rolls over to the next year, and he is assuming then at the year 2000 it no longer rolls over, it is then paid off. It has been our negotiator's position that since the treaty says these funds will be paid to the extent earned, if they aren't earned they are not a liability of the U.S. Government and they would not be paid.

Governor Parfitt again repeated the theme in his exchange with the junior Senator from Colorado:

I think that everybody agrees to the extent they do not pay it in any given year it rolls over. I don't think there is any difference of understanding on that issue. It rolls over until the year 2000. That is where there is a difference of interpretation.

And again:

There is no difference in opinion on roll-over annually. The difference of opinion comes at the year 2000. To the extent that it is not earned at that point in time, the administration concludes that since we didn't earn it we are not required to pay it.

I think Mr. Staats' testimony asks does Panama agree with that. What we hear is Panama does not agree.

And again:

Everybody agrees it rolls over in a given year to the next year until the year 2000. Then there is a difference in point of view.

There are basically two ways in which the United States can resolve the difficulties associated with the contingency payment. The first method is to clarify the language of the treaty. The second is to insure that there is no accumulated contingency payment debt in 1999.

The best way to resolve the difficulties associated with the contingency payment is to clarify the language in the treaty whose ambiguity has created the problem in the first place. This is the approach taken by my amendment. Given the very real confusion

over the language of the treaty, and given the language of the treaty, and given the divergent interpretations which have already appeared, an informal agreement between the two governments as to the obligation of the United States to make good on the accumulated contingency payment debts after 1999 would lack credibility. I believe the difficulties associated with efforts to clarify the contingency payment in the implementing legislation are pointed out in the following dialog between Governor Parfitt and myself:

Senator BARTLETT. I believe you told Senator McIntyre that the Canal Commission would expect to set its toll revenue to meet its cost and that if this contingent payment was not included in the plan for setting tolls, there would be little surplus to pay the Panamanians since the Commission is not a profitmaking organization.

Governor PARFITT. That is correct, sir.

Senator BARTLETT. So what we would have here is a situation in which we have promised to pay the Panamanians out of any surplus which the Commission earns but the Commission is not expected to have any surplus.

Governor PARFITT. Under a situation which we now forecast, which is one of ever-increasing demand for additional tolls, we would not be generating surpluses, at least in very significant amounts.

Senator BARTLETT. And if we include the contingency payment in the estimate of operating costs, we increase the chance of the Canal Commission running into debt, and we have said to the Panamanians that we will turn the canal over to them free of debt.

Governor PARFITT. That is correct, sir.

Senator BARTLETT. Given the large sums of money involved and the ambiguities in the treaty, which could cost either the United States or Panama large sums of money, depending upon how the disputes are resolved, could you, Governor Parfitt, tell me how the two nations are going to avoid disputes and conflicts over the interpretation? In other words, the same question I asked Mr. Staats.

Governor PARFITT. Obviously there are built in some difficulties and we hope that these can be ironed out through the various committees that have been established in effect to try to resolve these problems. Certainly the problem related to the contingency payment seems to be one that cannot be resolved in that fashion in view of the conflicting views of both parties right now.

Senator BARTLETT. I would assume that the Congress would want to see that these differences are resolved, and how would you suggest the Congress do that?

Governor PARFITT. We had hoped most of them at least can be resolved through the implementing legislation that the Administration is now trying to develop.

Senator BARTLETT. But if the implementing legislation expresses a Congressional point of view or even an Administration point of view, and if that is not the point of view of the Panamanians, then there would still be the controversy.

Governor PARFITT. That is correct, if this does not represent really the agreement of Panama and the United States the implementing legislation will not resolve that conflict.

Senator BARTLETT. Unless the Panamanians reach some agreement with the United States executed by President Torrijos or someone from Panama?

Governor PARFITT. Or unless they in fact agree with the interpretation of the Administration as it is implemented in the legislation. There seems to be a little difference of opinion as to what the Panamanians agree to and do not agreed to. I have not had that direct an association with them so I do not know directly what their position is.

Senator BARTLETT. That would require a signed instrument, would it not?

Governor PARFITT. It would appear to involve some kind of a signed instrument or some kind of a reservation or amendment to the basic documents.

This view receives support even from Mr. Staats, as the following statement makes clear:

Mr. STAATS. Well, there might be several ways on the $10 million surplus issue of dealing with that. One would be to have an exchange of notes or something in writing which would interpret this, have an agreement on the interpretation of what is the surplus and whether or not there is an obligation to carry that over from year to year, the so-called rollover idea.

There is another way, even in the absence of an agreement, it could be written right into the implementing legislation. I would think the former would be the preferred way to deal with it.

But lacking that, it seems to me certainty is important in this case than to have the uncertainty and the kind of irritation and controversy that would flow from it. We are talking about a substantial amount of money.

It is because I feel strongly that we need to have certainty in the agreement rather than uncertainty, rather than ambiguity, that I am presenting to the Senate this amendment to the Panama Canal Treaty.

Following a discussion of problems associated with the $10 million contingency payment, the senior Senator from the State of New Hampshire expressed a similar view as follows:

Senator McIntyre. As one Senator who sees these treaties as something whose time has come, I want to say I have been very upset that I could find all of these mish-mash of negotiations that are still hanging fire, far from creating what I was hoping for, which would be a nice, good, strong relationship with our Panamanian friends. I can see all kind of troubles on the horizon.

I, too, see much trouble on the horizon, especially resulting from the probability that the Government of Panama will receive little, if any, of the contingency payment they anticipate out of excess revenues generated by the Panama Canal Commission. The problem is a simple one, outlined in my exchange with Governor Parfitt quoted above. If plans for the contingency payment are not included in setting the toll base, there is little likelihood that the Commission will have excess revenue because it is not a profitmaking organization. Testimony before the Armed Services Committee indicated that the surplus payment would not be considered in setting tolls, and the draft of implementing legislation made available to the Congress by the administration supports this view. In setting guidelines for the establishment of toll rates, the implementing legislation takes into consideration maintenance costs of the canal, depreciation of assets, amortization of use rights, and the payment to Panama described in sections 4(a) and 4(b) of article XIII of the treaty, but not section 4 (c) which deals with the contingency payment.

Furthermore, in determining the actual amount of the annual contingency payment, the implementing legislation requires that priority first be given to operations, maintenance, inventory, payable unfunded liabilities, services, other payments to Panama, a capital reserve account, and programed reserved accounts designed to maintain the financial liquidity of the Commission during periods between toll rate increases.

The likelihood that the Panama Canal Commission might run a deficit during the treaty period prior to 1999 was studied extensively by the Armed Services Committee. A study for the Committee by American Management Systems, Inc., concluded on January 26, 1978, that the proposed Panama Canal Commission would have to engage in major cost reduction programs and would have to link tolls closely to the rate of inflation in order to avoid a serious deficit. The study done for the Administration and for the Panama Canal Company was summarized in this respect by Senator McIntyre. I quote:

Senator McIntyre. It is obvious from your testimony today that you do not feel that if the $10 million contingency payment is not included in the toll base, it will be very unlikely that we will have a $10 million surplus running around.

Governor Parfitt. I feel very definitely if it is not included in the toll base it will not be generally earned.

These pessimistic conclusions about the likelihood of achieving a sizable surplus from which to derive a large number of contingency payments contrasts with the optimism expressed by the Panamanian Ministry of Planning and Economic Development in his San Francisco statement. I quote Mr. Barletta:

However, I would like to say, that in our estimation, the revenues of the Canal and all the projections and studies that have been made should be able to cover this second $10 million that should come to Panama if revenues permit, so I don't forsee much of a problem in respect to (a) deficit.

I wish to point out that several times in the hearing before the Armed Services Committee, Governor Parfitt referred to the fact that in the out years, in the years approaching the year 1999, it would be much more difficult for the canal commission to make a profit or to keep from having a significant debt. In fact, he pointed out, in his answers to various questions, that the large amount of traffic that now exists going through the canal, carrying oil from the North Slope of Alaska to the east coast or the gulf coast, is giving a lot of business to the canal that is not expected to be permanent, because it is anticipated that in the not too distant future, there will be a facility, a pipeline facility, to transport the oil from the west coast to the east coast, or at least, to the midsection of the 48 States. So it is anticipated that the traffic through the canal, the income from that traffic, will decline rather sharply in a matter of a few years.

If ambiguity in the language of the treaty leaves open the question of whether the United States has a legal obligation to make good on the accumulated contingency payment debts after 1999, then the less-than-straightforward manner in which Panama has been led to believe that it will receive the accumulated contingency payment leaves open the question of whether the United States will have a moral obligation to make such a payment.

Much has been said in recent weeks about so-called killer amendments. By no stretch of the imagination could this amendment be given that title. If Panama agrees with the State Department's interpretation of the contingency payment, then Panama agrees with this amendment. If Panama does not agree with the official State Department interpretation, then my amendment is the only way to resolve the issue. Given the numerous Members of this body who have expressed their concern over the ambiguities associated with the contingency payment, and given the concern expressed by members of the administration itself, I urge all of my colleagues to support this clarifying language to eliminate the ambiguity as it exists.

I should like to stress that the proper place and the only place to eliminate the ambiguity is in the treaty itself. If the plan is that this matter can be resolved by a reservation, I would hardly disagree, because all that will do is add one more, a third, conflicting interpretation, rather than resolving the two conflicting provisions that exists in article XIII.

Mr. President, I reserve the remainder of my time.

(The following colloquy occurred during Mr. Bartlett's remarks and is printed at this point in the Record by unanimous consent.)

Mr. PERCY. I wonder if the Senator knows whether or not the position taken by Panama's Minister of Planning and Economic Development, Nicolas Barletta, has been put on the record? I realize that it was a statement made by a government official of Panama and is not equivalent to language in a treaty. However, I think it should be made clear as to how the Panamanians view this. I visited with Minister Barletta both in Panama and discussed this matter with him in my office here when he visited here a few weeks ago, and I would like to make certain that we have on the record his statement which interprets his particular section of the treaty.

Mr. BARTLETT. I have already referred to it. I note it was made a part of the Record, I think, by Senator Byrd some days ago or some weeks ago.

Mr. PERCY. This was the statement that he made in his appearance before the World Affair Council in San Francisco on February 28.

Mr. BARTLETT. It was a statement he made in response to a question after his speech and in which he made the statement that the Senator alludes to.

I would point out that this in no way obligates the Panamanians or necessarily the Government of Panama. Before the Senator arrived, I believe I pointed out that it was, I think, on February 1 that I sent a wire to President Torrijos asking for his interpretation. I did not get an answer. So 3 weeks later I sent another wire and I still did not get an answer from President Torrijos. I finally got an answer from the Ambassador from Panama, and what he did was just give me a copy of the statement made by Mr. Barletta in answering the question in San Francisco.

I would say this to my good friend from Illinois that I regard the inaction by President Torrijos in answering my inquiries in either case or refraining from answering as avoiding the question.

I asked him what he thought of it and he did not tell me what he thought of it nor did he tell me what the people in Panama, according to his point of view, think about it.

But whether or not he agrees with the State Department, it does not eliminate the ambiguity that exists in the treaty.

The people of Panama, according to testimony by Governor Parfitt and Mr. Staata, are of the opinion in some cases that we would owe this amount, whatever the unpaid balances would be, the contingency payment by the year 1999.

The other interpretation—which is mine—is that we do not owe it. But I recognize that the ambiguity exists, and I know that the distinguished Senator from Maryland, who is managing the floor right now, has said before, and many of his colleagues who support the treaty sincerely hope and expect, that these treaties, if ratified, will enhance the relations between the United States and Panama.

But this is not going to be the case if there is an ambiguity over a rather potentially large amount of money.

Mr. PERCY. I could not agree more.

Mr. BARTLETT. So what am I trying to do with this amendment is eliminate that ambiguity, so it will not be ambiguous in the treaty itself.

Mr. PERCY. I would like to state to my distinguished colleague from Oklahoma that of the many, many witnesses that we had before the Foreign Relations Committee hearings on the treaties, one or two indicated there was probably a virtue in ambiguity.

I have never found that to be true in any agreement or contractual relationship I have had with a second or third party, and I think one of the purposes of this debate is to remove as much ambiguity as possible.

Mr. President, I ask unanimous consent that at this point in the dialog the statement made before the World Affairs Council of San Francisco by Panama's Minister of Planning and Economic Development, Nicholas Barletta, be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

Actually this question refers to the fact that in the treaties Panama should be getting $10 million if the revenues permit. If revenues do not permit, the deficit will be accumulated to be paid by revenues from later years. If there is an accumulated deficit by the time the treaty ends, in 1999, that's it, the U.S. is not committed to make it up if such amount has not been able to be collected from the revenues of the Canal operation. We do not hope in our interpretation of this clause of the treaty, that the U.S. is committed to pay any such deficit that might have accumulated. However, I would like to say, that in our estimation, the revenues of the Canal and all the projections and studies that have been made should be able to cover to Panama if revenues permit, so I don't foresee much of a problem in respect to deficit. But if such a deficit is accumulated and is pending when the treaty ends, then the U.S. is not committed to make it back from the U.S. Treasury.

Mr. PERCY. Second, I feel that our distinguished colleague has done a service to the Senate and the country in raising this issue and pinpointing it. My preference would be to have a reservation or understanding on this particular point, rather than an amendment, for a variety of reasons. I would like just to just ask one last question, because during the debate on understandings and reservations, the Senator from Illinois intends to discuss the revenue we can expect from the Panama Canal and the operation of it for the next 22 years.

It would seem to me, and I would ask our distinguished colleague whether he concurs, that in the development of our relationship with Panama, it is going to be in the interests of both our countries to maximize revenues for the next 22 years, to raise tolls sufficiently so that they cover as much of our own expense as possible, including the loss of interest that the Treasury has enjoyed every year on our investment.

That means we must maximize revenue by setting the tolls at a level where we do not lose so much volume that it reaches the point of diminishing returns. If we maximize the revenue, Panama would come closer to earning this $10 million a year until the year 2000, when we have no further obligation whatsoever.

The expectations of Panama are high, and to the extent that we can realize those by charging the users of the canal a reasonable fee for the passage, they can have that benefit and we can recover the legitimate costs we will have from the ratification of these treaties.

I understand the Senator from Oklahoma is supportive of an amendment rather than a reservation or understanding, and I think that is probably the only point we disagree on.

Mr. BARTLETT. I would point out to the distinguished Senator that, yes, I feel very strongly about this being an amendment rather than a reservation. The reason is that I think it is important to eliminate from the treaty itself the ambiguity that exists.

A reservation would just add a third conflicting interpretation, but the ambiguity would still be there. It would still exist, and the Torrijos regime or administration, or succeeding administrations, could very definitely, if they so desired, hang their hat on the first part of the 13th article, section 1, on the basis that this canal should be turned over free of debt.

As the Record will heretofore show my having done, I am going to, very soon, get into a recitation of the dialog that I had with Governor Parfitt, which impacts directly on the matter as to which the Senator inquired whether I agreed, and I think the Senator will see there are real doubts about any expectation of contingency from payments on the part of Governor Parfitt, and that the Panamanians should not expect that.

On the other hand, as the Senator from Illinois noted in the Barletta statement, he was anticipating that the ambiguity would not make much difference, because they are going to receive the contingency payment on time anyway. I do not think his confidence in that respect is very well grounded.

Mr. PERCY. I thank the Senator from Oklahoma.

Mr. BARTLETT. I appreciate the comments that the Senator from Illinois, and I apologize to the Senator from Maryland for the delay.

[This concludes proceedings which occurred earlier.]

The PRESIDING OFFICER. Who yields time?

The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I have listened carefully to the distinguished Senator from Oklahoma with respect to his proposed amendment. In responding to him, I should like first to refer to the actual provisions of the treaty, then to some of the questioning that took place in the Foreign Relations Committee when this matter was considered, then discuss and insert fully in the Record, because I think it is very important, the statement that was made by Dr. Barletta, who is Minister of Planning and Economic Development in Panama.

Then I should like to discuss some of the testimony which the distinguished Senator from Oklahoma cited that was given before the Committee on Armed Services. All of that discussion will go to the point of showing that the amendment is completely unnecessary. Then, finally, I should like to discuss some international law and make the point that, if there is any reason whatever to think there is any ambiguity, which I do not think there is, the best way to go about remedying it is by an understanding to the articles of ratification.

The Panama Canal Treaty, which we are now considering, provides, in article XIII, for a certain economic participation by the Republic of Panama in the return from the tolls of the Panama Canal. Of course, the theory behind that participation, among

other things, is to compensate Panama for committing its major national resource; namely, its location, at the isthmus, the fact that it holds this unparalleled geographical position to be the pathway between the seas; and second, to give to Panama an involvement in the effective financial operation of the canal. The canal then, as a national asset, would be making a return to the Republic of Panama.

One of the provisions contained in article XIII, section 4, is for what is called a contingent payment.

It provides that Panama shall receive "an annual amount of up to 10 million U.S. dollars per year, to be paid out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission, including amounts paid pursuant to this Treaty". So that payment is to come out of Canal operating revenues—operating revenues—to the extent that such revenues exceed expenditures of the Panama Canal Commission. The rest of that provision then goes on to say:

> In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

So if in, any year of operation, they do not produce out of operating revenues, revenues do not exceed expenditures sufficient to make this payment, then the unpaid balance shall be paid from operating surpluses in future years.

The important words to underscore there are "In the event canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years"—I emphasize "from operating surpluses in future years". So if there is any carryover in the payment to future years, that unpaid balance shall be paid from operating surpluses in future years.

Now, it is then contended, or it is asserted, that an ambiguity arises because article XIII, section 1, provides:

> 1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

It is asserted that this contingent payment, if carried over and existing at the termination date, could be a lien or a debt.

Mr. President, article XIII, section 4(c) is very clear in saying that the contingency payment shall be paid from operating surpluses in future years. If there are no operating surpluses, it will not be paid and it does not, therefore, remain as a debt, an accumulated debt or lien, that has to be cleared before the canal is turned over.

Now, this matter was discussed in the Foreign Relations Committee at the time of our hearings. In fact, Senator Glenn specifically put the question to Ambassador Bunker. Senator Glenn, and I quote the exchange between Senator Glenn and our treaty negotiator, Ambassador Bunker:

> Article XIII, section 4(c), provides that in the event revenues are not sufficient to meet the payments provided for in that paragraph, the obligation will be carried over. In the event there is a balance owing at the end of the year 1999, what will be the obligation of the United States to pay that balance? Should there be any such obligation, will an appropriations bill be required to provide the funds for this?

Ambassador BUNKER. No. there will be no obligation after the treaty expires, Senator.

Senator GLENN. There will be no obligation?

Ambassador BUNKER. No.

The committee concluded in its report that if there are no operating surpluses from the canal at the end of the treaty period, the United States and the Panama Canal Commission are under no obligation to pay Panama any cumulative balances.

Now, the same question was addressed in the letter signed by Secretary Brown, Secretary of Defense; Secretary Vance, Secretary of State; Secretary Alexander, Secretary of the Army; in a letter sent by them to all Members of the Senate on February 10 of this year. They responded in that letter to a number of questions that had been raised and on this matter they said the following:

Q. What about the contingent $10 million payment? Will we be obligated to pay off on that in the year 2000? Will it be part of the toll base?

A. The contingent $10 million annuity is payable only if operating revenues produce a surplus over expenditures, which include among others the variable annuity due Panama of $.30 per Canal ton and the fixed annuity of $10 million. The contingent annuity will not be figured in the calculation of the toll base.

If the surplus is insufficient to cover the entire payment of the contingent annuity, the shortfall is carried over to succeeding years. Since payment is contingent on available surpluses, the United States is not obligated to pay off on any accumulated unpaid balance in the year 2000. Panama's negotiators have acknowledged this fact.

Let me simply repeat that last paragraph in the letter from Secretaries Brown, Vance, and Alexander. They stated:

If the surplus is insufficient to cover the entire payment of the contingent annuity, the shortfall is carried over to succeeding years. Since payment is contingent on available surpluses, the United States is not obligated to pay off on any accumulated unpaid balance in the year 2000. Panama's negotiators have acknowledged this fact.

The distinguished Senator from Oklahoma made reference to the questioning before the Armed Services Committee, of which he is a member, both of Comptroller General Staats and Governor Parfitt.

Comptroller General Staats indicated that under one interpretation, if no payments were made during the lifetime of the treaty, a lump sum payment to Panama, over $200 million, could be required at termination of the treaty.

He then went on to say:

The Department of State, however, has said that the propsed Commission is obligated to make this payment only to the extent that operating surpluses exist during the treaty life and that there will be no obligations by either the Commission or the U.S. Government to pay Panama any unpaid cumulative balance after December 31, 1999. Accordingly, the Panama Canal Company has excluded this amount from all its cost projections, including those we used.

Senator CANNON. That is a unilateral statement on the part of the Department of State. There is nothing in the treaty to clearly spell that out.

Mr. STAATS. As was indicated this morning, the Panamanians have a different interpretation with respect to that.

He then goes on to suggest that one way to make the State Department view clear is to spell it out in the implementing legislation.

Now, Governor Parfitt in his questioning, again with the distinguished Senator from Oklahoma (Mr. Bartlett), talked on this same issue and said, among other things, when the question was raised:

Or unless they in fact agree with the interpretation of the administration as it is implemented in the legislation. There seems to be a little difference of opinion as to what the Panamanians agree to and do not agree to. I have not had a direct association with them so I do not know directly what their position is.

Now, the Senator from Oklahoma quoted two witnesses before his committee, both of whom said that this was an interpretation being made by the Panamanians, the interpretation that an outstanding obligation would exist at the end of the treaty period.

I have not heard the Senator quote to me the Panamanian sources for that assertion, and our Secretaries of Defense and State, in a letter to Members of the Senate, have said:

Since payment is contingent on available surpluses, the United States is not obilgated to pay off on any accumulated unpaid balance in the year 2000, Panama's negotiators have acknowledged this fact.

I repeat:

Panama's negotiators have acknowledged this fact.

Further, as the distinguished Senator from Oklahoma recognized—I think quite fairly—Dr. Nicolas Barletta, the Minister of Planning and Economic Development of the Republic of Panama, in a major address in San Francisco on the 28th of February, agreed with the interpretation given to the Foreign Relations Committee by Ambassador Bunker in his testimony and the interpretation presented by the Secretary of Defense, the Secretary of State, and the Secretary of the Army in their letter of February 10 to the Members of Senate.

Let me quote in full Dr. Barletta's statement in San Francisco in his address to the Commonwealth Club—California Council of International Trade, World Affairs Council of San Francisco, World Trade Association of the Chamber of Commerce. This was in the question and answer period which they had before that distinguished audience.

The question was asked of Dr. Barletta, the Panamanian Minister of Planning and Economic Development. This is the moderator speaking:

I received a question which asks if there is an accumulated unpaid balance under Article XIII, Section 4(c) of the contingency payments stipulated in the Panama Canal Treaties, would the United States be liable for payment of the accumulated unpaid balance?

That is the question on which the Senator from Oklahoma is asserting there is such ambiguity that an amendment to the treaty is called for and is necessary.

Dr. Barletta replied as follows:

Actually this question refers to the fact that in the treaties, Panama should be getting $10 million a year from the revenues of the canal operation and an additional $10 million if the revenues permit. If revenues do not permit, the deficit will be accumulated, to be paid by revenues from later years. If there is an accumulated deficit by the time the treaty ends in 1999, that's it, the United States is not committed to make it up if such amount has not been able to be collected from the revenues of the canal operation.

Let me repeat that sentence:

If there is an accumulated deficit by the time the treaty ends in 1999, that's it. The United States is not committed to make it up if such amount has not been able to be collected from the revenues of the canal operation.

Dr. Barletta then goes on to say:

We do not hope in our interpretation of this clause, that the United States is committed to pay any such deficit that might be accumulated.

However, I would like to say that, in our estimation, the revenues of the canal and all the projections and studies that have been made should be able to cover this second $10 million that should come to Panama if revenues permit, so I don't foresee—much of a problem in respect to deficit.

That was the sentence that the Senator from Oklahoma alluded to in his statement—namely, that the Panamanians expect there to be no deficit, and it is correct that they have that expectation that the revenues will produce sufficient margin to make this payment. Therefore, Minister Barletta said:

So I don't foresee much of a problem in respect to deficit.

However, he then went on to conclude as follows:

But if such a deficit is accumulated and is pending when the treaty ends, then the United States is not committed to make it back from the United States Treasury.

Mr. President, that is pretty explicit. As pointed out earlier, Mr. Barletta said:

If there is an accumulated deficit by the time the treaty ends in 1999, that's it, the United States is not committed to make it up if such amount has not been able to be collected from the revenues of the canal operation.

Our negotiators interpret this clause in the way I have outlined. The Panamanian negotiators interpret this clause in the way that has been outlined. The minister of planning has made this very clear and explicit statement, which I understand from the Senator from Oklahoma was delivered to him by the Panamanian Ambassador in response to his telegrams to the Chief of State in Panama.

So I believe, Mr. President, that there is not any ambiguity which needs to be resolved.

Finally, Mr. President, I suggest that under a proper understanding of treaties and international law, if one still has the slightest trace of a doubt—and I am saying that I do not—but if one does in an instance in which both parties are in agreement as to the meaning or the interpretation of a provision in a treaty, the way to eliminate that last element of a doubt is with an understanding as to the meaning of the provision. That is the very purpose of understandings. By definition, an understanding is the agreed-upon interpretation of some provision in a treaty about which someone says there is a doubt or an ambiguity, as to what it means. I do not agree that there is doubt or ambiguity here. I have read the language of the treaties, and, in particular, I do not think there is any doubt and ambiguity; because article XIII, section 4(c), very clearly says that the unpaid balance shall be paid from the operating surpluses in future years—operating surpluses in future years. So there cannot be a lien or debt there that has to be paid from some other source. That has been precluded by the language of the treaty.

I find it interesting how many ambiguities opponents, who do not want the treaties at all, can find. In any event, in an instance in which both parties have clearly stated identical views of what the language means, the way to meet that situation, the way to handle it, is through an understanding.

Mr. BARTLETT. Mr. President, will the Senator yield?

Mr. SARBANES. I yield.

Mr. BARTLETT. In addition to the Barletta statement, which I discussed—and I will discuss it further—what proof does the Senator from Maryland have of an understanding of their negotiators with our negotiators? Does the Senator have a signed statement from their negotiators?

Mr. SARBANES. No, I have the statement made by our own negotiator who was in long and continuous consultation with Panamanian negotiators and the statement made by our Secretary of State and our Secretary of Defense.

Mr. BARTLETT. The Senator from Maryland has one Panamanian answering a question, in San Francisco, speaking for all Panamanians?

Mr. SARBANES. I must say to the Senator that I think the assertions we received from our negotiator, Ambassador Bunker, and the assertions made by our Secretary of State and Secretary of Defense——

Mr. BARTLETT. That is not what the Senator from Maryland said earlier. The Senator said that he had agreements from the Panamanian negotiators. The Senator did not say he had it from Ambassador Bunker or from other people testifying to that effect.

Mr. SARBANES. No. If the Senator will forbear for a moment, what I said was that the Secretary of Defense and the Secretary of State had sent a letter in which they had stated:

> Since payment is contingent on available surpluses, the United States is not obligated to pay off any accumulated unpaid balance in the year 2000. Panama's negotiators have acknowledged this fact.

Mr. BARTLETT. The Senator said that, but he also said that the Panama negotiators have acknowledged this fact.

Mr. SARBANES. That is right.

Mr. BARTLETT. The Senator is not submitting any evidence to the effect that they themselves did it?

Mr. SARBANES. I am submitting the letter from the Secretary of State and the Secretary of Defense which have told us that.

I am glad the Senator has brought up the point. Let me contrast a letter from the Secretary of State, and Secretary of Defense, and Secretary of the Army, leading officials who have been in contact with Panamanian officials, who tell us Panama's negotiators have acknowledged this fact, with the distinguished Senator citing the view of Governor Parfitt that a different interpretation exists on the part of the Panamanians.

I am now quoting from page 409 of the hearings before the Armed Services Committee.

Mr. BARTLETT. Will the Senator read that clear through to the end? The last time the Senator stopped before the conclusion of that dialog, and I think if he continues the dialog he will get additional information which I think is very pertinent to the question.

Mr. SARBANES. Governor Parfitt, in response to the Senator's line of inquiry with respect to this supposed differing interpretation, says:

> There seems to be a little difference of opinion as to what the Panamanians agree to and do not agree to. I have not had a direct association with them so I do not know directly what their position is.

And then, of course, the Senator went on to say:

That would require a signed instrument, would it not?

Governor PARFITT. It would appear to involve some kind of a singed instrument or some kind of a reservation or amendment to the basic document.

Senator BARTLETT. I thank you both very much.

Of course, Comptroller General Staats earlier talked about amending the implementing legislation.

What I ask the Senator to provide is the Panamanian interpretation that is contrary to the position that I have outlined as to the meaning of these provisions, other than an assertion by Comptroller General Staats and Governor Parfitt that they think or they have heard or someone has told them that there is a difference of opinion; Of course, Parfitt goes on to say:

I have not had a direct association with them so I do not know directly what their position is.

Mr. BARTLETT. Is the Senator asking me a question?

Mr. SARBANES. Yes.

Mr. BARTLETT. I thought the Senator was still talking.

The testimony that they gave indicated that there was, without being specific, a misunderstanding on the part of the Panamanians. What the Senator from Maryland has not mentioned at all has been section 1 of article XIII which says that the Panama Canal must be turned over free of debt.

Mr. SARBANES. Will the Senator yield?

Mr. BARTLETT. I will not yield at this point until I conclude.

Mr. SARBANES. I read that section in full. The Senator said I had not mentioned. Perhaps he left the room. Not only did I mention it, bit I quoted it word for word. I read it in the course of developing my presentation.

Mr. BARTLETT. The Senator did not mention that in arguing the point. He may have read it. I was here, I did not leave the room. I did not hear it. But the Senator did not mention that in his argument and that is where the ambiguity exists in article XIII, that is, that you can have one interpretation, that the debt at the end of 22 years must be paid by the United States; you have the other interpretation in article XIII, section 4(c) to the effect that the moneys are paid out of revenues and hence if the revenues are not there the money is not owed.

I agree that that is a correct interpretation of the position of the United States and the State Department.

Mr. President, the plain facts are that we have ambiguity.

The only statement that the Senator from Maryland can attribute to a specific person is an answer to a question following a speech by Mr. Barletta in San Francisco. He, of course, was expressing a personal opinion. He was not saying that he was designated by President Torrijos to lay out the Torrijos administration position in that answer to a question after a speech as the official position of Panama.

I sent a wire to Gen. Omar Torrijos on Febraury 1, and I wish to place this in the Record, but "I would appreciate your personal interpretation of article XVIII, section 4(c) of the proposed Panama Canal Treaty which provides to Panama," and I then quoted section 4(c), asking for his interpretation.

I ask unanimous consent that this wire be printed in the Record.

There being no objection, the telegram was ordered to be printed in the Record, as follows:

FEBRUARY 1, 1978.

GEN. OMAR TORRIJOS,
Panama City, Panama.

GENERAL TORRIJOS: I would appreciate your personal interpretation of article 13, sec. 4(c) of the proposed Panama canal Treaty which provides to Panama:

"An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this treaty. In the event canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed."

In the event there is an unpaid debt derived under this section accumulated at noon, Panama time, December 31, 1999, is it your understanding that the United States must assume such debt and make payment to the Government of Panama? Also, is it your understanding that the Panama Canal Commission is committed to raising tolls in order to maximize the possibility of making this additional payment annually to Panama?

Please cable reply. Thank you.

DEWEY F. BARTLETT.
U.S. Senator.

Mr. BARTLETT. The Senator from Oklahoma did not receive an answer from General Torrijos. So he was given the chance to respond, I point out to the Senator from Maryland, and he refused to answer the inquiry. So I sent him another wire 3 weeks later and pointed out that I had not received a response to my earlier inquiry, and asked him again. I ask unanimous consent, Mr. President, that this second wire be printed in the Record.

There being no objection, the telegram was ordered to be printed in the Record, as follows:

FEBRUARY 22, 1978.

Gen. OMAR TORRIJOS,
Panama City, Panama.

GENERAL TORRIJOS: As of this date, I have not received your response to my telegram of February 1, 1978.

If the Panama Canal Treaty and the Treaty of Neutrality are to be thoroughly and objectively considered, the Senate must have a firm and complete understanding of the terms of the documents. The information I have requested of you is essential to our present debate.

I again request your personal interpretation of Article 13, Sec. 4, Subsection (c) of the proposed Panama Canal Treaty which provides to Panama:

(c) "An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed."

In the event there is an unpaid debt derived under this section accumulated at noon, Panamanian time, December 31, 1999, is it your understanding that the Panama Canal Commission or the United States must assume such debt and make payment to the government of Panama? Also, is it your understanding that the Panama Canal Commission is committed to raising tolls in order to maximize the possibility of making this additional payment annually to Panama?

I would appreciate your prompt response.

DEWEY F. BARTLETT. *U.S. Senator.*

Mr. BARTLETT. Then a short while later I received an answer from the Ambassador from Panama saying that the General wanted me to have the Barletta answer to a question after a

speech in San Francisco and, of course, I never did hear from General Torrijos.

The fact that he did not answer me on this very fundamental question as to what the President thought, leaves in the mind of the Senator from Oklahoma considerable doubt as to what his position is on this.

Does he have some reason not to answer? Certainly I think he had the opportunity on two occasions, and he failed to do it, so he failed to express an answer.

But I did receive an answer from Gabriel Lewis, Ambassador from Panama. He said:

MARCH 6, 1978.

Hon. DEWEY F. BARTLETT,
U.S. Senator,
State of Oklahoma,
Russell Senate Office Building.

DEAR SENATOR: General Omar Torrijos, Chief of Government has received your telegram of February 22, 1978. He has requested us to send the transcripts of recent statements made by Dr. Nicolas Ardito Barletta which answer your question.

Dr. Barletta is our Minister of Planning and Economic Development and the negotiator in behalf of our country for the economic issues in the new Treaties.

Hoping to have been able to serve you, I remain

Very truly yours,

GABRIEL LEWIS, *Ambassador.*

Senators will notice that he made no mention of my telegram of February 21, 1978.

This leaves, of course, a lot of doubt as to what the President of Panama really does think and how he does interpret the ambiguities that exist in article XIII.

Mr. President, I ask unanimous consent that the lecture and answers to questions be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

LECTURE AND ANSWERS TO QUESTIONS

The Audience who invited him to address them were members of the Panamerican Society (organizers); World Affairs Council; World Trade Association of the Chamber of Commerce; Latin American Section of the Commonwealth Club; and California Council of International Trade.

Mr. DE LA OSSA: I received a question which asks: If there is an accumulated unpaid balance under Article XIII (4)(C) of the contingency payment stipulated in the Panama Canal Treaties? Would the U.S. be liable for payment of the accumulated unpaid balance?

Dr. ARDITO BARLETTA: Actually this question refers to the fact that in the treaties Panama should be getting $10 million a year from the revenues of the Canal operation and an additional $10 million if the revenues permit. If revenues do not permit, the deficit will be accumulated to be paid by revenues from later years. If there is an accumulated deficit by the time the treaty ends, in 1999, that's it, the U.S. is not committed to make it up if such amount has not been able to be collected from the revenues of the canal operation. We do not hope in our interpretation of this clause of the treaty, that the U.S. is committed to pay any such deficit that might have accumulated. However, I would like to say, that in our estimation, the revenues of the canal and all the projections and studies that have been made should be able to cover this second $10 million that should come to Panama if revenues permit, so I don't foresee much of a problem in respect to deficit. But if such a deficit is accumulated and is pending when the treaty ends, then the U.S. is not committed to make it back from the U.S. Treasury.

Mr. BARTLETT. But if the present Government of Panama and the Government of the United States do, in fact, agree on their interpretation, then this amendment eliminates the ambiguity that

exists in article XIII so that it would not be a source of conflict or controversy in the coming years up to and including 1999.

Whether or not President Torrijos agrees with Mr. Barletta, or Minister Barletta, the fact remains that the issue is the ambiguity that exists that the Senator from Maryland does not want to eliminate.

I cannot understand for the life of me why the Senator from Maryland, one of the floor managers of the treaty, does not want to have an instrument representing the understanding between the two nations that is unambiguous, that is clear, on the question of contingency payments.

I think it is incumbent upon the Senator of the United States to make any corrections of ambiguity that exist so that there will be clear understanding between the two parties as to what actually is agreed to.

So I find it very difficult to see why the Senator from Maryland does not support this amendment, because it has the effect of eliminating two different points of view as to how contingency payments would be paid.

If the intention of the Senator from Maryland and the leadership is to have a reservation similar to the amendment that I am offering, then all that is offering, as far as I am concerned, is just one more point of view. What would remain in the treaty is the conflict, the ambiguity, the difference of opinion. It would still be there, and attention to it could still be called by one party of the other in succeeding years.

So I think it is very vital that we not add to the confusion by having a reservation with one more point of view, but that we eliminate the confusion, the ambiguity, so that there would not be hard feelings developed over this particular point.

I know the Senator from Wyoming has been waiting patiently, and I would be very happy to yield to him.

Mr. HANSEN. Mr. President, I thank my distinguished colleague from Oklahoma for yielding and I would like, at the same time, to express my very genuine appreciation to him for the service he is providing our country, and for the contribution he is making toward a good relationship between the United States and the Nation of Panama.

I, too, find it extremely difficult to understand or to comprehend why proponents of the treaty are so insistent, so adamant, in their refusal to clear up sources of trouble, areas of misunderstanding, and points that could very well be in contention, or will come into contention, in the years ahead.

No one need remind anyone on this floor that the action this body has already taken on the Treaty of Neutrality, which was adopted some time ago, and which included, not as an amendment in the definition of that term as propounded by proponents of the treaty but rather, an amendment to the Resolution of Ratification of the Treaty of Neutrality, as I recall it, so as to escape the charge that the treaty was being amended, has led to real difficulties between Panama and the United States.

I refer, or course, to the so-called DeConcini amendment. I would venture to say that we have seen so far only the tip of the iceberg. First, there was concern on the part of the people of Panama, and

now it appears as though when the full impact of that so-called DeConcini amendment is understood by other Latin American and South American countries it may be a point that will be objected to by more than simply the nation of Panama.

I have felt all along that no one contends, or few indeed are those who contend, that a treaty should not be renegotiated with Panama. I have never contended that there should have been no changes since 1903 and no subsequent modifications that have in fact been agreed upon by our countries after the initial treaty signing back at the beginning of the century. But I have insisted, and I now feel that it is more important than ever, that whatever a new treaty to be agreed upon, adopted and ratified by both countries says must be clear, easy of interpretation, and devoid of any ambiguity, so as to leave no doubt at all, for future persons and officials, judges who may be called upon to interpret what the Congress of the United States and the President of the United States and the nation of Panama intended was agreed upon.

So it is in that context that I applaud my colleague from Oklahoma for his diligent pursuit of the intricacies of this treaty so as to take out ambiguities or to qualify or to explain in a fashion that will make clear precisely what we are saying.

Now, it is not difficult at all to find all kinds of authorities, and to quote this official or that official. It is not difficult at all to say what Panama understands. Then I hear someone making the assertion as to what is the understanding of the negotiations for the United States, on the other hand, and what is the understanding of the representatives of Panama, on the other, I cannot escape recalling similar assurances that have been given over the years to each of us in this body by the White House.

Earlier this year we were talking about some other legislation which has nothing to do with the treaty between Panama and the United States. I was told and assured that a certain provision in a bill then before the Senate would have the full and unqualified support of the White House. I was further assured by persons I felt competent to give the assurances, that a letter would be forthcoming supporting completely a position I then was taking of the floor of the Senate.

I have had the same experience I am certain a great many others have had—and I might add that it does not make all that much difference which administration may be in power at the White House—of this same willingness of people around the President, people in the executive branch of the Government, to speak for the President.

It is a long story. It is one that, as I have indicated, has included Republicans and Democrats both.

Yet the bottom line is that when you come down to delivering what the President of the United States has been reported to be willing to do, you have to look finally to the President of the United States himself, and no one else. No one else can speak for him.

I think the most recent example of the ability of a President to take first one position and then another was demonstrated in connection with the neutron bomb issue. For more than a year, our Nation actively pressed the West German Republic to endorse the

neutron bomb concept, and, with understandable misgivings, that great nation, our valued ally in the Western European part of the world, examined the ramifications of such an endorsement, all the time under the continued prodding of the present administration to give that endorsement.

Finally that Government endorsed the concept of a neutron bomb; and within a few days later, to the great chagrin and amazement of the West German Republic, and indeed as well of the rest of the world, the President of the United States changed his mind yet another time, and said in effect, "I am going to stop production of the neutron bomb."

What the Senator from Oklahoma is talking about is precisely this sort of situation, compounded by the fact that we are not talking in-house, as we have been on the neutron bomb, but rather between two countries.

I have listened closely to a person I admire very much, the distinguished junior Senator from Maryland (Mr. Sarbanes), who is a very brilliant scholar and an excellent lawyer, and yet I do not find in what I hear him say, or what I have read he has said, anything that confirms in my mind the unreasonableness of this amendment offered by the Senator from Oklahoma. I do not find any reason at all for not adopting and including in the treaty the amendment offered by the Senator from Oklahoma.

It is all well and good, in talking about different positions in Panama, to refer, as has been done repeatedly, to statements by the Governor of the Panama Canal Commission and others. I would like to quote, if I may the Comptroller General of the United States, the Honorable Elmer Staats; from a letter dated April 4, 1978, and addressed to our colleague, the Honorable Richard Stone.

On page 3 of that letter—and if it has not yet been included in the Record, I would ask unanimous consent that it may be. Has it been ordered to be printed in the Record, does the Senator from Maryland know?

Mr. SARBANES. I do not think it yet has. I hope the Senator will include it, and I hope very shortly to be quoting from it also.

Mr. HANSEN. The Senator will not be quoting it very shortly, because I do not intend to yield shortly, but I appreciate my friend's interest in the letter, and I ask unanimous consent, then, Mr. President, that the letter to which I have referred be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as following:

COMPTROLLER GENERAL
OF THE UNITED STATES,
Washington, D.C., April 4, 1978.

In reply refer to: B-114839.

Hon. RICHARD STONE,
U.S. Senate.

DEAR SENATOR STONE: This is in reply to your letter of March 15, 1978, expressing concern that the Panama Canal Treaty might require future appropriations caused by the payments to Panama specified in the treaty. You requested our views on this issue in light of the recent testimony to the Senate Armed Services Committee, the March 3, 1978 draft of legislation to implement the treaty, and the Secretary of State's January 27, 1978 letter to you.

As you know, there has been an extensive discussion of whether the proposed Panama Canal Commission will be financially self-sufficient during the lifetime of

the Panama Canal Treaty. There is no definitive answer to this question because of the inherent uncertainties of long-term cost and revenue estimates.

In his February 1, 1978, testimony before the Senate Armed Services Committee, Governor Parfitt of the Canal Zone testified that, unless there was a significant drop in anticipated North Slope oil traffic, the Commission should be able to raise toll rates and generate sufficient revenues to meet its estimated costs through fiscal year 1984. Governor Parfitt, however, alerted the Committee to the possibility that the Commission might require appropriations or loans to cover operating deficits in the years after 1984. The Governor stated that deficits might occur because of cost inflation, the limit to which toll rates could be raised, a falloff in North Slope oil transits and competition from alternative modes of traffic.

I indicated in my testimony before the Senate Armed Services Committee that the Panama Canal Company's financial study for the 1979–84 period was a conservative analysis in that a 5 percent inflation factor was used for future costs and capital expenditures were estimated at a low level. In addition, I pointed out some of the implementation uncertainties which would affect the financial viability of the Panama Canal Commission. Governor Parfitt and I agreed at the hearings that the implementing legislation should resolve these issues.

We have analyzed the March 3, 1978, draft implementing legislation for the Panama Canal Treaty in terms of the concerns I expressed in testimony. The enclosed table shows this comparison.

The Secretary of State noted in his January 27, 1978, letter to you that in fiscal year 1976 the Panama Canal Company had deferred $9.3 million of interest payments to the Treasury and that $3.9 million of this amount remained to be paid in fiscal year 1978. We understand that this remaining payment has been made. We should point out that the Secretary's statement to you that after this payment "the (Panama Canal) Company will have no outstanding long-term obligations" is not completely accurate. As of September 30, 1977, the Company had the following long-term obligations:

$15.1 million liability for retirement benefits to certain former employees and for employees' repatriation (The Canal Zone Government had a comparable liability of $4.3 million.);

$72.3 million contingent liability for a 25-year contract, effective May 9, 1969, with the Institute de Recursos Hidraulicos y Electrificacion, an autonomous agency of the Republic of Panama, for the purchase of electric power to be produced by that agency; and a

$26.6 million commitment under uncompleted construction contracts and unfilled purchase orders.

Settlement of these liabilities and commitments will extend beyond the normal operating cycle of 1 year and, therefore, in that sense they can be considered to be long-term obligations.

Concerning the payments to Panama, the treaty provides for four types of payments by the Panama Canal Commission. First, Article III, paragraph 5, of the treaty provides for an annual payment of $10 million from the Commission to Panama to reimburse Panama for the costs incurred in providing public services. Every 3 years from the date the treaty enters into force the costs involved in furnishing the services shall be reexamined in order to determine whether adjustment to the payment should be made because of inflation and other factors affecting costs.

In addition to the annual payment for services under Article III, Article XIII, paragraph 4, of the treaty provides that the Republic of Panama shall receive from the Panama Canal Commission three other forms of payment:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar ($0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal after the entry into force of this Treaty, for which tolls are charged. * * *

(b) A fixed annuity of ten million United States dollars ($10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

"(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed."

Under the treaty, Panama grants the United States the rights to manage, operate, and maintain the Panama Canal. Art. III, para. 1. The treaty provides for the

United States to "carry to its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America." Art. III, para. 3. Because the Panama Canal Commission is a United States Government agency, it is clear that the financial obligations of the Commission are also obligations of the United States.

Furthermore, Article XIII, paragraph 1, provides that upon termination of the treaty, Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, "which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree." Accordingly, the United States would be precluded from turning the Panama Canal over to Panama subject to financial encumbrances, unless both parties agreed otherwise.

It is of course conceivable that the revenues of the Panama Canal Commission will not be sufficient to cover the expenditures of the Commission. Such a deficit would need to be offset either through borrowings or appropriations. Accordingly, it has been proposed that the $40 million borrowing authority under current legislation be retained. Since the treaty provides for the Canal to be turned over to Panama free of liens and debts (unless otherwise agreed), to the extent that such borrowing becomes necessary and could not be repaid from future revenues of the Commission the United States would either need to appropriate funds for the Commission or forgive the Commission's indebtedness to the Treasury under this line of credit.

The treaty provides that the payments to Panama under Article XIII, paragraph 4, are to be paid out of Canal operating revenues. Since the treaty authorizes the United States to determine tolls and other charges, the United States has some control over the amount of Canal operating revenues. Art. III. (Of course, the extent to which tolls may be increased is dependent upon future economic conditions.) Although Canal operating revenues are the specified source for the payments to Panama under Article XIII, there is at least a possibility that the payments may indirectly result in funds being paid out of the United States Treasury should there be a substantial, protracted shortfall. As stated earlier, the Commission may need to borrow money from the Treasury and those loans may not be liquidated by the year 2000. Since the possibility of Treasury funds being needed is related to the Commission being a United States agency and the United States' authority over tolls, it would be difficult if not impossible, to amend the treaty to eliminate the possibility that funds from the United States Treasury might be needed without affecting other provisions of the treaty that appear to be in the interest of the United States, such as retention of control of the Commission.

Some confusion has arisen concerning the interpretation by GAO and the Government of Panama of Article XIII, subparagraph 4(c), which provides for an annual amount of up to $10 million per year to be paid by the Commission to Panama out of Canal operating revenues to the extent that such revenues exceed expenditures of the Commission. See, e.g., 124 Cong. Rec. S2621-23 (daily ed. March 1, 1978). By tracing our testimony with respect to this provision, we would hope to aid in clarifying the matter.

In my statement of November 30, 1977, before the Subcommittee on the Panama Canal of the House Marine and Fisheries Committee, I indicated that a question had been raised whether a lump-sum payment of $220 million would be required at the time the treaty is terminated—in the event that there were no surplus during the lifetime of the treaty. In other words, would the annual shortfall accumulate as a debt to the extent it exceeds any surplus as of December 31, 1999? I indicated that we had not yet formed an opinion on this issue.

I again referred to the contingent $10 million payment in my prepared statement of February 1, 1978, before the Senate Committee on Armed Services. I stated in pertinent part as follows:

"Last November in our testimony before the House Subcommittee on the Panama Canal, we noted the possible ambiguity concerning the treaty-specified payment to Panama of up to $10 million if operating revenues exceed expenditures. Under one interpretation, if no payments were made during the lifetime of the treaty, a lump sum payment to Panama of over $200 million could be required at termination of the treaty. The Department of State, however, has said that the proposed Commission is obligated to make this payment only to the extent that operating surpluses exist during the treaty life and that there will be no obligations by either the Commission or the U.S. Government to pay Panama any unpaid cumulative balance after December 31, 1999." Hearings on the Defense, Maintenance and Operation of

the Panama Canal, including Administration and Government of the Canal Zone before the Senate Comm. on Armed Services, 95th Con., 2d Sess. 375 (1978).

Except for the reference to our November testimony, the above quoted portion of my statement was included in the summaries of testimony contained in the Senate Armed Services Committee Report. However, "one interpretation" was inadvertently changed to "our interpretation," in the text of the summary, thus giving the impression that GAO's interpretation of the provision was at odds with the interpretation of the Department of State.

Our interpretation of Article XIII, subparagraph 4(c), is that the $10 million payment is contingent upon the revenues of the Commission exceeding expenditures and therefore, a lump-sum payment would not be required at termination of the treaty. Subparagraph 4(b), which provides for the fixed annuity, specifically provides that the amount of the fixed annuity "shall constitute a fixed expense of the Panama Canal Commission." In contrast, subparagraph 4(c), which provides for the contingent $10 million payment, does not contain such a provision. Subparagraph 4(c) provides for an "annual payment of *up to* ten million United States dollars ($10,000,000) per year, to be paid out of operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty." (Emphasis added.) Thus the right to receive a payment is conditioned upon the existence of a suplus and is, in effect, limited by the amount of the surplus. Subparagraph 4(c) further provides that, "in the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years *in a manner to be mutually agreed.*" (Emphasis added.) The right to receive payment of the unpaid balance is conditioned upon the existence of an operating surplus in future years. In the event there is not an operating surplus, there would be no right to receive payment. The provision in Article XIII, paragraph 1, which requires the Canal to be turned over to Panama upon termination of the treaty "free of liens and debts" is not pertinent since there would be no debt where the condition precedent to the right to receive payment (i.e., an operating surplus) had not occurred. Accordingly, GAO's interpretation of Article XIII, subparagraph 4(c) is that there would be no obligation by either the Commission or the United States to make a lump-sum payment to Panama under this provision at termination of the treaty.

In addition to the confusion with respect to GAO's interpretation of the contingent payment provision, there also appears to be confusion with respect to the interpretation given the provision by the Government of Panama. The summaries of testimony in the Senate Armed Services Committee Report state:

"In response to a question whether this was a unilateral understanding on the part of the State Department concerning the $10 million contingent payment, Mr. Staats answered: 'the Panamanians have a different interpretation with respect to that." S. Rep. No. 95-633, 95th Cong., 2d Sess. 18 (1978).

The quotation in the report is incomplete, and thereby may create an erroneous impression. I had stated in full: "As was indicated this morning, the Panamanians have a different interpretation with respect to that." Hearings before the Senate Committee on Armed Services, at p. 379. I was referring to the testimony of Mr. Parfitt, Governor of the Panama Canal Zone and President of the Panama Canal Company, who had preceded me as a witness. With respect to the $10 million contingent payment, the following exchange took place during that earlier testimony:

Senator McIntyre. Further, I understand that the Panamanians expect this payment; is this true?

Governor Parfitt. As recently as Sunday I was advised to this effect by several Senators who were visiting [sic] with the Panamanian Government.

Senator McIntyre. They are claiming not that they expect it but that they are entitled to it under the treaty.

Governor Parfitt. I have no direct information to that effect, but the Senators who have visited with them have reported that to me.

Hearing before the Senate Armed Services Comm., at p. 332.

The State and Defense Departments subsequently indicated that the matter is not open to differing interpretations. The February 10, 1978, letter to Senators from the Secretaries of Defense, State, and Army contained the following question and answer:

"What about the contingent $10 million payment? Will we be obligated to pay off on that in the year 2000? Will it be part of the toll base?

"The contingent $10 million annuity is payable only if operating revenues produce a surplus over expenditures, which include among others the variable annuity

due Panama of $.30 per Canal ton and the fixed annuity of $10 million. The contingent annuity will not be figured in the calculation of the toll base.

"If the surplus is insufficient to cover the entire payment of the contingent annuity, the shortfall is carried over to succeeding years. Since payment is contingent on available surpluses, the United States is not obligated to pay off on any accumulated unpaid balance in the year 2000. *Panama's negotiators have acknowledged this fact."* (Emphasis added.)

Furthermore, a letter to Senator McIntyre dated February 23, 1978, from Douglas J. Bennett, Jr., Assistant Secretary of State for Congressional Relations stated:

"You asked whether the Panama Government agreed with our interpretation that any accrued unpaid balance of the annual contingent $10 million payment would not be paid by the United States. We have raised this issue with the Panamanian Government within the last two weeks and have been assured again that *their interpretation is the same as ours."* (Emphasis added.)

In light of the assurances given by the Department of State concerning the Panamanian Government's interpretation of the contingent payment provision, it is our veiw that an amendment, reservation, or understanding to the treaty is not necessary.

We trust that the above is responsive to your request.

Sincerely yours,

ELMER B. STAATS,
Comptroller General of the United States.

COMPARISON OF GAO CONCERNS AND DRAFT INPLEMENTING LEGISLATION FOR PANAMA CANAL TREATY

Issue, draft legislation, and reference:

Interest payments to the U.S. Treasury, eliminates obligation, sec. 202, p. 9.

Contingent payment of surplus to Panama, provides method of calculation not included in toll base; no mention of carryover beyond 1999 [1], sec. 293, pp.10–11, sec. 232, pp. 20–21.

Recovery of existing investment through accelerated depreciation or returned assets, provides for depreciation; no mention of acceleration depreciation in toll base, sec. 210, pp. 14–15, sec. 232, p. 20.

Resolution of Panama's debt for prior service, no mention.[2]

Public services payment to Panama, no mention of calculation or quality.

Capital improvements during life of the Treaty, establishes capital reserve account which is included in toll base, sec. 203, p. 10, sec. 232, pp. 20–21.

Liquidation of transferred inventories, transfer to other U.S. agencies may be with or without exchange of funds, sec. 213, p. 18.

Valuation of transferred assets; to Panama, no mention (in second draft value determined by Commission with Presidential approval).

Valuation of transferred assets to other U.S. agencies, U.S. investment to be adjusted by value of transfer, sec. 213, p. 18.

Transfer and termination of employees, numerous provisions, including 1) early optional retirement, 2) special immigrants, pp. 28–49, sec. 325, 326, pp. 37, sec. 410, p. 59.

Form of U.S. Government agency, Government corporation, sec. 201, p. 8, sec. 209, p. 13–14.

Responsibility for external audit, GAO under authority provided by Government Corporation Control Act, sec. 2, pp. 1–2.

DEPARTMENT OF STATE,
Washington, D.C., February 23, 1978.

Hon. THOMAS J. MCINTYRE,
U.S. Senate,

DEAR SENATOR MCINTYRE: I appreciate the opportunity to answer the questions your raised yesterday about the Panama Treaties and the present state of the implementing legislation.

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[1] The Department of State contends that the Panamanian Government agrees that United States has no obligation for payment after 1999 per letter of February 23, 1978, to Senator McIntyre (attached).

[2] The Department of State intends to resolve this debt through "diplomatic means" per letter of February 23, 1978, to Senator McIntyre.

First, you asked what would happen if, in any year between now and 2000, while the United States continues to operate the Canal, toll revenues were insufficient to cover costs. We are confident that toll revenues will be sufficient to cover the operating costs of the Canal until the year 2000. Our expectations in this regard are supported by recently-conducted cost and revenue projections. Of course, it is possible, with or without the new Treaty, that unanticipated events of major significance may cause losses which cannot be totally recovered from revenues.

As you know, our negotiators fought hard to assure an extended period during which the United States would continue to operate the Canal. Having assumed responsibility for operating the Canal during this 21-year period, we naturally have an obligation to cover any unforeseen losses as well. If operating losses should occur in a given year, we anticipate that deficits would be financed through use of standby borrowing authority. These deficits would be recovered in subsequent years through an adjustment of the tolls base.

With regard to the $8.9 million debt owed by Panama to the present Company, the Treaty in no way extinguishes this obligation. If the debt remains uncollected when the new Treaty becomes effective, it would become an account receivable of the Panama Canal Commission. The amount of the debt is disputed by Panama. We intend, through diplomatic means, to resolve this dispute and liquidate the debt.

You asked whether the Panama Government agrees with our interpretation that any accrued unpaid balance of the annual contingent $10 million payment would not be paid by the United States. We have raised this issue with the Panamanian Government within the last two weeks and have been assured again that their interpretation is the same as ours.

Finally, I am enclosing a summary of the implementing legislation in its present stage of development. This summary identifies the major issues and in some cases indicates how we expect the Administration to decide them. If you have any further questions on the implementing legislation, I would be happy to arrange a detailed briefing.

Sincerely,

DOUGLAS J. BENNET, Jr.,
Assistant Secretary for Congressional Relations.

Mr. HANSEN. On page 3 of that letter, the Comptroller General of the United States, the person who speaks for Congress, says this:

Under the treaty, Panama grants the United States the rights to manage, operate, and maintain the Panama Canal. Art. III, para. 1. The treaty provides for the United States to "carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America." Art. III, para. 3. Because the Panama Canal Commission is a United States Government agency, it is clear that the financial obligations of the Commission are also obligations of the United States.

Furthermore, Article XIII, paragraph 1—To which Senator Bartlett has made numerous references—

provides that upon termination of the treaty, Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, "which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree."

Mr. Staats continues:

Accordingly, the United States would be precluded from turning the Panama Canal over to Panama subject to financial encumbrances, unless both parties agreed otherwise.

I think it is terribly important, Mr. President, to understand what the chief spokesman for the Congress of the United States is saying here.

He continues:

It is of course conceivable that the revenues of the Panama Canal Commission will not be sufficient to cover the expenditures of the Commission. Such a deficit would need to be offset either through borrowings or appropriations. Accordingly, it has been proposed that the $40 million borrowing authority under current legislation be retained. Since the treaty provides for the Canal to be turned over to

Panama free of liens and debts (unless otherwise agreed), to the extent that such borrowing becomes necessary and could not be repaid from future revenues of the Commission the United States would either need to appropriate funds for the Commission or forgive the Commission's indebtedness to the Treaty under this line of credit.

This is not what Panama is saying. This is not what Mr. Torrijos is saying. This is not what Mr. Barletta is saying. This is what Mr. Elmer Staats is saying.

It is not for anyone to say, as has been done, that there are no ambiguities in this treaty. Here is the person who heads up the Comptroller General's Office, which speaks for the Congress of the United States. Essentially, the Comptroller General recently said that the particular use for which arms sold by the Government of the United States or delivered to the nation of Israel had been used in Lebanon probably constituted a violation of the law on the books of the United States of America.

This is the same man who is making a statement on the treaty. I think it fortifies, undergirds, and supports the contention made by the Senator from Oklahoma that, indeed, there is ambiguity in this treaty; indeed, there is the real probability that revenues from the operation of the canal will not be sufficient to satisfy all of the demands put upon those funds, and to pay, as well, the $10 million per year which, if default should occur in any year, will become cumulative and will become due very conceivably, as many people read the treaty, before the Panama Canal can be turned over to the nation of Panama.

I quote again from article XIII, paragraph 1:

Upon termination of this treaty the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts.

That is exactly what we are talking about. I think it needs to be cleared up, it needs to be understood, it needs to be resolved, so that next year, the year after, or at the end of the year 1999, we are not having a hassle with Panama as to what was intended by what seems to be very clear and precise language.

The Treaty provides that the payments to Panama under article XIII, paragraph 4, are to be paid out of canal operating revenues.

I am reading further from Mr. Staat's letter to Senator Stone.

Since the treaty authorizes the United States to determine tolls and other charges, the United States has some control over the amount of canal operating revenues. Article III. (Of course, the extent to which tolls may be increased, is dependent upon future economic conditions.) Although canal operating revenues are the specified source for the payments to Panama under article XIII, there is at least a possibility that payments may indirectly result in funds being paid out of the United States Treasury should there be a substantial, protracted shortfall. As stated earlier, the commission may need to borrow money from the Treasury and those loans may not be liquidated by the year 2000. Since the possibility of Treasury funds being needed is related to the commission being a United States agency and the United States authority over tolls, it would be difficult if not impossible, to amend the treaty to eliminate the possibility that funds from the United States Treasury might be needed without affecting other provisions of the treaty that appear to be in the interest of the United States, such as retention of control of the commission.

I make these points to call attention to the fact that the amendment by the Senator from Oklahoma is very relevant. It is specific and precise. It does deserve serious consideration because it calls attention specifically to obvious ambiguities which cannot be

denied by virtue of the fact that the Comptroller General, too, finds in the language of the treaty very real reasons to support the contention that we would wind up, at the end of this 22-year period of time, owing Panama, in addition to all other debts and encumbrances, as much as $220 million if revenues between now and the end of 1999 were not sufficient to make these payments.

Mr. President, I do not know how much time the Senator from Oklahoma has. Could I be advised?

The PRESIDING OFFICER. The Senator from Oklahoma has 17 minutes remaining.

Mr. HANSEN. Mr. President, I rise in support of the pending amendment offered by my good friend and distinguished colleague, Senator Bartlett. I am pleased to be a cosponsor of his amendment. The amendment would clarify provisions of paragraph 4, section c, article XIII, under which the United States is obligated to pay an annual amount of up to $10 million per year out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission.

Senator Bartlett's amendment would provide that the United States would not be committed to pay any part of such unpaid balance to the Republic of Panama after the date of the termination of this treaty. This amendment is especially important in light of conflicting interpretations of that clause in paragraph 1 of article XIII which provides that the canal shall be turned over free of liens and debts to the Republic of Panama.

Mr. President, the entire debate, as I have pointed out on previous occasions, has been frought with misunderstandings and inconsistencies. Senator Bartlett's amendment addresses one of the most potentially divisive issues of the treaty.

This $10 million contingent payment with which article XIII, paragraph 4(c) deals, was not, in determining this figure considered a cost for inclusion in the toll base. Payment of this $10 million per year is dependent upon the generation of revenues in excess of all other requirements.

This manner of estimating costs which the United States will be obligated to pay under the terms of the treaty, is risky business, at best. At worst, we may be faced with one of the most unfortunate issues involved in the termination process of the treaty in the year 2000. Indeed, Senator McIntyre stated during hearings in the Senate Armed Services Committee, "I can see all kinds of troubles on the horizon."

It is generally agreed by both the United States and the Republic of Panama, and supported in testimony before the Armed Services Committee by several witnesses, that each year, anything less than $10 million which remains unpaid will be carried over to the following year. It will accumulate over the next 22 years. Theoretically, should there be no excess revenues from which to pay the $10 million each year, the Panama Canal Commission, operated by the U.S. Government, will be obligated to pay the Republic of Panama a total of $220 million by the year 2000.

What is not generally agreed on is whether or not, on the termination of the treaty, the United States will be obligated to pay this amount in order to comply with that clause of article XIII, para-

graph 1, which provides that the canal shall be turned over free of any liens and debts to the Republic of Panama.

In testimony before the Senate Armed Services Committee, General Parfitt, Governor of the Canal Zone, testified that it had been our negotator's position, that since the treaty says these funds will be paid to the extent earned, if they are not earned they are not a liability of the U.S. Government and they would not be paid.

In addition, Elmer Staats, Comptroller General of the GAO testified:

> The Department of State has said the proposed Commission is obligated to make this payment only to the extent that operating surpluses exist during the treaty life and that there will be no obligations by either the Commission or the U.S. Government to pay Panama any cumulative balance after December 31, 1999.

On the other hand, Mr. President, I am afraid there has been another interpretation given this provision by the Republic of Panama. It is Governor Parfitt's understanding that to the extent the United States does not pay the surplus:

> It rolls over to the next year, and he (General Torrijos) is assuming then at the year 2000 it no longer rolls over, it is then paid off.

If the Panama Canal Commission is in fact obligated to pay any amount which has not been met at the rate of $10 million per year over the next 22 years, it could result in signficant appropriations or loans from the U.S. Government which would ultimately have to be absorbed by the U.S. taxpayer, as Governor Parfitt suggested. As I noted previously this could reasonably amount to $220 million by the year 2000.

Mr. President, that amount is not so insignificant that we can leave the matter unresolved at this stage in the ratification process.

Mr. President, regardless of what is actually the case, it is obvious we have here a misunderstanding of some dimension. Senator Bartlett's amendment would go a long way in clarifying the language we now have and I urge my colleagues to support it.

Mr. Staats indicated in his testimony that it would be most wise to make certain that the interpretation given this section by the State Department is clearly understood. He believed it should be spelled out in implementing legislation. After months of waiting, the implementing legislation is now available.

Unfortunately, the issue is not made any clearer. However, the Senate can take affirmative action on the implementing legislation at the appropriate time to clear up this problem. It would be wise, therefore, to have corresponding clarifying language in the treaty upon which the implementing legislation will be based. This is the purpose of Senator Bartlett's amendment and I would hope it is given the serious consideration it deserves by my colleagues.

Mr. BARTLETT. I thank my distinguished friend from Wyoming for his remarks. They are meaningful in this debate and are very enlightening. They provide strong support for the amendment and for the ambiguity being eliminated in an amendment and not to have an effort made to try to eliminate it in some other way which does not really do the job.

Mr. President, I reserve the remainder of my time.

Mr. SARBANES. Mr. President, I regret very much that the distinguished Senator from Wyoming did not proceed further with the letter of the Comptroller General, Mr. Staats, a letter dated April 4, just a few days ago, because Mr. Staats then directs his attention to the exact issue which is now before us.

While the full text of the letter has been put into the Record, I think it is important to quote the statements of Comptroller General Staats on the very issue which is now before the body.

The distinguished Senator from Wyoming has outlined the important position which Comptroller General Staats holds, his relationship to the Congress, and has, in effect, qualified Mr. Staats as an expert witness, as they would say in court.

Comptroller General Staats went on to say:

> Some confusion has arisen concerning the interpretation by GAO and the Government of Panama of article XIII, subparagraph 4(c), which provides for an annual amount of up to $10 million per year to be paid by the commission to Panama out of canal operating revenues to the extent that such revenues exceed expenditures of the commission. By tracing our testimony with respect to this provision, we would hope to aid in clarifying the matter.

He then says that in a statement he made before the House Merchant Marine and Fisheries Committee he indicated that a question had arisen with respect to this matter, the very question the Senator from Oklahoma now raises: Would the annual shortfall accumulate into debt to the extent it exceeds any surplus as of December 31, 1999?

The Comptroller General states:

> I indicated that we had not yet formed an opinion on this issue. I again referred to the contingent $10 million payment in my prepared statement of February 1, 1978, before the Senate Committee on Armed Services. I stated in pertinent part as follows:

And he then quotes from his testimony before the Armed Services Committee as follows:

> Last November in our testimony before the House Subcommittee on the Panama Canal, we noted the possible ambiguity concerning the treaty-specified payment to Panama of up to $10 million if operating revenues exceed expenditures. Under one interpretation, if no payments were made during the lifetime of the treaty, a lump sum payment to Panama of over $200 million could be required at the termination of the treaty. The Department of State, however, has said that the proposed commission is obligated to make this payment only to the extent that operating surpluses exist during the treaty life and that there will be no obligations by either the Commission or the United States Government to pay Panama any unpaid cumulative balance after December 31, 1999.

Comptroller General Staats goes on:

> Except for the reference to our November testimony, the above quoted portion of my statement has included in the summaries of testimony contained in the Senate Armed Services Committee Report. However, "one interpretation" was inadvertently changed to "our interpretation," in the text of the summary, thus giving the impression that GAO's interpretation of the provision was at odds with the interpretation of the Department of State.

Let me explain what happened here. This is very interesting. It shows how you can build a myth upon a myth and eventually assert that you have reality. In his statement to the committee, what Comptroller General Staats said was that there was one interpretation; in other words, this idea had been put out by someone of the accumulated payment having to be paid at the end. In the committee's report, the "one interpretation," through a typo-

graphical mistake, was changed to "our interpretation." Therefore, it became an interpretation attributed to Comptroller General Staats. As he says:

However, "one interpretation" was inadvertently changed to "our interpretation," in the test of the summary, thus giving the impression that GAO's interpretation of the provision was at odds with the interpretation of the Department of State.

He then goes on to say in this very letter from which the Senator from Wyoming was quoting only a few minutes ago in seeking to make the argument for the amendment offered by the distinguished Senator from Oklahoma—in the very same letter, the Comptroller General of the United States goes on to say the following:

Our interpretation of Article XIII, subparagraph 4(c), is that the $10 million payment is contingent upon the revenues of the Commission exceeding expenditures and, therefore, a lump-payment would not be required at termination of the treaty.

Let me repeat that, Mr. President. This is Comptroller General Staats' letter of April 4, which the Senator from Wyoming was quoting in an effort to support the amendment, contending that it was necessary because a lump sum payment would be required at the end of the treaty term. Comptroller General Staats says, on page 6 of that letter the first full paragraph:

Our interpretation of Article XIII, subparagraph 4(c), is that the $10 million payment is contingent upon the revenues of the Commission exceeding expenditures and, therefore, a lump-sum payment would not be required at termination of the treaty.

He then proceeds to discuss the provisions of the treaty which have led him to this conclusion. He further says:

The right to receive payment of the unpaid balance is conditioned upon the existence of an operating surplus in future years. In the event there is not an operating surplus, there would be no right to receive payment. The provision in Article XIII, paragraph 1, which requires the Canal to be turned over to Panama upon termination of the treaty "free of liens and debt" is not pertinent since there would be no debt where the condition precedent to the right to receive payment (i.e., an operating surplus) has not occurred. Accordingly, GAO's interpretation of Article XIII, subparagraph 4(c), is that there would be no obligation by either the Commission or the United States to make a lump-sum payment to Panama under this provision at termination of the treaty.

Mr. President, I think that that is a most explicit statement by the Comptroller General of the United States. I thank the distinguished Senator from Wyoming for placing the full letter of the Comptroller General in the Record.

I reserve the remainder of our time.

Mr. HEINZ. Will the Senator yield me some time, 4 minutes?

Mr. SARBANES. I yield 4 minutes to the Senator from Pennsylvania.

Mr. HEINZ. I thank the distinguished Senator from Maryland. I should like to address a question to Senator Allen if he is still here.

Let me yield back the time.

Mr. SARBANES. I shall be happy to yield it subsequently and perhaps the Senator from Oklahoma can use his time now.

Mr. HEINZ. The Senator must have seen me rising. I shall try on another occasion.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I say to the distinguished Senator from Maryland that the letter from Mr. Staats to Senator Stone

does mention, as he points out, errors in the Armed Services Committee summary, but I did not use that summary in preparing my arguments, nor did the Senator say I did. I did not.

Mr. SARBANES. If the Senator will yield, the Senator did not, and I hope nothing I said suggests that he did. I did have a colloquy yesterday with Senator Harry F. Byrd, of Virginia, on this very point, because he had used the summary of the committee in which the phrase, "one interpretation," had been changed to "our interpretation." But the Senator from Oklahoma today, in quoting, quoted from the hearings of the committee in which the correct phrase "one interpretation" was used. I made that point only to set the record straight because it had been asserted by other Senators that this was Comptroller General Staats' own interpretation.

The Senator from Oklahoma is quite correct, he did not make that assertion today. If anything I said led him to feel that I thought he had, I certainly seek to correct that impression at this point.

Mr. BARTLETT. I wanted to make that clear, because it might have been interpreted by some people listening that I did use the error in my remarks, which I did not do. I was aware of the error and I just wanted to make that clear. As I said, I was not asserting that the distinguished Senator from Maryland had implied that in any way, shape, or form.

What I think is important, I say to the Senator from Maryland, about the Staats letter is what it does and does not say. Mr. Staats, in November, testified in his formal prepared remarks in the House to the effect that there exists in the treaty, then and today, an ambiguity, an ambiguity that needs to be corrected. Then, in his prepared remarks in January before the Senate Armed Services Committee, he made the same assertion. In the case of his testimony before the Armed Services Committee, on several occasions in his oral presentation or in answering questions, he made the additional assertions that, indeed, there is ambiguity in the treaty and that, indeed, this ambiguity needs correction.

I agree with that. I think what Mr. Staats is saying in his letter to Senator Stone is that he agrees with the State Department's interpretation of the American position on the matter of contingency payment.

I might say that I agree with the State Department's position, and I think that this truly does represent the American position.

But the point remains, nonetheless, as Mr. Staats said, as Governor Parfitt said, that in the treaty there is an ambiguity. The Senator from Wyoming pointed out the ambiguity in the very precise terms.

But what the amendment proposes to do is to eliminate that ambiguity, to correct it.

Mr. HANSEN. Will the Senator from Oklahoma yield?

Mr. BARTLETT. I am happy to yield to the Senator.

Mr. HANSEN. Mr. President, it seems strange, indeed, to me that the Senator from Maryland, or any other Senator, would be quibbling, arguing, or taking issue with the Senator from Oklahoma on this amendment.

Let me read the amendment:

Nothing in this subparagraph may be construed to commit the United States of America to pay any part of such unpaid balance to the Republic of Panama after the date of the termination of this treaty.

That is exactly what the State Department says is the case. It is exactly what the Senator from Maryland contends is the case. It is what I think the case should be.

It seems, though, as I have examined the Record, not to be an impression universally held by everyone. It is precisely because of that fact that I think the amendment offered by the Senator from Oklahoma should be adopted.

If we all agree this is what it means, what possible harm can there be in amending the treaty to include this precise language?

If it is what the Panamanians say, and it has been contended that that is what they say, then I see no reason at all to quibble or argue over a clear, concise, precise statement that says exactly what both sides, apparently, agree is the understanding.

I thank my friend from Oklahoma.

Mr. BARTLETT. I thank the distinguished Senator from Wyoming. I think he made his point most effectively.

I would point out to him and my colleagues that in the hearings Senator Cannon, Senator McIntyre, Senator Thurmond, all expressed the opinion that there was and is an ambiguity in the treaty.

In fact, Senator Cannon submitted a printed amendment dealing with the ambiguity. There were others with whom I had conversations about the testimony before the Armed Services Committee indicating that, in fact, there was a very distinct ambiguity which needs correction in the treaty.

This is what I am proposing to do. It certainly surprises me that there are people who want to continue the ambiguity in the treaty, who do not want to eliminate it, and I cannot understand this at all.

It seems that one of the responsibilities of this body is to make certain that the treaty that is ratified is clear, understandable, without a shadow of a doubt, and that there would not be other interpretations that could be made of it in subsequent years that could lead to controversy between this Nation and the nation of Panama.

Certainly, one of the goals of the treaties is to establish a good relationship between this Nation and Panama and that good relationship will be threatened if there is, in fact, a disagreement now or later on over the meaning of one of the important payments that is mentioned in the treaty, specifically, the contingency payment of $10 million per year out of surplus.

So I feel very strongly that the treaty does need this kind of improvement by eliminating the ambiguity that does exist over the payment of the $10 million out of surplus.

This can be handled in a very simple manner. I cannot understand the reluctance on the part of some to make this clarification.

I hope that the majority of my colleagues will join with me in support of this amendment so the difference of opinion, or the different conflicting statements that are in article XIII can be resolved, so that there is not a conflict and that there is just one clear interpretation that can be made.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. Hodges). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BARTLETT. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. Bartlett addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I am prepared to yield back the remainder of my time if the Senator from Idaho is prepared to do the same.

Mr. CHURCH. Yes.

Mr. President, our position has been fully explained. In the first place, we believe that the language of the treaty does not present an ambiguity. Therefore, no amendment is necessary.

Second, the interpretation of this particular provision by the American Government and the Panamanian Government is not in conflict. Both governments understand the provision alike, which lays additional emphasis on our contention that no amendment is necessary.

Third, if, for any reason, Senators still believe some clarification is called for, the proper way for the clarification to be made is by way of amendment to the articles of ratification, not by way of an amendment which would force a change in the text of the treaty itself, thus introducing the possibility of either having to renegotiate the treaty or having to submit the amended treaty to another plebiscite in Panama.

For these reasons, we feel it would be most unwise for the Senate to adopt this amendment.

Mr. President, I am prepared to relinquish the remainder of my time and I move—

Mr. BARTLETT. Mr. President, if I might comment on the distinguished Senator's remarks before he makes any motion.

Mr. CHURCH. Yes; I withhold my motion for that purpose.

Mr. BARTLETT. I will be very brief.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. BARTLETT. Mr. President, I would point out that a reservation or an understanding, as the Senator from Idaho says, is the proper way to approach this problem. I am glad he admits that there is a problem and I assume he admits there is an ambiguity or, otherwise, there would not be a problem.

But I would point out, a reservation or understanding only adds to the resolution of Ratification a third conflicting interpretation, rather than resolving the two conflicting provisions that create the ambiguity in article XIII.

I would also point out to the distinguished Senator that it is not clear at all what the position of Panama is on this.

Certainly, I do not think that even a Cabinet Officer of President Carter would necessarily be speaking for the President because there have been statements made by Cabinet officers of President Carter which were in conflict with final statements made by him explaining his position.

But even more than that, after sending two wires to General Torrijos asking what his interpretation of this ambiguity is, I did not receive an answer from General Torrijos. I received an answer from the Ambassador of Panama, enclosing an answer made to a question after a speech in San Francisco. To contend that that answer represents the position of Panama, I think, is a gross exaggeration. I do not think it in any way even pretends to express the position of the Government of Panama.

I believe there is real doubt as to what the position of the Government of Panama is, by the very fact that General Torrijos refused to answer the questions I asked in two wires I sent.

So I think there is good reason to resolve the ambiguity that exists in article XIII and that this would not be resolved by adding another opinion in the form of a reservation or an understanding in the resolution of ratification.

It is important to correct the problem where it exists, which is in article XIII, and I hope my colleagues will join me in doing this and in making certain that the language is clear.

Mr. CHURCH. Mr. President, we see no problem. In the first place, General Torrijos, as chief of state, may have felt that he was following the proper protocol in replying to the inquiries of the distinguished Senator from Oklahoma through his own ambassador in Washington. That is the normal practice, I believe.

It seems to me that the representations of the ambassador, referring to the position taken by Dr. Nicolas R. Barletta, who is the Minister of Planning and Economic Development of Panama, and who, I understand, was the chief negotiator for Panama with regard to those provisions in the treaty that relate to finances, represents the authoritative position of the Government of Panama.

I do not know how the Panamanian interpretation of this particular clause could be more authoritatively expressed than through Panama's own Ambassador in Washington, who relies upon the statement of Panama's chief negotiator. He makes it perfectly clear that Panama interprets this provision as we interpret the provision. Therefore, we see no problem.

However, if Senators have any reason to believe otherwise, then I reiterate that the way to handle it is through an amendment to the articles of ratification. This is the normal procedure the Senate follows in cases of this kind.

I remind the Senate that the text of no treaty has been amended directly by the Senate, previous to the Panama Canal treaties, for the past 54 years. The proper procedure, in a matter of this kind, is the adoption of an amendment to the articles of ratification, through which the Senate confers its consent.

Again, for these reasons, Mr. President, we feel that the adoption of this amendment would be unwise as well as unnecessary.

I relinquish the remainder of my time, if the Senator is prepared to do the same, and I move that the amendment be laid on the table. In that connection, I ask for the yeas and nays.

Mr. BARTLETT. Mr. President, before the Senator makes that motion, and before I relinquish the remainder of my time, I should like to read to the distinguished Senator the letter I received from the Ambassador to Panama, Mr. Lewis. He says:

DEAR SENATOR: General Omar Torrijos, Chief of Government of Panama has received your telegram of February 22, 1978. He has requested us to send the transcripts of recent statements made by Dr. Nicolas Ardito Barletta which answer your question.

Dr. Barletta is our Minister of Planning and Economic Development and the negotiator in behalf of our country for the economic issues in the new Treaties.

Hoping to have been able to serve you, I remain

I point out that he does not spell out specifically that this is the official position. He says "This answers your question," but he does not point out that this is the position of General Torrijos.

I would think that on an important issue such as this, the general would want to make a clear statement, whether he made it directly to me or made it through his ambassador, but made it clear to the Members of the Senate who are considering this issue at the present time. He has refused to do that, and I think it leaves considerable doubt as to just what the position is.

Nonetheless, even if he agreed with the position, the ambiguity of the treaty is still there, and it is going to remain there unless it is eliminated by amendment.

I yield back the remainder of my time.

Mr. CHURCH. I yield back the remainder of my time. All time having been yielded back, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Oklahoma. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MELCHER (when his name was called). Mr. President, on this vote I have a live pair with the Senator from Washington (Mr. Magnuson). If he were present and voting, he would vote "yea." If I were permitted to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the Senator from Indiana (Mr. Bayh), the Senator from Arkansas (Mr. Bumpers), the Senator from Nevada (Mr. Cannon), the Senator from Iowa (Mr. Clark), the Senator from Alaska (Mr. Gravel), the Senator from Montana (Mr. Hatfield), the Senator from Maine (Mr. Hathaway), the Senator from Kentucky (Mr. Huddleston), the Senator from Washington (Mr. Magnuson), the Senator from Maine (Mr. Muskie), the Senator from Rhode Island (Mr. Pell), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that the Senator from Missouri (Mr. Eagleton) is absent on official business.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson) and the Senator from Iowa (Mr. Clark) would each vote "yea."

Mr. BAKER. I announce that the Senator from Oklahoma (Mr. Bellmon), the Senator from Massachusetts (Mr. Brooke), the Senator from Rhode Island (Mr. Chafee), the Senator from Nebraska (Mr. Curtis), the Senator from Michigan (Mr. Griffin), the Senator

from Kansas (Mr. Pearson), the Senator from Alaska (Mr. Stevens), the Senator from South Carolina (Mr. Thurmond), the Senator from Texas (Mr. Tower), and the Senator from Connecticut (Mr. Weicker) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. Stevens), the Senator from South Carolina (Mr. Thurmond), and the Senator from Texas (Mr. Tower) would each vote "nay."

The result was announced—yeas 40, nays 33, as follows:

[Rollcall Vote No. 83 Ex.]

YEAS—40

Baker	Hodges	Moynihan
Bentsen	Hollings	Nelson
Biden	Humphrey	Percy
Case	Inouye	Proxmire
Church	Jackson	Ribicoff
Cranston	Javits	Riegle
Culver	Kennedy	Sarbanes
Danforth	Leahy	Sparkman
Durkin	Long	Stafford
Glenn	Mathias	Stevenson
Hart	Matsunaga	Talmadge
Haskell	McGovern	Williams
Hatfield, Mark O.	Metzenbaum	
Hayakawa	Morgan	

NAYS—33

Allen	Hansen	Roth
Bartlett	Hatch	Sasser
Burdick	Heinz	Schmitt
Byrd, Harry F., Jr.	Helms	Schweiker
Chiles	Johnston	Scott
DeConcini	Laxalt	Stone
Dole	Lugar	Wallop
Domenici	McClure	Young
Eastland	McIntyre	Zorinsky
Ford	Nunn	
Garn	Packwood	
Goldwater	Randolph	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—2

Robert C. Byrd, for.
Melcher, against.

NOT VOTING—25

Abourezk	Curtis	Pearson
Anderson	Eagleton	Pell
Bayh	Gravel	Stennis
Bellmon	Griffin	Stevens
Brooke	Hatfield, Paul G.	Thurmond
Bumpers	Hathaway	Tower
Cannon	Huddleston	Weicker
Chafee	Magnuson	
Clark	Muskie	

So the motion to lay on the table was agreed to.

[Later the following occurred:]

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, having voted in the affirmative on the rollcall on the motion to table the Bartlett amendment, in view of the fact that it would not alter the outcome, that I may be permitted to enter into a live pair with the distinguished Senator from Nevada (Mr. Cannon). If he were present and voting, he would vote "nay." Having voted in the affirmative, I will withdraw my vote if unanimous consent is so allowed.

The PRESIDING OFFICER. Without objection, it is so ordered.

[The foregoing rollcall vote has been corrected to reflect the above order.]

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. Allen addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. May we have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ALLEN. Mr. President, this debate has been going on now for some 2 months. During most of this time I have participated actively in the debate. My participation in the debate has been on an ad lib, extemporaneous basis because I believe that the issues are important enough so that Members should have informed themselves of the facts and the issues and should have been able to discuss the matter without written or prepared scripts.

I do wish to comment on the decision of the Circuit Court of Appeals for the District of Columbia on the constitutional issue that we have been discussing here on the Senate floor regarding the applicability of article IV, section 3, clause 2 of the Constitution, in requiring action by Congress to authorize the disposition of property of the United States.

We have contended here on the floor that that article should be observed, that the role of the House of Representatives, not in the treatymaking process but in the disposition of property of the United States, should be recognized.

The circuit court of appeals, in a three-judge panel with appeal direct to the Supreme Court, has decided this question. By a vote of two to one, it decided that it was not necessary that Congress make this authorization, but that the Executive and the Senate, through the treatymaking process, could make disposition of the property of the United States.

So, Mr. President, inasmuch as I am commenting upon a ruling or decision of the circuit court of appeals. I should be very precise in my language and in my statement as to the effect of this decision. Therefore, I will read remarks that have been prepared for my use at this time.

Mr. President, yesterday the Circuit Court of Appeals for the District of Columbia issued its opinion in the case of Mickey Edwards, Member of Congress, and others against James Earl Carter, President of the United States, Mr. President, the plaintiffs in this case, some 60 Congressmen, complain that their legislative function as Members of Congress has been impaired by the action of the

President—and now, I might add, by the action of the Senate in rejecting the Hatch amendment just the other day—in refusing to follow the Constitution in the matter of the proposed disposal of public property in the Isthmus of Panama. The lawsuit seeks a declaratory judgment that the exclusive means provided in the Constitution for disposal of U.S. property requires congressional action and that, therefore, the Panama Canal Zone and the public property lying therein may not be given to Panama by means of a treaty purporting itself to make that transfer.

Now, Mr. President, the decision reached yesterday is very significant and highly encouraging in several respects. Not the ultimate outcome, but the reasoning which was used in arriving at that outcome, and the prospect that it gives for a decision by the Supreme Court of the United States which up to now has been unwilling to decide this issue on the merits. First, the circuit court did not sidestep the issue and did recognize that the plaintiffs had good standing to sue, thus upholding a long line of cases which acknowledge that a complaint alleging impairment of a legislative function brought by a Member of Congress does give the Member standing to sue. So in this respect the Court of Appeals overturned the ruling of the District Court and did decide the case on its merits.

The district court had refused to decide the issue on the merits but on appeal, the circuit court of appeals does decide the issue on the merits, which is a most important circumstance and development.

Also, Mr. President, the court very properly rejected out of hand the various complex and novel arguments advanced by the administration which sought desperately to challenge the jurisdiction of the Federal courts to adjudicate the merits of this important constitutional question. Thus the court rejected the argument that the case was premature or that it presented a nonjustifiable political question. In other words, Mr. President, the court faced the issue squarely and in so doing, noted that the controversy presents a pure question of constitutional law ripe for resolution by the circuit court and, I am sure, ripe also for final resolution by the Supreme Court of the United States.

So, Mr. President, the Circuit Court of Appeals for the District of Columbia has faced up to this critical Constitutional issue, and although I disagree with the opinion of the majority of the court which supported the proposition that a treaty acting alone can be used to dispose of public property of the United States, I certainly feel that the court is to be highly commended for recognizing that the issue must be finally resolved on its merits and not avoided.

Now, Mr. President, I do disagree with the decision of the merits reached by two of the three judges on the circuit court, and naturally I regret that the court was not persuaded, as I am, that the power of Congress to dispose of public property is indeed an exclusive power. But, Mr. President, this case is going to go to the Supreme Court. There can be no doubt of that fact, and the Supreme Court will have to make an independent and new study of this critical issue, using as a point of departure, point of reference, or point of procedure, the opinions of the court below. So the significant point here is that the circuit court has faced the issue

squarely and that when appeal is taken—and certainly there will be an appeal—the Supreme Court will also discharge its constitutional duty by establishing on the merits—free from political pressures—the true and proper construction to be placed on the words of the Constitution where it says, "Congress shall have power to dispose of * * * property belonging to the United States."

In reaching a decision, I believe the Supreme Court is going to be guided by the magnificent dissenting opinion written in yesterday's decision by Circuit Judge George MacKinnon. Senators will no doubt recall Judge MacKinnon's famous dissent in Buckley against Valeo—which was the public financing of elections case—which dissent was subsequently followed and indorsed by the Supreme Court. Mr. President, Judge MacKinnon's dissent in this case is an equally superb analysis—a strong dissent providing an analysis of every aspect of this question and laying to rest with finality every argument advanced to support the novel proposition that the power of Congress is not an exclusive power. So, Mr. President, I view yesterday's decision, on balance, as a victory for those of us here in the Congress—in both Houses—who are seeking to uphold the constitutional perogatives of the House of Representatives, and to uphold the constitutional requirement that before property of the United States is disposed of, the entire Congress must act authorizing that disposition.

Now, Mr. President, I believe it would be improper for me to criticize the opinion of the majority of the circuit court given in this important case—but I recall the distinguished Senator from Arizona (Mr. Goldwater) saying that this issue was whether the rights of the House of Representatives and whether the constitutional rights of the Congress as a whole would be upheld and respected. He felt that the issue involved in the Hatch amendment was more important, really, than the issue of the Panama Canal Treaty, because failure to resolve the issue correctly is going to subvert our entire constitutional process. If they on one hand can ignore the House of Representatives and the constitutional powers that it has, could they not just as easily ignore the rights of the Senate in another instance? So it is a most important issue, Mr. President, whether we are going to be a government of law and not a government of men. It is an important issue. The Senate will have the opportunity to decide this issue. It will be presented in a different form before we approve the resolution of ratification.

As I say, Mr. President, I believe it would be improper for me to criticize the opinion of the majority of the circuit court given in this important case, but since it is an opinion directly involving the legislative function of the full Congress, I will make one observation. The circuit court of appeals has made exactly the same mistake made by many others who have studied this issue.

The circuit court has regrettably confused the question of what is proper for inclusion in the treaty-making process with the question of what can be actually accomplished by means of a treaty. The circuit court—and I am speaking of the majority—relies on precedents which deal only with the constitutional scope of treaty power subject matter and which deal only with the nature of the treaty ratification process itself.

We do not say that the treaty needs to go to the House of Representatives for its consent, but in implementing the treaty and in accomplishing and authorizing that which is necessary before the treaty is put in force, there must be legislation enacted by the House of Representatives and the Senate.

No one has contended, Mr. President, that the House of Representatives should have any share whatsoever in the treatymaking process. The only contention is that Congress alone has power to cause a transfer of public property. Thus the circuit court relies mistakenly on the legislative history of the treaty power because that history deals only with the ratification process as it might be affected by particular treaty subject matter.

Of course, this subject matter can go into the treaty, but before the property can actually be disposed of, congressional authorization must be had; just as in the treaty in 1955, in article V, in three different places where the property was being disposed of in the treaty, the article says clearly that the transfer is subject to authorization by the Congress. But the circuit court does not understand this distinction. For example, when an amendment was proposed at the Virginia Ratification Convention which provided that no treaty ceding territory should be made except when ratified by three-quarters of the whole number of Members of both Houses of Congress, the only matter, Mr. President, the only matter under consideration was the ratification procedure with respect to the particular subject matter of territorial cession. The method of ratification was at issue, Mr. President, not the means of disposal. The means of actual property disposal was emphatically not before the convention. The Virginia convention understood that the means of disposal was already specified in article IV, section 3, clause 2 * * * the only question was whether also to involve the House in the ratification procedure, too.

The House of Representatives is not involved in the ratification procedures, but it must be involved in legislation authorizing the disposition of property.

Now, I regret that the court of appeals, at least the majority, was unable to understand this crucial, very crucial distinction between the precedents dealing with treaty subject matter and methods of ratification and the precedents dealing with the proper means for exercising the separate functions of a constitutional government, but I am hopeful, Mr. President, that this superb dissenting opinion by Judge MacKinnon will provide guidance to the Supreme Court in appreciating this essential distinction. The House of Representatives has no role in making treaties. The treaty power is the exclusive province of the President and the Senate. All the precedents and the Constitution establish that; but, Mr. President, the disposal power is just as equally the exclusive province of the Congress, and the two powers must be made to act together or an unconstitutional and illegal act would occur under the proposed treaty in its purported disposal of our public property in the Isthmus of Panama.

Mr. President, you can recognize the consternation that would be caused in Panama if this treaty, with its purported disposition of property of the United States in the Panama Canal Zone, should be approved by the Senate yet authorization by the Congress for the

disposition of that property was not had, and then the Supreme Court rules that the treaty, insofar as it pertained to disposing of the lands and waters, the canal and the contiguous land, that the treaty insofar as it purported to make disposition of this public property, was unconstitutional because the Congress had not authorized disposition. With this treaty having been solemnly ratified by the heads of the two governments and the Supreme Court announcing that the disposition of the property was unconstitutional, that it was still the property of the United States, why they would have to back up and work out something else in a hurry.

Fortunately, Mr. President, the Senate will have another opportunity to uphold the Constitution and make moot this pending litigation, because there will be another amendment offered which will call for an act of Congress before the disposition of this property and, failing in that, certainly, a reservation will be added.

There will be another amendment offered to recognize the House in the process of disposing of property of the United States, not to get the treaty to them, I trust the proponents will not indicate, as they have in the past, that that is what is involved, because it is not. It is a question of an act of Congress authorizing the disposition of this property, not a question of the treaty itself.

First, there will be an amendment offered. Failing in that, they will drop back on the reservation.

This reservation would forbid an exchange of instruments of ratification until the enactment of legislation authorizing the public property disposals which are promised in the treaty.

There are 235 Members of the House who would join in the reservation if they could, asking that they be given an opportunity to act as a part of Congress in authorizing the disposition of this property.

I hope the Senate will see the wisdom of accommodating the desires of the House of Representatives and of following the Constitution and will adopt this reservation, because this is the one reservation offered to this treaty which would have some real effect because it will guarantee that our own Constitution is followed and will make unnecessary a decision by the Supreme Court.

So if we will only take this action, if we will only allow them to require by reservation that the House and Senate pass legislation authorizing the disposition of this property, then we are going to make unnecessary and make entirely moot the question of whether or not the House has a right to act on the disposition of this public property.

If we act, if we adopt this reservation, then the question becomes absolutely moot and unnecessary to be decided.

But, Mr. President, if this reservation is turned down by the joint leadership, then the Supreme Court is going to have to resolve this question for us. If we are unwilling to face up to the matter, if we are unwilling to practice comity with the House of Representatives, then this matter is headed for resolution by the Supreme Court.

I think we ought to make the issue moot. I think we ought to grant the wishes of more than half the Members of the House of Representatives who have expressed the desire to be allowed to exercise their constitutional function as a coequal House in the Congress.

I think we ought to get the question out of the courts by facing up to the requirements of the Constitution whether we like those requirements or not. The Constitution says Congress shall have power to dispose of the property belonging to the United States. That ought to be enough, Mr. President. Let us allow Congress to exercise or not exercise that power as it sees fit. Let us here in the Senate make this issue moot. Let us get this issue out of the courts, because if we fail to act, it is obviously headed for further litigation and for resolution by the Supreme Court.

I do not want to see the day, Mr. President, when the Supreme Court tells the Senate—"Members of the Senate, these Congressmen are right; their legislative function has been impaired by the action of the President and by your failure to act." I do not want to see that day, but that day is coming, Mr. President, because the obstinance of the Senate in not acknowledging the requirements of the Constitution and the rights of the House is going to guarantee that the Supreme Court of the United States will tell us—exactly as Judge MacKinnon tells us in this superb dissenting opinion—

It is almost impossible to understand the motivation for excluding the House of Representatives from exercising its Constitutional authority.

The Supreme Court, Mr. President, is going to look at this issue dispassionately, I believe and hope. The Supreme Court is composed of men free from political pressures. The Supreme Court is going to decide this matter fairly, I believe, and I am confident the Senate leadership is going to regret the decision to turn down the House of Representatives; is going to regret the decision to tell the House of Representatives, "You are going to have to go to the courts to get us to do what the Constitution says is right."

So, Mr. President, I want to commend the Circuit Court of Appeals for the District of Columbia for facing up to this issue—the courts have not been willing to do it until now—and I particularly want to commend Judge George MacKinnon for his outstanding and truly magnificent dissenting opinion which, in my judgment, by the overwhelming force of its logic, will carry the day in the regrettable event this issue is not resolved properly in the Senate and is therefore finally decided in the Supreme Court.

Mr. President, I ask unanimous consent that the opinion of the Circuit Court of Appeals for the District of Columbia, in *Edwards* v. *Carter,* Appeal No. 78-1166, decided April 6, 1978, be printed in its entirety in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

EXHIBIT 1

[U.S. Court of Appeals for the District of Columbia Circuit, No.78-1166]

MICKEY EDWARDS, MEMBER OF CONGRESS, OKLAHOMA, ET AL., APPELLANTS V. JAMES EARL CARTER, PRESIDENT OF THE UNITED STATES

(ON MOTION FOR INJUNCTION PENDING APPEAL, MOTION FOR SUMMARY REVERSAL, AND MOTION FOR SUMMARY AFFIRMANCE (D.C. CIVIL 77-1733))

[Argued March 10, 1978; decided April 6, 1978]

Daniel J. Popeo, with whom *Joel D. Joseph* and *Paul D. Kamener* were on the motion for an injunction pending appeal and the motion for summary reversal, for appellants.

Robert E. Kopp, Attorney, Department of Justice, with whom *Steven I. Frank* and *Brook Hedge,* Attorney, Department of Justice, on the motion for summary affirmance, for appellee.

Before: Fahy, *Senior Circuit Judge,* and McGowan and MacKinnon, *Circuit Judges.*

Opinion Per Curiam.

Dissenting opinion filed by *Circuit Judge* MacKinnon.

Per Curiam: This is an appeal from the District Court's dismissal of a challenge to appellee's use of the treaty power to convey to the Republic of Panama United States properties, including the Panama Canal, located in the Panama Canal Zone.[1] Appellants, sixty members of the House of Representatives, sought a declaratory judgment that the exclusive means provided in the Constitution for disposal of United States property requires approval of both Houses of Congress, see Art. IV, § 3, cl. 2, and that therefore the Panama Canal Zone may not be returned to Panama through the Treaty process, which invests the treaty-making power in the President by and with the advice and consent of two-thirds of the Senate, see Art. II, § 2, cl. 2. Appellee contends that the Constitution permits United States territory to be disposed of either through congressional legislation or through the treaty process, and that therefore the President's decision to proceed under the treaty power is constitutionally permissible.

The District Court did not reach the merits of this controversy; rather, it dismissed the complaint for lack of jurisdiction after concluding that appellants lacked standing because they had failed to demonstrate injury in fact from the President's invocation of the treaty process. A notice of appeal and a request for a preliminary injunction pending appeal were immediately filed with this court. Appellee has moved for summary affirmance of the District Court's judgment either on the jurisdictional grounds stated by the District Court or on the merits of appellants' contention; appellants have moved for summary reversal. We have heard oral argument and have considered the case on an expedited basis.[2] For the reasons appearing below, we affirm the dismissal of the complaint, not on the jurisdictional ground relied on by the District Court but for failure to state a claim on which relief may be granted.

I

In addition to its argument on the merits, appellee has presented several substantial and complex challenges to the jurisdiction of the federal courts to adjudicate the merits of the constitutional question presented in this case. We refer not only to the contentions as to lack of standing, but also to the arguments that appellants' action is both premature and presents a nonjusticiable political question. Deciding only the jurisdictional issue before us could result in this court, or the Supreme Court, remanding the case for further proceedings either on the merits or on jurisdictional issues. Because the merits of this controversy present a pure question of law, with no need of a hearing for fact development, because these merits are so clearly against the parties asserting jurisdiction, and because the judgment appealed from was based on only one of several asserted grounds of lack of jurisdiction, we believe it is appropriate to proceed directly to the merits of this case. This conclusion is bolstered when the time constraints imposed by the immediacy of Senate action on the treaties are considered. See *Adams* v. *Vance,* No. 77-1960 (D.C. Cir. Jan. 17, 1978), at 8 n.7 and cases cited therein.

Consequently, the precise question we address is whether the constitutional delegation found in Art. IV, § 3, cl. 2 is exclusive so as to prohibit the disposition of United States property by self-executing treaty—i.e., a treaty enacted in accordance with Art. II, § 2, cl. 2, which becomes effective without implementing legislation.

II

Article IV, § 3, cl. 2 of the Constitution states in its entirety:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United

States, and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

Appellants contend that this clause gives Congress exclusive power to convey to foreign nations any property, such as the Panama Canal, owned by the United States.[3] We find such a construction to be at odds with the wording of this and similar grants of power to the Congress, and, most significantly, with the history of the constitutional debates.[4]

The grant of authority to Congress under the property clause states that "The Congress shall have Power . . .," not that only the Congress shall have power, or that the Congress shall have exclusive power. In this respect the property clause is parallel to Article I, § 8, which also states that "The Congress shall have Power. . . ." Many of the powers thereafter enumerated in § 8 involve matters that were at the time the Constitution was adoped and that are at the present time also commonly the subject of treaties. The most prominent example of this is the regulation of commerce with foreign nations, Art. 1, § 8, cl. 3, and appellants do not go so far as to contend that the treaty process is not a constitutionally allowable means for regulating foreign commerce. It thus seems to us that, on its face, the property clause is intended not to restrict the scope of the treaty clause, but, rather, is intended to permit Congress to accomplish through legislation what may concurrently be accomplished through other means provided in the Constitution.

The American Law Institute's Restatement of Foreign Relations, directly addressing this issue comes to the same conclusion we reach:

"The mere fact, however, that a congressional power exists does not mean that the power is exclusive so as to preclude the making of a self-executing treaty within the area of that power."

ALI Restatement of Foreign Relations Law (2d), § 141, at 435 (1965). The section of the Restatment relied on by the dissent merely states that the treaty power, like all powers granted to the United States, is limited by other restraints found in the Constitution on the exercise of governmental power (Rest. For. Rel. § 117).[5] Of course the correctness of this proposition as a matter of constitutional law is clear. See *Reid* v. *Covert*, 354 U.S. 1 (1957); *Geoffroy* v. *Riggs*, 132 U.S. 258 (1890); *Asakura* v. *Seattle*, 265 U.S. 332 (1924), also relied on by the dissent. To urge, as does the dissent, that the transfer of the Canal Zone property by treaty offends this well-settled principle—that the treaty power can only be exercised in a manner which conforms to the Constitution—begs the very question to be decided, namely, whether Art. IV, § 3, cl. 2 places in the Congress the *exclusive* authority to dispose of United States property.[6]

There are certain grants of authority to Congress which are, by their very terms, exclusive. In these areas, the treaty-making power and the power of Congress are not concurrent; rather, the only department of the federal government authorized to take action is the Congress. For instance, the Constitution expressly provides only one method—congressional enactment—for the appropriation of money:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Art. I, § 9, cl. 7. Thus, the expenditure of funds by the United States cannot be accomplished by self-executing treaty; implementing legislation appropriating such funds is indispensible. Similarly, the constitutional mandate that "all Bills for raising Revenue shall originate in the House of Representatives, "Art. 1, § 7, cl. 1, appears, by reason of the restrictive language used, to prohibit the use of the treaty power to impose taxes.[7]

These particular grants of power to Congress operate to limit the treaty power because the language of these provisions clearly includes any method of appropriating money or raising taxes other than through the enactment of laws by the full Congress. This is to be contrasted with the power-granting language in Art. 1, § 6, and in Art. IV, § 3, cl. 2. Rather than stating the particular matter of concern and providing that the enactment of a law is the only way for the federal government to take action regarding that matter, these provisons state simply that Congress shall have power to take action on the matters enumerated.

Thus it appears from the very language used in the property clause that this provision was not intended to preclude the availability of self-executing treaties as a means for disposing of United States property. The history of the drafting and ratification of that clause confirms this conclusion. The other clause of Art. IV, § 3 concerns the procedures for admission of new states into the Union, and the debates at the Constitutional Convention clearly demonstrate that the property clause was intended to delineate the role to be played by the central government in the disposition of Western lands which were potential new states. Several individual states had made territorial claims to portions of these lands; and as finally enacted, the property clause, introduced in the midst of the Convention's consideration of the

admission of new states, sought to preserve both federal claims and conflicting state claims to certain portions of the Western lands.[8]

The proceedings of the Virginia state ratifying convention provide further evidence of the limited scope of the property clause. During a debate in which the meaning of the clause was questioned, Mr. Grayson noted that the sole purpose for including this provision was to preserve the property rights of the states and the federal government to the Western territory as these rights existed during the Confederation.[9]

This history demonstrates the limited concerns giving rise to the inclusion of Art. IV, § 3, cl. 2 in the Constitution. Whether or not this historical perspective might serve as a basis for restricting the scope of congressional power under the property clause, we view it as persuasive evidence for rejecting the claim that Art. IV is an express limitation on the treaty power, foreclosing the availability of that process as a constitutional permissible means of disposing of American interests in the Panama Canal Zone.

III

The debates over the treaty clause at the Constitutional Convention and state ratifying conventions even more directly demonstrate the Framer's intent to permit the disposition of United States property by treaty without House approval. As originally reported to the Convention, authority to make treaties would have been entrusted to a majority of the Senate, without even Presidential participation.[10] However, this structure was thought to entrust too much power to the Senate, and the provision was subsequently amended to include an active Presidential role. Nonetheless, concern over the extensive scope of the power remained; particularly worrisome was the potential use of treaties as a menas of effecting territorial cessions. Elridge Gerry expressed this fear when he noted that "[i]n Treaties of peace the dearest interests will be at stake, as the fisheries, territory, etc. In treaties of peace also there is more danger to the extremities of the Continent, of being sacrificed than on any other occasion." [11]

Concern about the sweeping character of the treaty clause led to several proposed amendments aimed at limiting its exercise. One amendment would have restricted this power by requiring that "no Treaty of Peace affecting Territorial rights should be made without the concurrence of two thirds of the (members of the Senate present.)" [12] For some delegates, however, merely increasing the level of Senate approval did not go far enough towards ensuring the proper exercise of the treaty power. Thus Connecticut's Roger Sherman proposed an amendment providing that "no such [territorial] rights should be ceded without the sanction of the Legislature." [13]

The Committee of Eleven, in whose hands this issue finally rested, rejected the proposal amendment for House participation. Instead, a provision requiring a two-thirds Senate vote for the passage of all treaties was adopted. This choice clearly indicates the Framers' satisfaction with a supermajoritarian requirement in the Senate, rather than House approval, to serve as a check upon the improvident cessation of United States territory.

That the two-thirds voting requirement did not affect the scope of the treaty power, but only made ratification of treaties more difficult, was clearly understood at the state ratifying conventions. An amendment proposed at the Virginia Convention provided that—

"No treaty ceding, contracting, restraining, or suspending the territorial rights or claims of the United States . . . shall be made, but in case of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both houses respectively." [14]

This, and a similar amendment offered at the North Carolina Convention,[15] evidence the broad interpretation given Article II, § 2 at the time of its inception.[16] As was true of the effort at the Constitutional Convention to introduce House participation in ratification of treaties, these states attempt to limit the treaty power as now contained in the Constitution also failed.

That those who framed and ratified the Constitution rejected several express attempts to limit the treaty power in the manner now urged by appellants greatly undermines the interpretation of that power they press upon us. From this evidence we conclude that the disposition of property pursuant to the treaty power and without the express approval of the House of Representatives was both contemplated and authorized by the makers of the Constitution.

IV

In view of the lack of ambiguity as to the intended effects of the treaty and property clauses, it may be surprising that judicial pronouncements over the past two centuries relating to these constitutional provisions are somewhat vague and conflicting. However, none of the actual holdings in these cases addressed the precise issue before us—whether the property clause prohibits the transfer of United States property to foreign nations through self-executing treaties. While, therefore, neither the holdings nor the dicta of these previous cases are dispositive of the case before us, we believe that in the main they support the conclusions we have stated heretofore.

One line of cases, involving the property clause, has arisen in the context of the division of power between the federal government and the states. In discussing this question, the Supreme Court has stated that Article IV "implies an exclusion of all other authority over [United States] property which could interfere with this right or obstruct its exercise."[17] We think that the most reasonable interpretation of such dicta, occurring in the context referred to, is that there is a lack of any constitutional basis for exercise of authority by individual states over United States property.[18] But that a specific congressional power is exclusive against intrusion by the states does not necessarily remove it from the sphere of the federal treaty power.

Another line of cases, involving the treaty clause, has arisen in the context of conveyances by the federal government to Indian tribes. The leading case on the power to convey such land by self-executing treaty is *Holden* v. *Joy,* 84 U.S. 211 (1872). In quieting adverse claims to certain lands west of the Mississippi which had previously been conveyed to the Cherokee nation by treaty, the Court had to determine the validity of the original grant to the Indians. The Court noted that—

"Still it is insisted that the President and Senate, in concluding [a treaty for the passage of property], could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress. . . . On the contrary, there are many authorities where it is held that a treaty may convey to a grantee good title to such lands, without an act of Congress conferring it." . . . Id. at 247. Because later congressional enactments repeatedly recognized the validity of the transfer, the Court found it unnecessary to rest its decision on this constitutional point. However, the principle espoused is repeated in subsequent Supreme Court decisions.

The treaty in Holden involved a cession of non-Indian lands in return for tribal property. More common, however, were treaties in which Indian tribes ceded to the United States portions of their lands in return for, generally, some money and the creation of reservations. Usually these reservations consisted of tracts of territory originally occupied by the tribes and excepted by the treaty provisions from cession to the federal government. In order to fully comprehend the nature of the property interest transferred by the United States in these reservations it is necessary to understand the extent of the Indian's legal title prior thereto. The law early recognized the limited possessory rights of Indians in their territory. Ultimate title, that necessary to dispose of the property, rested solely in the hands of the federal government. *Johnson* v. *McIntosh,* 21 U.S. (8 Wheat.) 542 (1823). The purpose of the reservation treaties was to transfer the Indian tribes' possessory rights to most of their property to the United States in exchange for a fee simple title in excepted reservations. Such treaties, then, clearly disposed of United States property interests.

Supreme Court cases involving these cessions have provided dicta similar to that of *Holden* v. *Joy.* In *Jones* v. *Meehan,* 175 U.S. 1 (1899), the Court considered the nature of Indian property rights acquired by "reservation." There, Chief Moose Dung of the Chippewas had "reserved" a certain tract of land in a treaty ceding tribal territory to the United States. He subsequently leased some of that property to various individuals. A challenge was made questioning the Chief's authority to engage in that transaction. As framed by the Court, the issue for resolution was whether the treaty merely confirmed Chief Moose Dung's original right of occupancy in the reserved lands or whether the treaty granted a fee simple interest to the reservee. In holding that a fee simple passed under the treaty,[19] the court noted that "[i]t is well settled that good title to parts of the lands of an Indian tribe may be granted to individuals by treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States." 175 U.S. at 10. Thus the Court concluded that the treaty power alone was sufficient to transfer the underlying U.S. title in the reserved lands. In a similar situation the Court in *Francis* v. *Francis,* 203 U.S. 233, 241–42 (1906), stated that

"this court and the highest court of Michigan concur in holding that a title in fee may pass by treaty without the aid of an act of Congress."

As is true of most of the cases in which the Supreme Court has addressed the scope of the treaty power, Holden, Jones, and Francis involved the federal government's interaction with Indian tribues. Because of the sui generis nature of the relationship between the Indian tribes and the federal government, it might be argued that these decisions are not dispositive.[20] We think, however, that they are persuasively supportive of the authority of the President and the Senate under the treaty clause.

V

While certain earlier judicial interpretations of the interplay between the property clause and the treaty clause may be somewhat confused and less than dispositive of the precise issue before us, past treaty practice is thoroughly consistent with the revealed intention of the Framers of these clauses. In addition to the treaties with Indian tribes upheld in the cases discussed above, there are many other instances of self-executing treaties with foreign nations, including Panama, which cede land or other property assertedly owned by the United States.[21] That some transfers have been effected through a congressional enactment instead of, or in addition to, a treaty signed by the President and ratified by two-thirds of the Senate lends no support to appellants' position in this case, because, as stated previously, self-executing treaties and congressional enactments are alternative, concurrent means provided in the Constitution for disposal of United States property.

For instance, the Treaty with Panama of 1955, 6 U.S.T. 2273, transferred certain property (a strip of water and other sites within the Canal Zone) to Panama without concurring legislation by the Congress, while transfer of other property (owned by the United States but within the jurisdiction of Panama) was, under the terms of the treaty itself, dependent upon concurring legislation by the Congress. The decision to cast some but not all of the articles of conveyance in non-self-executing form was a policy choice; it was not required by the Constitution.

The transfer of property contemplated in the current instance is part of a broader effort in the conduct of our foreign affairs to strengthen relations with another country, and indeed with the whole of Latin America. The Framers in their wisdom have made the treaty power available to the President, the chief executant of foreign relations under our constitutional scheme, by and with the advice and consent of two-thirds of the members of the Senate present, as a means of accomplishing these public purposes. We do not think it is relevant that many previous treaties couched in self-executing terms have been different in scope, dealing with boundary issues or otherwise ceding land which was claimed both by the United States and by a foreign nation.[22] We note first that it is hardly surprising that lands transfers often involve boundaries or other disputed territory; indeed, it is in these situations that the decision to dispose of land would most often be made.

Second, the grant of power to Congress in the property clause is not predicated on the territory disposed of being on a boundary or being the subject of conflicting claims. Thus we do not understand the basis for appellant's argument that, even if that clause does not provide the exclusive means of disposing of disputed or boundary lands, it is the exclusive source of power for disposing of land concededly owned by the United States. If the status of the land has any bearing on whether it may be conveyed without congressional enactment under the property clause,[23] it would seem to cut in a direction contrary to that urged by appellants, for the Western lands that were the focus of the property clause were the subject of conflicting claims by the states and the federal government.

It is important to the correct resolution of the legal issue now before us not to confuse what the Constitution permits with what it prohibits. In deciding that Article IV, Section 3, clause 2 is not the exclusive method contemplated by the Constitution for disposing of federal property, we hold that the United States is not prohibited from employing an alternative means constitutionally authorized.[24] Our judicial function in deciding this lawsuit is confined to assessing the merits of the claim of appellants that in the conduct of foreign relations in this matter, involving, inter alia, the transfer of property of the United States, the treaty power as contained in Article II, Section 2, Clause 2, was not legally available to the President. We hold, contrarily, that this choice of procedure was clearly consonant with the Constitution.

For the foregoing reasons, the judgment of the District Court dismissing the complaint is

Affirmed.

FOOTNOTES

[1] Two treaties, signed by the chief executives of Panama and the United States, were presented to the Senate for ratification. The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal has now been ratified by the Senate, *see* note 2 *infra*. The Article conveying the Canal Zone properties to the Republic of Panama is contained in the Panama Canal Treaty:

"Property Transfer and Economic Participation by the Republic of Panama

"1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

"2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-renewable improvements thereon, as set forth below:

"(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;

"(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

"(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this treaty at such time as such units are made available to the Republic of Panama.

"(d) Upon termination of this Treaty, all real property and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

"3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.

"4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal."

[2] The Senate consented to The Neutrality Treaty on March 14, 1978. It is expected that the vote on the Panama Canal treaty will occur in early April 1978.

[3] In addressing the merits, we assume without deciding that the Panama Canal Zone real property which would be conveyed by the Panama Canal Treaty is indeed property belonging to the United States. Appellee has not contended otherwise and neither party has briefed this issue.

[4] The Senate Foreign Relations Committee has thoroughly considered and rejected appellants' argument. That Committee reported the treaties with Panama to the full Senate by a 14 to 1 vote, and the one dissenting Senator did not dispute the power of the President, by and with the advice and consent of the Senate, to transfer United States property. See Exec. Rept. No. 95-12 (95th Cong. 2d Sess., Feb. 3, 1978).

In addition to the American Law Institute's Restatement of Foreign Relations Law, *see infra*, other authorities in agreement with this conclusion include Professor Louis Henkin, see L. Henkin, "Foreign Affairs and the Constitution 159-60" (1965); Dean Louis Pollalk, see 124 Cong. Rec., No. 8, at 5729 (95th Cong., Jan. 30, 1978); Professor Covey Oliver, see Hearings Before the Committee on Foreign Relations, Part IV, at 95, 103, 112-13 (Jan. 19, 1978); and Professor John Norton Moore, see id. at 89, 93-94. The Attorney General and the State Department Legal Advisor have also issued opinions that the Panama Canal may be disposed of through self-executing treaty. See Opinion of the Attorney General to the Secretary of State, Aug. 11, 1977; Hearings Before the Subcommittee on the Separation of Powers of the Senate Judiciary Committee, Part I, at 3-25 (July 29, 1977). Professor Raoul Berger, in testimony before the Subcommittee on Separation of Powers of the Senate Judiciary Committee in the fall of 1977, expressed a contrary position. His thesis seems to be that the President cannot exercise under the treaty power any power granted to Congress, see Hearings Before the Subcommittee on Separation of Powers, (95th Cong. 1st Sess., Nov. 3, 1977). We agree with Professor Henkin that such a narrow view of the treaty power would, by "outlaw[ing] treaties on matters as to which Congress could legislate domestically," "virtually wipe out the treaty power." L. Henkin, supra, at 149.

We note that Professor Henkin's treatise leaves no doubt but that he is in agreement with our position. The passage quoted by the dissent, as is realized upon a careful reading of the passage itself —with its references to "unilateral" presidential action and "executive order[s]"), concerns the limitations upon the President's power to dispose of property through unilateral executive action. See note 24 infra.

[5] Similarly, § 118(1) of the Restatement lends no support to the dissent's position because it is not even relevant to the issue before us. That section, consistent with Missouri v. Holland, 252 U.S. 416 (1920), indicates that the treaty power is broader than the power of Congress to enact legislation. The issue before us, on the other hand, is whether the treaty power extends to an area in which Congress, by virtue of Art. IV, § 3, cl. 2, does have power to enact legislation.

[6] It is important to understand the limited scope of this inquiry. If Art. IV, § 3, cl. 2 does in

fact provide the exclusive means of property disposition, i.e., by legislation, clearly a self-executing treaty would be a constitutionally impermissible alternative. As the dissent repeatedly indicates, the treaty power may not encroach on delegations made exclusively to Congress.

[7] The dissent argues that because the power to declare war is exclusively reserved to Congress by Art. 1, § 8, so also must be the power to dispose of United States property, which power is granted to Congress in the same language as the warmaking power. Cf. L. Henkin, supra, at 160 n.++. The sui generis nature of a declaration of war and the unique history indicating the Framers' desire to have both Houses of Congress concur in such a declaration, may place it apart from the other congressional powers enumerated in Art. 1, § 8 and in Art. IV, § 3, cl. 2. The history, discussed infra, of the constitutional convention and ratifying conventions with respect to the property clause and the treaty clause, on the other hand, clearly demonstrates the Framers' intention to allow disposition of the United States property through self-executing treaty. Moreover, while there are numerous instances in past treaty practice of the latter, we know of no instance in which the United States has been in a state of formally declared war without a congressional declaration thereof.

[8] The states; clams to unsettled Western (trans-Allegheny) regions were based on charters granted to them from Great Britain. Landless states argued that all Western lands should inure to the benefit of all states, *i.e.*, should be federal properties. *See* H. Hockett, "The Constitutional History of the United States 1776–1826," 143–46 (1939); 2 M. Farrand, The Records of the Federal Convention of 1787, 461–66 (1937); 3 *id.* at 226–27.

[9] This issue arose in a debate over the treaty clause that was not unlike the controversy before this court. Governor Randolph of Virginia stated that he could "conceive that neither the life nor property of any citizen, nor the particular right of any state, can be affected by a treaty." He then argued that Art. IV, § 3 must be intended to protect against the dismemberment of the Union. Mr. Grayson replied that—

"[T]his clause was inserted for the purpose of enabling Congress to dispose of, and make all needful rules and regulations respecting, the territory, or other property, belonging to the United States, and to ascertain clearly that the claims of particular states, respecting territory should not be prejudiced by the alteration of the government, but be on the same footing as before; that it could not be construed to be a limitation on the power of making treaties."

3 Elliot's Debates in the Several State Contventions on the Adoption of the Federal Conventions on the Adoption of the Federal Convention 504–05 (1907).

[10] The account in the text is from 2 Farrand, *supra*, at 540–49.

[11] Id. at 541.

[12] Id. at 543.

[13] 3 "Elliot's Debates," *supra*, at 500.

[14] *Id.* at 660.

[15] *See* S. Crandall, "Treaties, Their Making and Enforcement" 63 (2d Ed. 1916); 4 "Elliot's Debates" *supra*, at 115.

[16] James Madison stated that "I do not conceive that power is given to the President and Senate to dismember the empire, or to alienate any great, essential right." But he continued by noting "I do not think the whole legislative authority have this power. The exercise of the power must be consistent with the object of the delegation." 3 Elliot's Debates, *supra*, at 514. It appears, thus, that Madison was only formulating a well-recognized limitation on all of the constitutional delegations are restrained by the basic premises upon which the Union and the Constitution were created.

[17] *Wisconsin Cent. R.R. Co.* v. *Price County*, 133 U.S. 496, 504 (1890).

[18] The dissent also relies upon *Alabama* v. *Texas*, 347 U.S. 272 (1954),which upheld the Submerged Lands Act of 1953, 67 Stat. 29. The reference in that case to Congress' power to dispose of property "without limitation" had no application to whatever limitation on Congress' power may be thought to result from use of the treaty power to accomplish disposal of property. Rather, the salient question in the case was whether Congress could grant to individual states indefeasible title to and ownership of certain resources under submerged marginal ocean lands. Thus, it appears that in referring to Congress' power "without limitation", the Court was holding that Congress' authority under Art. IV, § 3, cl. 2 embraces any disposition of property of the United States chosen by Congess. See also Inter-Island Co. v. Hawaii, 305 U.S. 306 (1938) (Under the Art. IV, § 3 powers to regulate, Congress has the authority to permit the Territory of Hawaii to impose taxes on petitioner's interstate business operations); United States v. Celestine, 215 U.S. 278 (1909) (Congress has power to retain federal jurisdiction over crimes committed by an Indian allottee on allotted land of an Indian reservation within the confines of a state); Wisconsin Cent. R.R. Co. v. Price County, 133 U.S. 496 (1890) (U.S. property is not subject to state taxation since enforcement of such a tax might result in states, instead of Congress, controlling the disposition of federal property, contrary to Art. IV, § 3, cl. 2); Griffin v. United States, 168 F.2d 457 (8th Cir. 1948) (county resolution declaring federally owned property open for grazing is invalid encroachment upon power delegated to Congress to regulate U.S. property).

Appellants also cite several cases that, while not dealing with federal-state relations, are nonetheless inapplicable here. See *United States* v. *Fitzgerald*, 40 U.S. (15 Pet.) 405 (1841) (an individual employee of the federal government is not empowered by his position to dispose of U.S. property without further congressional authorization); United States v. Gratiot, 39 U.S. (14 Pet.) 526 (1840) (congressional authorization to lease publicly owned lead mines to individuals is within constitutional delegation permitting "disposal" of U.S. property); Sierra Club v. Hickel, 533 F.2d 24 (9th Cir. 1970), aff'd sub non., Sierra Club v. Morton, 405 U.S. 727 (1972) (Congress had the power to delegate regulation of the public lands to Executive officers).

In Sioux Tribe v. *United States*, 316 U.S. 317 (1942), cited by appellants, the Court held that the President could not by Executive Order dispose of public lands without congressional authorization. However, the unilateral nature of presidential action by Executive Order renders

that case inapposite here. Treaties involve not only presidential action but senatorial participation as well.

[19] *Jones* v. *Meehan* discussed and rejected as irreconcilable with later Supreme Court opinions the contrary views expressed by Attorney General Taney and Justice Nelson, which are also relied on by the dissent in the case before us. 175 U.S. at 12–14.

[20] Although this unique relationship has often been cited as a basis for distinguishing "Indian cases," we question the applicability of the distinction to this case. This sui generis relationship is traditionally found in the context of individual rights, and it does not seen directly relevant to the scope of the treaty power vis-a-vis other sources of federal power. The Supreme Court long ago noted that "the power to make treaties with the Indian tribes is as we have seen, coextensive with that to make treaties with foreign nations." United States v. 43 Gallons of Whiskey, 93 U.S. 188, 197 (1876).

[21] See, e.g., Florida Treaty with Spain of 1819, 8 Stat. 252 (256); Treaty between the United States and Great Britain (Webster-Ashburton Treaty, 1842); 12 Bevans, 82; Treaty between the United States and Japan (June 17, 1971), 23 U.S.T. 447, citations in note 22 infra.

[22] See, e.g., The Treaty with Mexico of 1933 (Rectification of the Rio Grande), 9 Bevans 976; The Treaty with Mexico of 1963 (Solution of the Chamizal Problem), 15 U.S.T. 21; The Treaty with Mexico of 1970 (changing position of Rio Grande to maintain boundary), 23 U.S.T. 371; Florida Treaty with Spain, supra note 21.

The dissent asserts that the treaties with Mexico cited herein were not self-executing. However, the only portions of three treaties dependent upon legislation were provisions in the latter two treaties requiring the United States to acquire certain property from private individuals prior to ceding it to Mexico. Because such acquisition necessitated appropriation of funds, implementing legislation was required, see pp. 9–10 supra. Similarly, the treaties with Panama also will require implementing legislation for the payment of annuities to Panama and certain other provisions in the treaties. See Hearings Before the Subcommittee on Separation of Powers, supra, at 20 (Department of State Statement of Legislation Required to Implement Proposed New Agreements with Panama).

[23] It is exceedingly difficult to understand why the constitutionality of utilization of the treaty process should depend on whether the nation to whom the land is conveyed has previously "claimed" such land.

[24] The dissent tends to obscure the distinction between the treaty power and presidential power asserted to be inherent in his authority to conduct our foreign relations. There is no doubt that the latter is more restricted than the former. As Professor Henkin notes—

"Whatever, then, [the President] might do by treaty or other international agreement . . . he cannot *unilaterally* regulate commerce with foreign nations, or make domestic laws punishing piracy or defining offenses against the nations or declare war. Equally, he cannot exercise, even for foreign affairs purposes, the general powers allocated to Congress: he cannot regulate patents or copyrights or the value of money, or establish post offices, or dispose of American territory or property." . . . L. Henkin, *supra* at 94–96 (1972) (emphasis added). A similar view is expressed in the 1940 Opinion of the Attorney General indicating that the President could not, by *executive agreement*, transfer "mosquito" boats to Great Britain during the war. 39 Op. Atty. Gen. 484 (1940). Additionally, the State Department Guidelines, upon which the dissent draws, states that—

"The President may conclude an international agreement on the basis of existing legislation or subject to legislaion to be enacted by the Congress." . . . Department of State, 11 Foreign Affairs Manual § 721.2(a)2. Thus these too recognize that the President, when acting alone, has only limited power. However, we are not now faced with determining the permissibility of territorial cessation by executive agreement. Before us is the much broader power established by the treat clause of Art. II, § 2, cl. 2. Accordingly, these authorities are not applicable here.

No. 78-1166—Edwards V. Carter

Mackinnon, *Circuit Judge*, dissenting: The United States Constitution in Article IV, § 3, 2 [1] provides that "The *Congress* shall have power *to dispose* of . . . property belonging to the United States . . ." (emphasis added). Because of this specific constitutional provision, it is my opinion that the treat clause [2] does not authorize the President to dispose of the large property interests of the United States in the Panama Canal Agreement without the approval of *Congress* to the transfer of the *property* involved. Yet the pending treaty with the Republic of Panama would violate the Constitution and disenfranchise the 435 members of the House of Representatives from voting as members of "the Congress" upon the proposal to "dispose of" eight billion dollars [3] worth of Canal "property belonging to the United States." [4] Since we are supposedly a participatory democracy, where the right and duty of the entire Congress to participate in that decision is clearly stated in the Constitution, and has been recognized by prior Presidents, it is almost impossible to understand the motivation for excluding the House of Representatives from exercising its constitutional authority.

In my opinion, Senator Connally of Texas, when he was Chairman of the Senate Committee on Foreign Relations, correctly interpreted the Constitution when he stated in the Senate debate on the procedure to be followed in authorizing a transfer of United States property to Panama:

The House of Representatives has a *right* to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise. 88 Cong. Rec. 9267 (December 3, 1942) (emphasis added).

Recognizing that the House of Representatives has a vote on the disposition of the Panama Canal does not operate as a restriction on the "treaty" power. The *Per Curiam* opinion is in error in treating this as a matter of "power" when it is merely a question of ratification procedure. Treaties may still be entered into by the President upon all subjects that are amendable to international agreement, and to become effective the "treaty provisions" must be ratified by two-thirds of the Senate; but if any treaty attempts to "dispose of * * * territory or property belonging to the United States . . ." and it is ratified by the Senate, Art. IV of the Constitution still requires the concurrence of the House of Representatives to "carry out the obligations *by the enactment of legislation.*" *Id.*, Senator Connally, 88 Cong. Rec. 9270 (December 3, 1942) (emphasis added). In the transfer to Panama that was the subject of Senator Connally's remarks, the Senate by its vote acquiesced in that procedure and the House joined the Senate in voting to authorize the transfer of the property to Panama before the agreement was executed.

The net result is that unless it is previously approved by the "Congress," *i.e.*, the Senate *and the House of Representatives*,[5] the Constitution prohibits the effectuation of a self-executing agreement transferring the property in the Canal Zone belonging to the United States. The *Per Curiam* opinion reaches a different conclusion, but to my mind does not satisfactorily explain why this enormous disposition of property to the Republic of Panama should not recognize the proper role of Congress in such transfer as was followed in all prior transfers where the value of the property was infitesimal compared to what is involved here. From its conclusion I thus respectfully dissent.

I. IS A POLITICAL QUESTION INVOLVED?

At the outset, appellee defends on the theory that this case involves a political question which this court is without authority to decide. In other words, he contends that the treaty clause of the Constitution gives him the unchallengeable option to "dispose of . . . property belonging to the United States" without the approval of "the Congress" as set forth in Art. IV, § 3, cl. 2.[6] What this asserted defense amounts to is the claim that since he has already decided to proceed, and has taken certain steps that may violate the Constitution, the courts have no power to declare his conduct to be unlawful.

A question is not deemed political, however, when its resolution is committed to the courts by the Constitution. *Elrod* v. *Burns*, 427 U.S. 247, 351 (1976) (Brennan, J.); *Baker* v. *Carr*, 369 U.S. 186, 217 (1972). The issue here is plainly one that calls for a determination of which procedure is constitutionally required to approve an international agreement that will "dispose . . . of property belonging to the United States" of the value of eight billion dollars (*Sen. Exec. Rpt., Exec. N*, 95th Cong., 1st Sess., at 99 (Feb. 3, 1978) (hereafter "Committee Report")).

The construction of treaties is the peculiar province of the judiciary. *Jones* v. *Meehan*, 175 U.S. 1, 32 (1899). This case presents a question for which there is no "textually demonstrable constitutional commitment of the issue to a coordinate political department." Instead, the question is purely judicial; it is committed by Art. III, § 2 to the courts established pursuant to Art. III, § 1 in which the "judicial power [is] vested." It is the type of controversy that the United States courts decide every day, and there is no lack of judicial and manageable standards for resolving it. Nor is the issue impossible for the courts to decide without a prior policy determination clearly involving non-judicial discretion. Since the issue is solely one of constitutional interpretation and both parties to the controversy are firmly committed to adhering to the dictates of the Constitution, and it is a relatively simple matter to do so, a proper declaration of the correct constitutional procedure would not embarrass or indicate any lack of respect due the two coordinate branches that are represented by the parties hereto. It should also be added that the issue is so clearly answered by the Constitution that the case does not involve any unusual need to adhere to any prior political decision. Therefore our authority to decide the issue is clear. *Baker* v. *Carr*, supra, 369 U.S. at 217.

II. THE EXCLUSIVE POWER TO DISPOSE OF PROPERTY BELONGING TO THE UNITED STATES

No contention is advanced by this opinion that "Article II treaty power stops where the power of Congress begins," (Appellee Br., p. 12) but it is contended that in any international agreement the ratification or authorization procedure must conform to *specific* constitutional provisions. Therefore, the specific provisions of the Constitution outside of Art. I, § 8, which designate "Congress" as the body to levy

taxes (Art. 1, § 7), appropriate money (Art. I, § 9), and dispose of Government *property* (Art. IV, § 3, cl. 2) require that international agreements that trangress into these areas can only become effective by enactments of Congress. The President cannot violate any of these provisions under the claimed need or desire for a self-executing treaty.

The issue we are confronted with at the outset concerns the proposal in the Panama Canal treaty (*see* Appendix) what would immediately replace the interest *in perpetuity* of the United States in the Panama Canal to act "as though it were sovereign" with a mere 21-year operational right, would immediately transfer the entire Panama Railroad and certain other valuable structures (Appendix, Art. XIII), and would eventually provide for the *automatic* transfer on December 31, 1999, of whatever interest the United States still retained in the entire Panama Canal. Appellee claims all this can be accomplished by the pending Carter-Torrijos treaty with nothing more than Senate approval; and that the participation of the House in those parts of the agreement that dispose of property belonging to the United States is not required and will not be sought. Such construction conflicts directly with the above-quoted provision of the Constitution and with past practices. A number of Supreme Court decisions also contain statements which recognize the exclusive power of *Congress* under Art. IV, § 3, cl. 2 to dispose of United States territory and property.

A. the Supreme Court decisions

The decision in *Alabama* v. *Texas,* 347 U.S. 272 (194), involved a motion by the States of Alabama and Rhode Island for leave to file complaints challenging the constitutionality of the Submerged Lands Act of 1953. In a *Per Curiam* opinion, the motions were denied on the ground that Art. IV, § 3, cl. 2 prohibited such suits by the states:

"The power of *Congress* to dispose of any kind of property belonging to the United States is vested in Congress *without limitation.*'" [Quoting *United States* v. *Gratiot,* 39 U.S. (14 Pet.) 526, 537.] 347 U.S. at 273 (emphasis added).[7]

Much earlier in *Gibson* v. *Chouteau,* 80 U.S. (13 Wall.) 92, 99, 20 L. Ed. 534 (1872), the Court had stated:

"With respect to the public domain, the Constitution vests in *Congress* the power of disposition and of making all needful rules and regulations. That power is subject to no limitations."[8] (Emphasis added.)

In *Winconsin Central Railroad Company v. Price County,* 133 U.S. 496, 504 (1890), the Court remarked: "[Art. IV] implies an exclusion of all other authority over the property which interfere with this right of obstruct its exercise." This same conclusion was reached in *United States v. Celestine,* 215 U.S. 278, 284 (1909):

"By the second clause of § 3, art. 4 of the Constitution, *to Congress; and to it alone,* is given 'power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.'" [Emphasis added.]

The Supreme Court in *Sioux Tribe* v. *United States,* 316 U.S. 317 (1942) also acknowledged the power of the Executive to withdraw lands from the territory subject to their being sold, but recognized that the power to *dispose* of the land rested in the Congress:

"Section 3 of Article IV of the Constitution confers upon Congress *exclusively* 'the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.'" 316 U.S. at 324 (emphasis added). However, Congress had previously revealed its awareness of this practice and acquiesced in it (316 U.S. at 324–25).

Geofroy v. Riggs, 133 U.S. 258 (1890) remarks:

"The treaty power, as expressed in the Constitution, is in terms unlimited *except by those restraints which are found in that instrument* against the action of the government or its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. *Fort Leavenworth R. Co. v. Lowe,* 114 U.S. 525, 541. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country." 133 U.S. at 267 (emphasis added).

In my view, one of the "restraints" to which *Geofroy* refers in the Art. IV, § 3, cl. 2 power vested in Congress to dispose of property. By treaty, the President could not sell or give away Alaska to another country. Similarly, in my view, the President by treaty cannot dispose of our porperty in the Panama Canal without authorization from *Congress.*

Another decision which discusses the treaty power is *Asakura* v. *Seattle,* 265 U.S. 332 (1924):

"The treaty-making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend *'so far as to authorize what the Constitution forbids,'* it does not extend to all proper subjects of negotiation between our government and other nations." *Geofroy v. Riggs,* 133 U.S. 258, 266, 267; *In re Ross,* 140 U.S. 453, 463; *Missouri v. Holland,* 252 U.S. 416. 265 U.S. at 341 (emphasis added)

Since the treaty power does not extend so far as to authorize what the Constitution forbids, the power does not extend so far as to permit the disposal of our territorial and property interest in the Panama Canal without the approval of Congress as required by Art. IV, § 3, cl. 2.

If the scope of the treaty power were so broad as to permit such disposal, then the statements of the Supreme Court would be incongruent: if the treaty power were that broad, there would be a need to explain why Art. IV was not and express power limiting Art. II. Since there are no references to this possible conflict, it seems reasonable to state that the Court never conceived that the treaty power might be so broad as to permit disposition of property covered by Art. IV. These cases are wholly consistent with the Supreme Court's rulings concerning the treaty power.

Thus, the proper construction of the constitutional provisions is straight-forward and sensible. The treaty power is not limited by any express power in the Constitution *because it does not extend so far as to permit the disposition of property without an Act of Congress.* The power of Congress to dispose of property has no limit—in the language of *Celestine,* its resides in Congress alone; and thus, the treaty power is not a restriction on Congress, because it cannot operate to dispose of United States property.[9]

B. Comparison of the powers of Congress to levy taxes, to make appropriations and to dispose of property

That Congress has exclusive power to dispose of United States property is also demonstrated by a comparative analysis of those delegated powers in which the right of Congress is admitted to be exclusive.

In overview, it is important to realize that the power to make treaties does not confer absolute authority upon the President and the Senate. It is a very broad power, but it is not unlimited. As a noted authority wrote before the form of the instant Panama Treaty became a national issue:

"Broad assertions and extravagant adjectives, some of them supported by the Supreme Court, might leave the impression that the President can exercise virtually all the national political power in foreign affairs, at least concurrently with Congress. In fact, large areas have never been claimed by him [except now in the Panama Canal Treaty]. In principle, it would be difficult for a President to dispute that by vesting in Congress 'all legislative Powers herein granted' *and* granting it a comprehensive array of specific powers, the Constitution barred the President from exercising these powers even as regards foreign affairs. Whatever, then, he might do by treaty or other international agreement * * * he cannot *unilaterally* regulate commerce with foreign nations, or make domestic laws punishing piracy or defining offenses against the law of nations, or declare war. *Equally, he cannot exercise, even for foreign affairs purposes, the general powers allocated to Congress: he cannot* regulate patents or copyrights or the value of money, or establish post offices, or *dispose of American territory or property;* he cannot enact necessary and proper laws to carry into execution the powers of Congress or even his own powers, for example, criminal laws to enforce an arms embargo. He cannot spend money on his own authority for foreign aid, or draw funds from the Treasury, without Congressional appropriation, to build and embassy. Presumably, the unexpressed lawmaking powers of Congress deriving from national sovereignty are also generally denied the President: he cannot enact general immigration laws by executive order." L. Henkin, *Foreign Affairs and the Constitution* 94-96 (1972) (emphasis and matter in brackets added). The foregoing quotation does not support the assertion that Henkin's treaties agrees with the conclusion of the *Per Curiam* opinion. *Cf. Per Curiam* op., at 7 n.4.[10]

The *Per Curiam* opinion grasps at the word "unilaterally" in one sentence and asserts therefrom that Henkin in the next sentence is also speaking solely of the President's power to act "unilaterally." Such construction cannot be supported. Henkin, in the first sentence, is referring to *unilateral* action by the President that transcended what "he might do by treaty or *other international agreement.*" However, in the very next sentence, which is the critical sentence, Henkin shifts to deal with the President's entire "foreign affairs purposes" and these unquestionably

refer to his powers to enter into treaties, international agreements, as well as to act *unilaterally* and by "executive order" as referred to in the last sentence of the quoted paragraph. In this broad context Henkin states that the President "cannot * * * dispose of American territory or property * * *" It is absurd to suggest that this statement by Henkin was only intended to state that the President was prohibited from disposing of American territory or property by *executive agreement,* and not by treaty, since no person has ever suggested that American territory could be disposed of by a mere executive agreement with another nation, much less by *unilateral* action or executive order without congressional approval. Henkin's statement with respect to the disposition of American territory and property thus included the President's power to make treaties and international agreements as well as his power to act unilaterally and by executive order. These are all encompassed within "foreign affairs purposes." It must thus be admitted that the present treaty is an attempt by the President to "dispose of American territory [and] property * * * for *foreign affairs purposes*"—and that Henkin states this cannot be done by treaty. Thus, Henkin is *not* "in agreement with [the *Per Curiam*] opinion." *Per Curiam,* at 7 n.4. Not that Henkin is authoritative or binding—he is a highly respected professor.

The powers of government insofar as they may be exercised by treaty, are thus subject to the *specific* limitations imposed by the Constitution. First, Art. I, § 7, cl. 1, of the United States Constitution provides:

"All Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments as on other Bills."

Second, Art. I, § 9, cl. 7 provides:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."

Henkin has stated—and the appellee recognizes—that in a treaty the Executive cannot obviate these provisions by levying taxes or appropriating money from the United States Treasury.

In 1844 the President laid before the Senate a treaty he had negotiated which for at least three years would place the power to exceed certain maximum import duties beyond the power of Congress. The Senate, however, took the view that the constitutional method of imposing regulatory duties was by Act of Congress rather than by treaty. 2 Hinds' Precedents 998–1001. In a subsequent instance when the right of the Senate to act on a treaty was questioned, the Senate observed that the right of Congress to act by legislation was admitted and therefore the Report of the Senate Committee on Foreign Relations recommended that the treaty be amended by inserting: "This treaty shall not take effect until the same shall have been approved by the Congress." 2 Hinds' Precedents 1001–1002. The property transfer portion of the present treaty could be handled accordingly as all governments are on notice of the constitutional requirements of Art. IV.

Appellee also recognizes, as Henkin states, *supra,* that a Declaration of War is subject to the same limitation: it is beyond the President's *unilateral* power to declare war by edict. Likewise all seem agreed that "the United States cannot declare war" by treaty. Henkin, *id.,* 159–60. That conclusion, however, devolves from the provision of Art. I, § 8, which states "Congress shall have Power * * * To declare War." This is nothing in the Constitution which specifically forbids a President from declaring war to comply with a prior treaty. The Committee Report relies upon "the unique legislative history of the declaration of war clause" which supposedly "clearly indicates the power was intended to reside jointly in the House and Senate." Committee Report, at 74. This admits that the House of Representatives has a "share of the warmaking power," *id.* To read the clause as a concurrent power would unconstitutionally confer upon the President the power to declare war. However, since the President is commander-in-chief and represents the nation in our foreign relations, there is even less reason to read in the necessity for House participation in a declaration of war from the language of section 8, solely from the asserted history of the clause, than there is *to give effect to the separate constitutional limitation specifically requiring an Act of Congress to dispose of United States property as set forth in Art. IV, § 3, cl. 2.* This, unlike the war power, is one of the "general powers allocated to Congress" that Henkin recognizes the President cannot exercise in a treaty. Henkin, *supra.*

This then brings us to the placement of the power to dispose of Government property. This power is not specifically included in the general enumeration of powers set forth in Art. I, § 8, but it is undoubtedly one of the "general powers" "necessary and proper" for carrying into execution the previously enumerated powers and practically all other powers. In a separate provision outside Art. I, § 8

(like the taxing and appropriation provisions), Art. IV, § 3, cl. 2 imposes the requirement that "The *Congress* shall have Power to dispose of * * * Territory or Property belonging to the United States." (Emphasis added.)

In imposing a specific procedure *outside Art. I, § 8* for "Congress" to dispose of Government property, the Framers followed the same pattern as they did with respect to the other *general provisions* of the Constitution—levying taxes and making appropriations. Thus, Art. IV in requiring action by *both* Houses of Congress is cast in exactly the same mold as the tax and appropriation powers. Therefore, under the format of the Constitution, disposing of the United States' *property interests in the Panama Canal by a donation is entitled to action by the Congress to the same extent as would be an appropriation for the same amount which admittedly could only be accomplished by enactment of the "Congress."* It must thus be recognized that what is clearly required in the Carter-Torrijos Panama Canal Treaty is exactly what was done in the 1955 treaty involving the Panama Canal Zone: an Act of Congress was required to approve those provisions of the treaty which called for the disposition of United States property.[11]

To say that the Constitution is loose in this particular, and that it permits the President to have a free choice between bypassing the House, as is proposed here, and submitting the matter to the House and the Senate as was done in 1955, is to permit an important constitutional provision to be bypassed in the name of expediency—the exact motivation for which is not readily apparent. If there is any policy inherent in this decision, it should be to determine that at least a majority of the nation's representatives who have been elected on a one man one vote apportionment support the property disposition portions of the treaty. Even a casual survey of the treaty (*see* Appendix) indicates that a great deal of implementing legislation is required and contemplated, and it has been recognized since 1796, *see* p. 20, *infra,* that the President and the Senate cannot foreclose the House of Representatives from exercising its independent constitutional authority in all respects.

There are two other obvious matters which appear to require implementing legislation that a treaty cannot assure:

(1) Art. III, § 5 requires the Panama Canal Commission (constituted by and in conformity with the laws of the United States, *see* Art. III, § 3) to pay the Republic of Panama for municipal services "ten million United States dollars * * * per annum." The treaty does not provide that this sum will be paid annually from Canal tolls, which in any event are covered into the United States Treasury, and an appropriation may be required. At page 9 the *Per Curiam* opinion states:

"Thus, agreements with other nations requiring the expenditure of funds by the United States cannot be made by self-executing treaty * * *."

I agree. From the foregoing it also appears that this "self-executing treaty [does] require the expenditure of funds by the United States * * *." Hence, as the *Per Curiam* opinion states, the treaty "cannot be made * * *" and be valid in its present form.

The treaty is self-executing in that it purports to create an annual liability of the United States for the sum of $10 million. It appears, from pp. 24–25 n. 22 of the *Per Curiam* opinion, that the majority agree with this interpretation.

(2) Art. X, § 9 of the treaty also authorizes the affiliation of employees of the Panama Canal Commission with local and international unions, that they may negotiate collective bargaining contracts *with the Panama Canal Commission, and that labor relations with employees "shall" be conducted in accordance with forms of collective bargaining established by the United States after consultation with employee unions.* This apparently makes a collective bargaining contract mandatory and in operation might require all Panama Canal workers to belong to a particular labor organization. It seems to be pure legislation with respect to the employee relations of the United States' employees and is very far-reaching. The briefs do not discuss the issue and no authority has been cited in support of this obvious legislative action.

It would thus appear to be extremely doubtful that the President is authorized to commit the United States to all of this procedure without approval of Congress.

C. The restatement of foreign relations law and the constitutional requirements for the disposition of United States property

The Restatement, Second, Foreign Relations Law of the United States, is hardly authority for the proposition that the power to dispose of property *concurrently* resides in Art. II and in Art. IV of the Constitution. The majority cities, as the section most strongly supporting the concurrent power notion, a sentence in comment (f) to section 141:

"The mere fact, however, that a Congressional power exists does not mean that the power is exclusive so as to preclude the making or a self-executing treaty within the area of that power." *Per Curiam* at 6.

In applying this broad single sentence to the specific constitutional power here vested in Congress, the majority ignores the general thrust of the Restatement.

The section of the Restatement which explains the relative boundaries of the treaty power and the powers delegated to Congress is section 118(1). That section states that the power of Congress to enact legislation does not limit the treaty power; but in so providing, that section does not stand for the proposition that property belonging to the United States may be disposed of by treaty without approval by the Congress. Section 118(1) states:

"An international agreement made by the United States as a treaty may deal with any matter as to which the United States has the *constitutional power* to make an international agreement under the rules stated in § 117." (Emphasis added.)

Comment (b) to that section states:

"*b. Treaty power and power of Congress compared.* The treaty power of the United States is not limited by the extent of the powers delegated to the Congress by the Constitution. This follows from the fact that the treaty power is itself an independent power granted to the President and the Senate under the Constitution."

Nothing in section 118, however, supports a power to dispose of government "property" by treaty without the consent of the Congress. The Constitution vests that power in Congress by a separate provision. *In so doing the grant to Congress of the power does not operate to impose a limitation on the power of the President to enter into international agreements but instead merely provides the necessary implementing procedure that must be complied with under the Constitution before certain international agreements become fully effective to accomplish their stated purpose.*

This opinion does not contend for its thesis, as the *Per Curiam* opinion attributes (rightly or wrongly) to Professor Raoul Berger, "that the President cannot exercise under the treaty power any power granted to Congress * * *" *Per Curiam,* p. 6 n. 4. Admittedly such construction would "virtually wipe out the treaty power," as Henkin states. Furthermore, however, this opinion does not contend, as the *Per Curiam* opinion might conclude, that the President under his treaty power can exercise practically all the powers granted to Congress. That would, to paraphase Henkin, "virtually wipe out the legislative power" in many recognized fields.

To be more specific, and to deal with the facts of this case, rather than attempting to write broad dicta, this opinion does contend that the treaty power cannot wipe out powers granted to Congress with the specificity indicated in Art. IV, § 3, cl. 2. Beyond that this opinion draws no line, but to my mind it seems clear, for the following and other reasons, that the placement of this separate paragraph in an article and section removed from Art. I, § 8, carries with it somewhat the same purpose to indicate exclusive congressional power that one derives from the location outside Art. I, § 8 of those provisions which impart exclusivity to Congress in the exercise of the taxing and appropriation powers.

The foregoing interpretation is consistent with the language of section 117 of the Restatement, which is referred to in section 118. Section 117 provides:

"(1) the United States has the power under the Constitution to make an international agreement if. * * *"

(b) the agreement does not contravene any of the limitations of the Constitution applicable to all powers of the United States.

Comment (d) states:

"No power granted to the United States by the Constitution is unlimited. The power of the United States to make international agreements is not an exception to this rule. The extent of each power grounded in the Constitution must be determined not only by the constitutional language granting it but also by the restrictions placed upon it *by other constitutional limitations.*"

The comment seems to be addressed in part to such constitutional restrictions as were added by the Bill of Rights. For example, the President and the Senate could not cause a treaty to go into effect which abridges the freedom of speech of the American citizenry. The power of Congress to dispose of "property" fits precisely within this same classification but may have a stronger base in the intendment of the Framers since it was part of the original Constitution. Other constitutional limitations—here Art. IV, § 3, cl. 2—thus place restrictions upon the manner of implementing the treaty power: property cannot be disposed of without the approval of Congress. Section 117 is consistent with this.

Section 141(3) which is relied upon by the majority, does not disparage this analysis in any respect. That section provides:

A treaty cannot be self-executing under the rule stated in Subsection (1) and have the effect stated there *to the extent that it involves governmental action that under the Constitution can be taken only by the Congress."* (Emphasis added.)

By way of illustration, comment (f) states:

"*f. Constitutional limitation on self-executing treaties.* Even though a treaty is cast in the form of a self-executing treaty, it does not become effective as domestic law in the United States upon becoming binding between the United States and the other party or parties, if it deals with a subject matter that by the Constitution is reserved *exclusively* to Congress. For example, only the Congress can appropriate money from the treasury of the United States." (Emphasis in original)

Illustration: 8. The United States enters into a treaty with state A under which A agrees to cede a portion of its territory to the United States in return for payment of $7,200,000. Advice and consent to the ratification of the treaty is given by the Senate and it is ratified by the President. The ratification does not have the effect of appropriating the $7,200,000. *Further action to this effect must be taken by both Houses of Congress.* (Emphasis added).

The mere fact, however, that a Congressional power exists does not mean that the power is exclusive so as to preclude the making of a self-executing treaty within the area of that power. Thus the fact that Congress has power to regulate commerce with foreign nations does not mean that the making of a self-executing treaty dealing with foreign commerce is precluded; in fact, many provisions in treaties dealing with foreign trade and commerce are self-executing.

The comment explicitly states that a treaty cannot be self-executing if it deals with a subject that is reserved exclusively to Congress. Art. IV, § 3 provides that Congress "shall," thus *exclusively,* dispose of property of the United States, just the same as "only the Congress can appropriate money from the treasury of the United States." The two powers, *i.e.,* dispose of property and appropriate money, are practically identical, and there is every reason to suspect that the Framers intended that both powers should be exclusively exercised by Congress. A disposition of Government property is to all intents and purposes an appropriation thereof. The rules of the House of Representatives originally adopted in 1794 and amended in 1874 and 1896 have equated the appropriation of property with other appropriations:

"All * * * bills making *apprpriations of money, or property* or requiring such appropriation to be made * * * shall first be considered in a Committee of the Whole * * *." Rules of the House of Representatives, 95th Cong. (1977), Rule XXIII, ¶ 3, § 865 (emphasis added).

In addition, *id.,* Rule XIII, ¶ 1, § 742, speaks of

"First. A calendar of the Committee of the Whole House on the state of the Union, to which shall be referred * * * bills of a public character, directly or indirectly *appropriating money or property."* (Emphasis added.) *See* 4 HINDS' PRECEDENTS § 840, at 1050 (1907).

It is unreasonable to suggest that the Constitution is more concerned with the transfer of eight billion dollars of United States *funds* from the Treasury than with the transfer of eight billion dollars of United States *property.* And the potential earning power of the Canal makes it much more valuable even than eight billion in dollars.[12]

It was observed in the discussion of the Supreme Court precedents that it is undisputed that the treaty power is not *limited* by the extent of the powers delegated to the Congress. Yet this does not mean that the general treaty power, so far as it exists, can overrun *specific* constitutional provisions. To state the proposition otherwise, the treaty power is not *so broad in the first instance* that it permits the disposition of property of the United States to be made other than in the manner specifically provided for by Art. IV, § 3, cl. 2. The treaty power clearly allows the President with the approval of the Senate to establish rights and obligations between this Nation and other countries. However, the actual power to dispose of property *exclusively rests* in the Congress—which includes the House of Representatives, *i.e.,* a treaty cannot without the approval of both houses transfer *property* belonging to the United States. Justice Jackson, when as Attorney General in 1940 he advised President Roosevelt on the fifty destroyers transaction with Great Britain, held that the exchange for British bases was permissible because Congress has *previously* given the President such statutory authority to transfer unneeded naval vessels. He further advised, however, that since Congress had not by law given greater authority, the President was precluded from transfering *new* mosquito boats that were under construction. 39 OP. ATTY GEN. 484 (1940), 86 CONG. REC. 11355. This recognized that, even in those critical times, only Congress could authorize the disposition of United States property.

It is unquestioned that the *negotiation* of treaties rests solely in the President. As Justice Sutherland declared for the Court in 1936:

"He alone negotiates. Into the field of negotiation, the Senate cannot intrude; and the Congress itself is powerless to invade it. * * *" *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 319 (1936).

From the earliest times of our country, however, as reflected in a resolution adopted by the House of Representatives in 1796, it has been established:

"That when a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution as to such stipulations on a law or laws to be passed by Congress, and it is the constitutional right and duty of the *House of Representatives* in all such cases to deliberate on the expediency or inexpediency of carrying such treaty into effect, and to determine and act thereon as in their judgment may be most conducive to the public good." 5 Annals of Congress 782 (1796) (emphasis added).

The House of Representatives in 1871 adopted a resolution to similar effect. Cong. Globe, 42d Cong., 1st Sess. 835 (1871). Senate Document 92-83, 93d Cong., 2d Sess., 488, notes that the early precedents which prohibited a treaty from circumventing the constitutional appropriation power of Congress (Art. I, § 9), have *"apparently been uniformly adhered to" since 1796.*[13]

The last paragraph of comment (f), from which the majority quotes, only illustrates the necessity for analyzing each case separately. This is precisely what the majority has not done. The *mere fact* that a congressional power exists is not, *by itself,* enough to render a treaty touching that power ineffective without legislative action. However, there are some congressional powers—appropriation, revenue, and *disposal of property*—which are so basic to the legislative function and are so intrinsically legislative that the treaty power cannot operate with out the concurrent exercise of the congressional power. The power to dispose of property is a power with specific constitutional limitations, substantially identical to the appropriation power, and by the Constitution, like the appropriation power and the power to levy taxes, it rests exclusively with the Congress. The transfer of property to the Republic of Panama requires an Act of "Congress" pursuant to Art. IV, § 3, cl. 2. Section 141(3) is consistent with this approach.

In short, it does not appear that anything in the Restatement supports the proposition that the Panama Canal, the Panama Railroad, and the other United States property which the Carter-Torrijos Treaty proposes to convey to Panama, can be transferred except by the "Congress." The treaty power is thus not unlimited and any treaty which disposes of substantial government property must, in that respect, be approved by both houses of Congress before coming into full force.

D. Exclusive language and the placement of article IV

Appellees advance two other arguments for the proposition that the power to dispose of United States property rests concurrently in the Executive and the Congress. First, it is suggested that since the property disposal clause does not use the same "exclusive language" as the appropriations and revenue clauses, the power to dispose of property must be concurrent. *See* Appellee Br. at 9. Second, it is argued that the property disposal clause is found in Art. IV which deals with state-federal and state-state relationships. This, it is argued, strongly suggests that the provision was intended to distribute power between the state and federal governments rather than among the three branches of the federal government. *Id.* This argument, however, is an incomplete answer. This is so because once a power is distributed between the state and federal government it must still be distributed between the three departments that constitute the three federal departments.

The first argument, that because the property disposal clause does not use, what is termed, "exclusive" language, the power rests concurrently in the Executive and the Congress, misapprehends the nature of Art. IV.

Of course the terminology by which a power is delegated to Congress is significant, and may be completely controlling in determining the scope of the President's treaty power; but each situation must be considered separately on its peculiar facts.

If any reasonably general statement were to be formulated for drawing the line at a point where the President's treaty power terminates, it would be at that point where the Constitution indicates that a legislative power was to be exercised. That applies to the taxing and appropriation power. And it is submitted that the Constitution is addressing itself to legislative enactment in Art. IV when it confers the power on *Congress* "to dispose and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States. * * *" Certainly to "make all needful Rules and Regulations" refers to legislation. This clause is the source of the power that Congress exercised for more than a century in legislating for our territories, before they became states.[14] Providing for the disposition of

property of the United States must also be recognized as a close counterpart to enactments providing for the appropriation of money to the United States. The paragraph is thus referring throughout to action by Congress.

Thus, the fact that the property disposal clause does not refer specifically to the "House," or to a "law" as in the taxing and appropriation clauses, is not controlling, because it otherwise indicates that the *Congress shall* have power to *legislate* for the territories and property belonging to the United States. It further lays down a very broad restriction on all acts of the legislature, executive and judiciary, *i.e.,* that nothing said in the Constitution should be construed to prejudice any claims of the United States or of any State.[15]

It is a gross understatement to construe the constitutional powers conferred by Art. I, § 8 and Art. IV, § 3, cl. 2 merely as though "these provisions state *simply* that Congress shall have power to take action on the matters enumerated." *Per Curiam,* p. 10 (emphasis added). The first error in this statement is to include the separate and *special* provision contained in Art. IV, § 3, cl. 2 with the *general* enumeration of powers set forth in Art. I, § 8. The difference in composition and location of these two sections indicated a difference in purpose and intent. The Constitution in Art. IV does "[state] the particular matter of concern, *i.e.*: the "power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States. * * *" It has long been recognized that *expressly* conferring this power on Congress implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise" *Wisconsin Cent. R.R. Co.* v. *Price County,* 133 U.S. 496, 504 (1890); *Van Brocklin* v. *State of Tennessee,* 117 U.S. 151, 167–168 (1886). The specific grant of power to Congress implicitly operates to deny that the power vests elsewhere, *United States* v. *MacCollom,* 426 U.S. 317, 321 (1976); *Passenger Corp.* v. *Passenger Assn.,* 414 U.S. 453, 458 (1974); *T.I.M.E.* v. *United States,* 359 U.S. 464, 471 (1959); *Botany Worsted Mills* v. *United States,* 278 U.S. 282, 289, (1929).

* * * * * * *

The location of Art. IV, § 3, as indicated by prior discussion, was principally a function of the Framers' concern with the claims of particular states to territory granted in their original charters. This was inetricably related to state-state and federal-state relations but it also directly involved the separation of powers between the Congress and the President; and insofar as United States versus States' "claims" were concerned, the Judiciary were also very much involved. This great concern with disposition of territory and the claims thereto caused Section 3 to be placed in Article IV, but the language of the clause—which also addresses *property,* which did not figure as importantly in the Framers' expressed concern relative to the grants under Royal charters, shoud not be narrowed as a result of its mere placement. The language of the clause is unequivocal: "The Congress *shall* have Power to dispose of * * * Property belonging to the United States."

This indicates that *exclusivity* of the powers in Art. IV, § 3, cl. 2, is vested in the *Congress* because if the President and the Senate, in the absence of any specific grant to that effect, were construed to possess the power, the Congress would thereby be excluded in many instances from exercising the power and the mandatory (*shall*) grant of the power to the Congress would be negated. It is recognized that some of the powers vested in Congress by Art. I, § B have been the subjects of treaties and that the mandatory character of that section may thereby have been obviated to some extent. That section, however, contains a great many designated powers covering a wide spectrum of legislative activity and it is recognizable that treaties might properly involve the same subjects *in a non-legislative manner.*

Art. IV, § 3, cl. 2, however, is very specific and limited. It refers only to territory and property (the claims also refer to territory and property). Thus, the specific nature and limited scope of the paragraph are reasons why the ratification procedure thus required should not be taken from Congress and obviated by self-executing treaties.

Such construction is also supported by the historical fact that the recognized intent of the Convention in this paragraph was to restrict the power to dispose of territory or property and this was the only place such intent is addressed. Had the convention intended to authorize the disposition of property as an incident of the treaty power, it would have been very easy to do so by merely before the semi-colon in Art. IV, § 3, cl. 2: "(which may also be disposed of by treaty)." The fact that the disposition of *territory* clause was followed by a separate restriction of general import to the entire Constitution which critically implicated state-state and Federal-state relations—while also implicating the distribution of powers among the three branches—should not cause the separate grant of broad power to dispose or territory and property to be construed narrowly.

The contention that the *placement* of the power with respect to property and territory in Art. IV is an indication of a limiting effect overlooks some other significant features of the content of the paragraph and its location. Art. IV is the first Article after the three first Articles which provided for the distribution of the powers of government between the Congress, the President, and the Judiciary. Art. IV is also the *last Article* in the Constitution that can be said to deal with the allocation of governmental powers: the remaining Articles provide for the manner of amendment (Art. V); recognize prior debts, provide for the supremacy of federal law and the oath of office (Art. VI); and provide for the manner of ratifying the Constitution (Art. VII). The Articles after IV are thus largely procedural and declaratory, and the Articles before IV are each *confined* to a separate department of government.

Thus, Art. IV was the appropriate place, *after* those sections in Art. IV which place certain limitations on the states, and before the *broad* guarantee by the whole *"United States"* of a Republican form of Government, for the Convention to make provision with respect to "Territory [and] other Property belonging to the United States" and further to add the very broad assurance applicable to all departments, the United states, and the States that *"nothing in this Constitution"* shall prejudice any claims of the United States or the states. *This is so because the Convention intended to restrict all three departments in some respect* and it would be contrary to the arrangement of the Articles to place such restriction in any of the first three Articles that were each devoted to a single department. Article IV, § 3 was the obvious place to insert its present contents and by such placement, its obvious meaning was not restricted.

Art. IV covers four areas: (1) the disposition and regulation of United States territory; (2) the disposition and regulation of United States property; (3) claims of the United States; and (4) claims of any particular state. Actually these are all closely related. With respect to these areas of concern, the Convention provided that Congress should exercise the power to dispose and regulate territory and property, and then restricted the power so conferred by providing, in effect, that none of the powers conferred on the Congress, the President, or the Courts ("nothing in this Constitution") shall be construed to prejudice "any claims of the United States or any particular State."

The claims so referred to were claims to "territory" in the West under Royal Charters which during the Convention were among the greatest concerns of some of the states. It is thus apparent that the most propitious place to restrict the power of the Congress, the President, and the Courts from dealing with this matter, was after the first three Articles and following the provision concerning Congress' power to dispose and regulate territory and property. It would not have been appropriate to place the restrictive language of Art. IV, § 3, cl. 2, in any of the first three Articles, as that would have suggested that the limiting language of the clause had some special relation to one particular branch of the federal government rather than to all three branches.

Placing the provision *after* those Articles, and after the territory and property provision, gives the limitation greater force and clarity.[16] Therefore, the location of the territory and property clause in Art. IV does not in any way limit the effect of its plain language to confer those powers on Congress as it prescribes. Furthermore, coupling the regulatory and disposition powers over "Territory [and] other Property belonging to the United States," because the regulatory power is so completely legislative, is indicative of an intent to refer to the disposition power also in its legislative context.

III. ESTABLISHED STATE DEPARTMENT PROCEDURES FOR INTERNATIONAL AGREEMENTS

In bypassing the House of Representatives, the pending agreement does not conform to established procedures of the Department of State. These have been codified, set forth, and designated as the "Circular 175 Procedure." Department of state, 11 Foreign Affairs Manual § 700 *et seq.* (Oct. 25, 1974).

In its Circular 175 Procedure, the Department of State recognizes four types of International Agreements: Treaties which may be ratified by the Senate where to do so would not *"contravene the* United States Constitution * * *." (*Id.*, § 721.2(a), emphasis added). The Procedure also recognizes three types of agreements *other than* treaties:

(1) Agreements Pursuant to Treaty.—

The President may conclude an international agreement pursuant to a treaty brought into force with the advice and consent of the Senate, *whose provisions constitute authorization for the agreement by the Executive without subsequent action by the Congress;*

(2) Agreements Pursuant to Legislation.—
The President may conclude an international agreement on the basis of existing legislation or *subject to legislation to be enacted by the Congress;* and
(3) Agreements Pursuant to the Constitutional Authority of the President—
The President may conclude an international agreement on any subject within his constitutional authority so long as the agreement is not inconsistent with legislation enacted by the Congress *in the exercise of its constitutional authority.* Department of State, 11 Foreign Affairs Manual § 721.2(a) (Oct. 25, 1974) (emphasis added).

The Circular 175 Procedure also provides in the "Considerations for Selecting Among Constitutionally Authorized Procedures" for international agreements that consideration shall be given to:

c. Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;
ds. Past U.S. practice as to similar agreements. (*Id.*, § 721.3).

Following these guidelines established by the Department of State, it is obvious that those portions of the treaty providing for the transfer of property to Panama are in effect outside the treaty power. This follows because the United States Constitution requires the additional approval of the House of Representatives, or the reference to the necessity for enactment of subsequent legislation by Congress, because Art. IV, § 3, cl. 2 provides that "The *Congress* shall have Power to dispose of * * * Property belonging to the United States * * *" (emphasis added). No party to this case questions that the treaty in its present form seeks to dispose of property belonging to the United States without approval by Congress.[17] This is true both as to the right to act as sovereign in the territory and as to our actual ownership of soil and fixtures which constitute property. The instant Panama Canal Treaty, insofar as it purports to dispose of the Canal territory and property, thus includes provisions of the second type, section 721.1(a)2, *supra,* which the State Department procedure correctly interprets the Constitution to provide that:

"The President may conclude * * * subject to legislation to be enacted by the Congress. * * *."

Thus, the property disposition portion of the treaty under the Constitution constitutes a severable international agreement that cannot constitutionally come into force unless the entire "Congress" approves that transfer.

Obviously Congress may not be required to approve other parts of the treaty. It should also be recognized that attempting to bypass the House of Representatives with the scheme which is framed as a "self-executing treaty" ignores that part of the Department of State Procedure which states that "[p]ast U.S. practice as to similar agreements" shall be followed. *Id.,* § 721.3d. And, lest the *Per Curiam* opinion insist that its attempt to distinguish "executive agreements" was successful and authorizes the treaty procedure presently being followed, the "past practices" in Panama were in complete accordance with the views expressed in this opinion. *See* Part IV, *infra; but cf. Per Curiam* op., n.24.

IV. PAST U.S. PRACTICES INVOLVING SIMILAR AGREEMENTS WITH PANAMA

A. Prior Panamanian treaties

The procedure to be used in conveying United States property to Panama confronted President Eisenhower in 1955 in the Eisenhower-Remon Treaty with the Republic of Panama which, *inter alia,* disposed of some "property of the United States" in Colon and Panama City. That Eisenhower-Remon Treaty provided in Art. V:

The United States agrees that, *subject to the enactment of legislation by the Congress,* there shall be conveyed to the Republic of Panama free of cost all the right, title and interest held by the United States of America or its agencies in and to certain lands and improvements in territory under the jurisdiction of the Republic of Panama [etc.] . . . The lands and improvements referred to in the preceding sentence and the determinations by the United States of America respecting the same, *subject to the enactment of legislation by the Congress,* are designated and set forth in Item 2 of the Memorandum of Understandings Reached which bears the same date as this Treaty. The United States of America also agrees that, *subject to the enactment of legislation by the Congress,* there shall be conveyed to the Republic of Panama free of cost all its right, title and interest to the land and improvements in the area known as PAITILLA POINT and that effective with such conveyance the United States of America shall relinquish all the rights, power and authority granted to it in such area under the Convention signed November 18, 1903.

Treaty of Mutual Understanding and Cooperation Between the United States of America and the Republic of Panama, 6 U.S.T. 2274, 2278–79 (Jan. 25, 1955) (emphasis added).

Thereafter, *Congress* enacted Public Law 85-223, 71 Stat. 509 (1957), which authorized such disposition.[18] This is the most substantial example of Unites States past practices that exists. It also transferred land to Panama. The treaty itself called for *congressional* enactment. In my opinion, that same procedure is required here by the property disposition provision of the Constitution and by the Department of State's Circular 175 Procedure.

The Committee Report asserts that Articles VI and VII of the Eisenhower-Remon Treaty of 1955 is an example of a self-executing treaty which authorizes the transfer of territory or property belonging to the United States to other nations without a "*prior* Congressional act authorizing such transfer." Committee Report at 68, 69 (emphasis added). Close examination does not support that conclusion. Naturally, enactment of an act *prior* to the treaty is not necessary—but the Committee Report suggests that an act prior to the *transfer* is not necessary; and the intent of the Committee Report, the Attorney General's Opinion, and the wording of the present Treaty provide for the transfer of the property the instant the instruments of ratification are exchanged, thereby completely eliminating the House of Representatives from any constitutional role in the transfer of United States property. Art. V of the 1955 treaty belies the Senate's and appellee's position. And the two provisions in Articles VI and VII only related to minor boundary matters. Art. VI[19] concerned the modification of a boundary line between the City of Colon and the Canal Zone; this article replaced Article V of the Boundary Convention of September 2, 1914[20] and modified Art. VIII of the Hull-Alfaro Treaty, which had been signed on March 2, 1936.[21] Art. VII concerned a boundary modification near Manzanillo Island.[22]

The asserting "self-executing" nature of Articles VI and VII of the 1955 treaty therefore do not provide precedential authority for disposing of the Panama Canal property without Congressional approval. First, recitfication of boundaries is a distinct matter from the disposition of the staggering amount of property in question here.[23] Boundary rectification ordinarily involves a dispute about which country owns the property; the subsequent agreement is more like a disposition of *claims* than of property, for the question of whether there even exists "United States property" is the entire matter in dispute.[24]

Second, in comparing the amount of property allegedly disposed of by Articles VI and VII to the amount being disposed in the present treaties, it is clear that the 1955 disposition, in relative terms, was even less than *de minimus*. Third, and most significant, *Congress did approve Articles VI and VII in its 1957 statute.*[25] Section 102(b) of the statute in its last line "authorized to be appropriated such amounts as may be required for the necessary replacement of property or facilities * * * conveyed or rendered excess as the result of the treaty or memorandum. * * *" Unlike Section 102(a) which only addressed the matters contained in Art. V of the treaty, section 102(b) addressed all *three* articles—V, VI and VII—and the authorization of appropriations for replacement of conveyed property constituted approval by Congress of the content of Articles VI and VII.

However, even if Articles VI and VIII did involve a disposition of property which Congress did not initially approve, it may be that those Articles were themselves unconstitutional. Even Congress' silent acquiescence in that small disposition—assuming that is what may have happened temporarily—cannot alter the proper constitutional procedures mandated under Art. IV of the United States Constitution for the transfer by the Panama Canal treaty of United States property of the staggering value here being disposed of.

It is also convincing that in 1932, in another transfer of property to Panama, the Government considered it to be necessary to obtain prior specific congressional authorization even for a minor disposition of property from the Canal Zone to the Republic of Panama. Public Law No. 117, 47 Stat. 145 (May 3, 1932), *authorized* the Secretary of State to effect with the Republic of Panama a modification of the boundary line.[26] This slight alienation was not a boundary correction but was in fact a cession of land made necessary by the requirements of international law with respects to embassies.[27]

During World War II, there were discussions between Panama and the United States concerning disposition of bases and the transfer of waterworks and railroad lots. On May 18, 1942, an agreement on the lease of defense sites was made between the two countries.[28] A more significant agreement was reached that same day,[29] which, based upon an exchange of notes, provided:

When the authority of the Congress of the United States shall have been obtained therefor, the Government of the United States will transfer to the Government of the Republic of Panama free of cost all of its rights, title and interest in the system of sewers and waterworks in the cities of Panama and Colon." 59 Stat. at 1289 (emphasis added).

The agreement also provided:

The President will seek the authority of Congress of the United States to transfer to the Republic of Panama free of all cost all of its rights, title and interest to the lands belonging to or of which the Panama Railroad Company now has usufruct in the cities of Panama and Colon which are not currently or prospectively needed for the maintenance operation, sanitation and protection of the Panama Canal, or of its auxiliary works, or for the operation of the Panama Railroad." 59 Stat. at 1290 (emphasis added).

These agreements thus *recognized the constitutional necessity for Congress to approve the disposition of United States property.* On May 3, 1943, Congress enacted the legislation necessary to effectuate the transfer. Public Law No. 48, 57 Stat. 74 (May 3, 1943).[30] These are thus *not* examples of self-executing transfers by treaty.

Appellee also cites the "Convention of May 24, 1950 [with the Republic of Panama] for Change in the Boundary and the Grant of Certain Corridors, 6 U.S.T. 462," Appellee's Supplemental Memorandum, March 17, 1978, at 3, as an example of a treaty which demonstrates "that under well established historical practice treaties with foreign countries have ceded rights to property of the United States," *id.,* at 4. Reference is also made to Art. VI in the 1955 treaty with respect to "a small portion of the Colon and of the Colon corridor." *Id.,* at 4.

The Convention of August 9, 1950 is entitled "Colon Corridor and Certain Other Corridors Through the Canal Zone." 6 U.S.T. 461. In Art. II thereof *the Republic of Panama transferred* certain tracts of land from the city of Colon to the Canal Zone as a boundary change and provided that said property would be incorporated "to form part of the Canal Zone in the same manner as though [said lands] had been included within the grants contained in the [boundary] convention of November 18, 1903 * * *" 6 U.S.T. 465.

Thereafter in Art. III the United States transferred to the Republic of Panama "*jurisdiction* over the corridor" (emphasis added). This included the Colon corridor and another corridor through a small portion of the Canal Zone. The purpose of these transfers was so that "the city of Colon may enjoy direct means of land communication under Panamanian jurisdiction with other territory under jurisdiction of the Republic of Panama * * *" 6 U.S.T. 465. This was something less than a transfer of "territory or property" because Art. V of the convention provided that the provisions previously referred to [conferring *jurisdiction* over corridors] "shall not affect the rights and obligations of either of the two high contracting parties under the treaties or other international agreements now in force between the two countries, nor be considered as a limitation, definition, restriction or restrictive interpretation of such rights and obligations * * *" 6 U.S.T. 469.

The reference to prior "treaties or other international agreements now in force between the two countries * * *" included reference to the treaty of November 18, 1903 which provides that the grants to the United States by the Republic of Panama should not "interfere with the rights of way over the public roads passing through the said Zone * * * unless said rights of way * * * shall conflict with rights * * * granted to the United States." Art. VI, 33 Stat. 2235. Thus, there being no conflict with United States' rights, the convention of 1950 insofar as it related to highway corridors was dealing with a subject in which the Republic of Panama had *reserved* certain rights from the earliest treaty. Therefore, the recognition of Panama's *jurisdiction"* over a highway corridor, which the agreement provided the United States had a right to use, and which did not take any land out of the Canal Zone proper, is not an instance where property owned by the United States was disposed of. *From the inception of the 1903 treaty, the United States had never possessed the right to "interfere with the rights of way over public roads passing through* said Zone" (Art. VI). The necessity for appellee to attempt to rely upon such unsupporting authority is an indication of the great weakness of his position.

The present case boils down to this: President Eisenhower in 1955 recognized his constitutional obligation to obtain authority from Congress to transfer a *depot* of the Panama Railroad to the Republic of Panama; but the appellee presently contends he does not need congressional approval to transfer the *entire Panama Railroad* and very substantial amounts of other property to the same party, and to reduce the entire interest of the United States in the colossal Panama Canal to a 21-year partnership with Panama solely in its operation.

With respect to prior treaties and agreements between the United States and Panama, the "past U.S. practice," as demonstrated above, has recognized the necessity of approval by *Congress* and has sought such approval by legislation whenever *United States territory or property was conveyed to Panama.* Heretofore *every* transfer of United States' property to Panama has been authorized in advance or subsequently ratified by action of *Congress.*[31] The proposed agreement files in the face of

all these "past U.S. practices" and this violates established procedures of the State Department.

B. Senate debate in 1943 over transfer of United States property to Panama

The Joint Resolution of 1943 which transferred the waterworks and some of the property of the Panama Railroad to Panama (57 Stat. 74) was the subject of debate in the Senate in which some Senators expressed the opinion that the disposition should have been made by Treaty, and not by resolution of both Houses (*see* 88 Cong. Rec. 9320 *et seq.*). The scope of Art. IV was discussed at considerable length. Senator Hiram Johnson of California argued that the resolution was dealing with "property of the United States" and that the Senate should "perform its constitutional function" by disposing of it by treaty. However, his views did not prevail against those pointing to the specific character of the language in Art. IV, § 3, cl. 2.

On December 3, 1942, Senator Connally of Texas, Chairman of the Senate Foreign Relations Committee, discussed the pending Senate Joint Resolution 162, which was to similar effect as the House Joint Resolution which eventually authorized the transfer. He quickly addressed the sentiment that a treaty should be the implementation instead of a Joint Resolution by the Congress:

"Mr. President, I am and have been and in the future shall continue to be ardent in my maintenance of the integrity and the rights of the Senate of the United States in all its proper functions as a branch of the Government; but the matter covered by the joint resolution has to be passed by the Congress sooner or later in some form, for the simple reason that under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. The Constitution itself confers on Congress specific authority to transfer territory or lands belonging to the United States. *So, if we had a formal treaty before us and if it should be ratified, it still would be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land; because "the Congress" means both bodies.* The House of Representatives has a right to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise." 88 Cong. Rec. 9267 (Dec. 3, 1942) (emphasis added).

Senator Vandenberg of Michigan then intervened to inquire why the disposition of the waterworks and some property owned by the Panama Railroad could not be executive agreement. They became somewhat sidetracked, whereupon Senator O'Mahoney of Wyoming queried why the disposition should not be by treaty? In the course of responding, Senator Connally said:

"Mr. President, I referred earlier in my remarks to the constitutional requirement that Congress shall exercise consent in the case of the disposal of real estate. Article IV, section 3, of the Constitution, among other things, provides:

"The Congress shall have authority to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

"So that, *in any event, it would be necessary to have congressional action even though there were a treaty. In this case it would be necessary to have congressional action parting with title to these properties.*" 88 Cong. Rec. 9269 (Dec. 3, 1942) (emphasis added).

In response to a query from Senator Taft of Ohio, Senator Connally made the point that a treaty could be substituted for the joint resolution *if* there was subsequent enacting legislation:

Mr. TAFT. I am somewhat hazy on the subject of why an executive agreement should be confirmed by legislation instead of being made the subject of a treaty. I myself have had considerable difficulty in drawing the line. It does not seem to me that the mere fact that some legislation is necessary to implement this particular agreement necessarily excuses it from being made the subject of a treaty.

Mr. CONNALLY. As a legal proposition I think the Senator from Ohio is correct. The mere fact that legislation is required does not necessarily mean that we could not first, by means of a treaty, assume the obligations, *and then carry out the obligations by the enactment of legislation.* I will say very frankly to the Senator from Ohio—I do not think he was present awhile ago when we discussed that question—that the Senator from Texas is not prepared with the accuracy of a civil engineer to draw the boundary line between what can be done by executive agreement and what can be done by a treaty. 88 Cong. Rec. 9270 (Dec. 3, 1942). (Emphasis added).

The next day, Senator Johnson of California spoke against the resolution, as described above. Senator Tunnell responded:

"There are different methods, apparently, by which questions of international moment are met. This is not a new question. Sometimes those who have objected to

the course of the Executive have been more fortunate than those who are now making this objection. In this instance the Constitution specifically provides for this method. In article IV, section 3, second paragraph, I find this language:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.

"It seems to me that if any other method than that of transfer by Congress had been attempted, we should have been met by the objection that Congress was only power by which this territory or this property could be disposed of. *There is no other method or authority to dispose of property of the Nation than that which is reposed in the Congress.*" 88 Cong. Rec. 9322 (Dec. 4, 1942) (emphasis added). The Joint Resolution passed 40 to 29, 88 Cong. Rec. 9329 (Dec. 4, 1942).

It cannot be said from this that the procedure there adopted by the President and *the Congress* to transfer property to Panama has the same effect as a binding judicial precedent. It must be recognized, however, that the Senate did understand the nature and importance of the issue and its constitutional—and politicial—ramifications; and in an instance where United States property of much less value than is here involved was being transferred, the Senate did decide that the proper procedure called for legislative action of the *Congress*. In our review of past practices, it is also important that this was another case involving the transfer of land to Panama.

V. THE HISTORY OF THE TREATY CLAUSE IN THE CONSTITUTIONAL CONVENTION AND ITS RELATION TO THE DISPOSTION OF PROPERTY BELONGING TO THE UNITED STATES

Appellee contends that the Constitutional Convention "adopted a proposal that required two-thirds of the Senate to concur in all treaties, *including peace treaties involving cessions of territory.* 2. Farrand, *supra,* at 544 549 * * * [which] demonstrate[s] that the framers of the Constitution contemplated the transfer of United States territory and property by treaty." Appellee Br. at 11 (emphasis added).

No such proposal was finally adopted. On September 4, 1787 the working draft of the proposed Constitution provided:

"Sec. 4. The President by and with the advice and consent of the Senate, shall have power to make treaties * * * But no Treaty shall be made without the consent of two-thirds of the Members present." 2 FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 17, 495 (rev. ed. 1929) (hereafter "FARRAND").

On September 7, the words "(except Treaties of Peace)" were added after the word "Treaty."[32] 2 FARRAND, 533. Under this amendment, a *majority* vote of the Senate could have ratified a *peace treaty.* There upon a motion was made to add the following amendment:

"But no Treaty of Peace shall be entered into, whereby the United States shall be deprived of any of their present Territory or rights without the concurrence of two-thirds of the members of the Senate present." 2 FARRAND, 534. This amendment was *defeated* by adjournment, 2 FARRAND 534,543, and was never offered again.

The very next day, as the first order of business, the convention *struck* the previously adopted amendment, *i.e.,* "(except Treaties of Peace)" from then section 4 by a vote of eight states to three. 2 FARRAND 544, 548–549. Thus, even that clause never became part of the treaty provision.

Thus, the convention eventually rejected the proposal that peace treaties should be ratified by a majority vote of the Senate, and by adjourning, it also rejected the proposal to add a specific provision that treaties of peace *transferring United States Territory or rights* would require a two-thirds vote if other peace treaties could be ratified by majority vote. Appellee's brief and argument overlook these facts.

The mere offering, consideration, and rejection of the amendment as to United States "territory and rights" does not support appellee's claim "that the framers of the Constitution contemplated *the transfer of United States territory and property by treaty.*"[33] Appellee Br. at 11 (emphasis added). Had the amendment with respect to the "territory and rights" become part of the treaty clause of the Constitution, appellee's interpretation would have been correct, but that amendment, contrary to appellee's representation, never even reached the voting stage. 2 FARRAND, 534, 543. Thus, the convention proceedings with respect to that amendment do not support appellee's present contention, and the temporary inclusion of peace treaties does not support an interpretation that the naked treaty power which was eventually voted included the right to cede territory. Even if a "Peace Treaty" could, they are a peculiar breed with their own characteristics, and insofar as they cede property they are usually recognizing that the property has already passed from their

domain. The conclusive answer to that argument, however, is that we are not here concerned with a "Peace Treaty."

Doubtlessly, the two members who offered the amendment with respect to "territory and rights" were of the view that treaties could transfer territory and rights of the United States (to be) and of the particular states; but these amendments were defeated and there is no indication that the movers (Williamson and Spaight, 2 Farrand 543) took cognizance of the provision of present Art. IV, § 3, cl. 2, which at that time was in its present form, except for its reference to "Legislature" which was later changed to "Congress" (2 FARRAND 459, 466).

In this matter, however, we should be guided more by the *action* of the Convention as a whole and by the interpretation evident from *rejection* of the proposed amendment by a substantial majority of states. In this inquiry there is nothing in the convention proceedings to refute the conclusion that the majority rejected the amendment because it interpreted the then-existing broader language that became Art. IV, § 3, cl. 2 as providing better protection for their interests through *Congress* than would have been possible through the defeated addendum to the treaty clause. Any member who relied on what became the property disposition clause of Art. IV would have voted for adjournment on September 7 against the territorial amendment discussed above, and would have had no reluctance to vote for the Constitution in the form in which it was submitted with Art. IV, § 3, cl. 2 as at present.[34]

The majority also refers to the history of the state ratifying conventions, and concludes therefrom that the states—in addition to the Framers—were satisfied that a two-thirds requirement in the Senate, rather than full congressional approval, served as an adequate check on the alienation of United States territory.

Such a broad conclusion cannot be drawn from the history of the state conventions. Typical of the majority's position is reliance on a proposed amendment at the Virginia ratifying convention, which read in full as follows:

"[N]o commercial treaty shall be ratified without the concurrence of two thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, or their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrrence of three fourths of the whole number of the members of both houses respectively." 3 Elliot's Debates in the Several State Conventions on the Adoption of the Federal Convention 660 (1907).

Irrespective of the statements of the participants of the Virginia convention, who may well have been laboring under the mistaken pretense that Art. IV was not operative in this area or who may not have even thought about that section at all, a wholly permissible conclusion to be drawn from the *rejection* of this amendment was that the provision in Art. IV for a vote of the *full Congress* for disposition of territory or property was an adequate safeguard. The statements of parties who suggested such amendments, in their honest but mistaken fear that the treaty power alone allowed the disposition of territory or property in circumstances such as are here present, and then had their amendment defeated, do not consititute an authoritative interpretation of the scope of Art. II.

VI. ELEVEN PRIOR TREATIES

Appellee's brief and the Committee Report [35] both refer to eleven treaties supplied by the Department of State and argue that such treaties were couched in self-executing terms and constitute examples of the transfer of United States territory or property to other nations, and in some instances to individuals, *without a prior Congressional act authorizing such transfer.* It is further asserted that these instances support the contention that Art. IV, § 3, cl, 2 of the Constitution permits the President through a treaty to dispose of property belonging to the United States without approval of "the Congress." [36] We examine each of these treaties for verification of the asserted interpretation; and we find little or no support therefor.

A. Indian treaties

1. The Treaty with the Cherokee Nation of December 29, 1835 (78 Stat. 478).—This treaty was *preceded* by the Act of May 28, 1830, by which Congress authorized the exchange of western lands for the Cherokee's eastern lands in connection with their removal to lands west of the Mississippi River. However, the 1835 treaty, in some respects, exceeded the statutory authorization as to the lands that were to be transferred, and citizens who took title to some lands subsequently transferred from the Indians were subjected to attacks upon their title. *Holden v. Joy,* 84 U.S. (17 Wall.) 211 (1872), involved such a controversy. The Court held, in effect, that those who received land from the Indians acquired good title because Congress, by appro-

priating some four-and-one-half million dollars to carry out the treaty, had in effect ratified the *ultra vires* acts of the treaty negotiators. In so ruling, the Court's opinion recognized the issue as to whether a treaty could convey lands belonging to the United States, but then stated:

"It is not necessary to decide the question in this case [whether the treaty conveyed title without Congressional approval] as the treaty in question has been fully carried into effect, and its provisions have been repeatedly recognized by Congress as valid." 84 U.S. (17 Wall.) at 247.[37]

Thus, far from holding that a treaty can transfer property belonging to the United States without Congress, the case recognizes the requirement of Congressional authorization, and holds that when land is transferred in a treaty in excess of statutory authorization, the transfer may be legalized by a subsequent act of "Congress" which in some affirmative manner indicates approval of the otherwise *ultra vires* act.

2. The Treaty of October 2, 1863, with the Red Lake and Pembina Bands of Chippewa Indians (13 Stat. 667).—Appellee points to Art. IX of this treaty signed by President Lincoln as an alleged transfer of property not consented to by Congress. That article provided: "there shall be *set apart from the tract hereby ceded* [to the United States by the Bands of Chippewa Indians] a reservation of (640) six hundred and forty acres near the mouth of Thief River for the Chief 'Moose Dung' * * *" The validity of the reservation to Chief Moose Dung was involved in *Jones v. Meehan,* 175 U.S. 1 (1899),[38] which considered the validity of a subsequent lease made by one who inherited from the chief. Appellee cites the court's decision upholding the lease for the rule that property of the United States may be transferred to individuals by treaty between the United States and Indian tribes *without any act of Congress* or any patent from the President. When the facts of this Indian treaty are analyzed, it is clear, however, that the authority of the case is limited to reservations of land made in treaties *between* the United States and Indian tribes, which were treated as being akin to nations. *see* following discussion of the Indian treaties.

3. *Summary.*—The early treaties with Indian tribes are *sui generis* as treaties. They are not treaties in the ordinary sense of the word as all have recognized since Congress in 1871 enacted a law prohibiting any "contract by treaty" with any Indian tribe or nations:

"That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: *Provided, further,* That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe." Act of March 3, 1871, 16 Stat. 566.

Had Indian treaties been true treaties in the constitutional sense *Congress* could not have prohibited the President from so contracting by treaty. While the Act took the form of providing that Indian tribes shall not be "acknowledged or recognized" as "independent," the statute clearly prohibited the President from negotiating treaties with any Indian tribe that was "independent." The Act was thus in form a clear restriction on the treaty power, but actually it recognized that the Indian treaties were something different than the treaties referred to in the Constitution.

They have special features that generally make then inapplicable as authority that a treaty can dispose of other types of United States property without an Act of Congress. This is true because generally the subject of the Indian treaties was land owned and occupied by the Indians, which the United States was buying or acquiring. The treaty "reserved" some of the land for the Indians. Thus, property of the United States was not *disposed* of by the treaty.

Attorney General Taney in an opinion on September 20, 1833 stated: "These reservations [of Indian land in treaties] are *excepted out of the grant made by treaty and did not pass by it.* Consequently the title remains *as it was before* the treaty, that is to say *the lands reserved are still held under the original title."* 175 U.S. at 12. Mr. Justice Nelson in *Gains* v. *Michelson,* 50 U.S. (9 How.) 356 (1850), pointed out that in such transactions, "it was so much carved out of the territory ceded, and remained to the Indian occupant, *as he had never parted with it.* He [the Indian] holds strictly speaking *not under the treaty* of cession but under his original title confirmed by the government in the act of agreeing to the reservation." 50 U.S. (9 How.) at 365.

In the *Per Curiam* opinion a statement in *Jones* v. *Meehan, supra,* 175 U.S. at 12–14, is cited as authority that the Taney opinion and the decision in *Gaines* v. *Michelson, supra,* were "irreconcilable with later Supreme Court opinions * * *" (*Per Curiam,* n.19). This may be explained by virtue of a change in the statute after

Jones v. *Meehan, supra,* which eliminated the prohibition against individuals purchasing or leasing from any individual Indian. Act of June 30, 1834, c. 161, § 12, 4 Stat. 730.

But whether the treaty confirmed the Indian right or granted a new right is no dispositive of the question as to whether there was a disposition of territory or property belonging to the United States. These treaties dwelt with territory and property and in doing so they dwelt with sovereignty over the territory and the right to individual patches of soil, as Chief Justice Marshall noted in *Johnson* v. *McIntosh,* 21 U.S. (8 Wheat.) 542 (1823). They also in some instances involved disputed claims to both territory and soil. In settling on the tribes the reserved territory the sovereign rights of the respective parties were involved, but in the "reservation" of specific acreage of *soil* to individual Indians, different claims were involved and this phase of the agreements was more concerned with what might be termed "property." It is clear that at one time such "reservations" were considered as a recognition of land already owned by the Indians. This would be particularly true where the Indian at the time actually occupied the soil.

In any event even *Jones* v. *Meehan, supra,* recognized that the land reserved to Chief Moose Dung on his death passed to his eldest son "by the laws, customs, and usages of the tribe * * *" What the *Per Curiam* opinion, and many other opinions in this field fail to recognize is that the individual Indians acquired title by virtue of the *treaty* and that it is not completely correct to say that the United States granted the title. The treaties were the act of two governments. The Indians as possessors had far the greater claim to the extent that they actually occupied the soil and the grantors in the treaty were not solely the United States but included *both* signatories.

And insofar as the right to the soil was concerned more came from the Indians than from the United States. It would hardly be correct to consider that soil actually occupied by an Indian for centuries was property belonging to the United States. The United States generally recognized the rights of such possessors, and though Indian *claims* to broad territory were only recognized as a right of occupancy, the reservation of individual tracts was on a different footing and generally by one device or another were found to be vested in fee simple in the actual Indian occupant. *Jones* v. *Meehan, supra,* 175 U.S. at 32, is a good example.

By way of conclusion on all these Indian treaties, in short, I deny that recognizing the ancestral right of Chief Moose Dung to pitch his teepee by the waters of Thief River is sufficient legal authority to give away the entire Panama Canal without benefit of Congress. Claiming support from such decision indicates the weakness of appellee's case because the character of the two treaties, the relationship of the signatories, the consideration involved, the nature of our interest or claim to the property involved and our relationships to them are all different in material respects.

Therefore, the treaties with the Cherokees, the Chippewa Indians, and the transfer to Chief Moose Dung do *not* constitute authority that the Panama Canal Zone property of the United States may be transferred to Panama without the approval of *the Congress.* The same general *modus operandi* was followed in other Indian treaties.

This also disposes of the decision in *Francis* v. *Francis,* 203 U.S. 233 (1906), cited in the *Per Curiam* opinion. That is another Indian treaty case which interpreted one of the usual "reservations" that the Indians customarily made when they transferred some of their lands to the United States by treaty. As in the other Indian treaty cases, the first Justice Harlan's opinion did not overturn the Chancellor's ruling that the named Indian "and his heirs" obtained a fee simple estate in Indian lands which were "reserved [and] did *not* pass to the United States by Treaty" (emphasis added) because under a rule of property in Michigan where the lands were located "[t]he term *reservation* was equivalent to an absolute grant."

The result in that respect was not disturbed. Thus, again the peculiarities of a reservation by Indians of their own lands in a joint treaty with the United States, belies the fact that the title passed by the treaty was to property (soil) that actually belonged to the United States. A more accurate description of the actual situation would be that the Indians never relinquished their claim and the treaty confirmed their title. These Indian treaties thus, to a certain extent, fall within treaties dealing with the disputed claims. The citation of *Francis* by the *Per Curiam* opinion, p. 21, overlooks the fact that it was the treaty of *both* parties that vested complete title, not the sole act of the United States. The case does not hold that the United States could transfer the soil by deed.

It also goes without saying that even if the Indians and the United States could jointly convey property to an Indian by a reservation of soil that he claimed, that

such precedents are not authority for the United States transferring property to Panama that is owned outright by the United States. The Panama Canal Treaty is an unquestioned disposition of property of the United States. The Indian treaties disposed of disputed territory and recognized claims of individual Indians to particular soil.

This case is of interest though for another reason: it holds that the President, "*without the authority of an act of Congress,*" was not authorized to agree in the Treaty to a proviso that none of the reserved Indian lands could be conveyed without his consent. To a certain extent this recognizes that in Indian treaties the title is not conveyed to reservees but more accurately is merely recognized. *See* 50 U.S. (9 How.) 365 *supra.*

B. Treaties with foreign nations

1. Treaty of February 22, 1819 between the United States and Spain (8 Stat. 252).—Spain ceded all of east and west Florida to the United States. The parties also agreed upon a boundary west of the Mississippi River beginning at the mouth of the Sabine River in the Gulf of Mexico, thence generally north and west to the Red River and the Arkansas River, and thence to the source of that river, and thence due west along the 42nd line of latitude to the South Sea (Pacific Ocean). On both sides of that boundary line, the respective parties ceded to each other their *claims* and pretentions to the territory in question. The treaty indicated that the parties did not know the precise source of the Arkansas River and, particularly in the mountain areas, neither nation was sufficiently familiar with much of the areas traversed by the newly drawn boundary lines to know precisely what was accomplished. This indicated the "claim" nature of the asserted rights.

Taken by its four corners, this treaty is hardly a disposition of United States property. It is a mutual relinquishment of boundary claims which is a usual subject of diplomacy, particularly in undeveloped areas. The settlement of many boudary disputes are more the settlement of claims rather than transfers of property.[39]

2. Treaty of August 9, 1842 between the United States and Great Britain (Webster-Ashburton Treaty) 8 Stat. 572.—This settled the boundary between the United States and Canada from the east through the Great Lakes, the present boundary waters and thence to the Rocky Mountains along the 49th parallel. Like the prior treaty, the parties here did not know where the boundary line they drew would begin to run westward from the Lake of the Woods. One result of this arrangement was the odd "Northwest angle" in Minnesota, which is completely separated by water from all United States territory. The treaty recognized prior grants of land by both countries in disputed areas. This agreement is within the traditional treaty-making function and does not qualify as a disposition of territory. It would be hard to point to the transfer of any *property* that belonged to the United States. This treaty is a perfect example of the settlement, in many respects, of highly questionable claims and not of the transfer of territory or property.

3. The Treaty of June 15, 1846 between the United States and Great Britain. The Oregon-Washington boundaries (9 Stat. 869).—The treaty recited that there was "Doubt and uncertainty * * * respecting the sovereignty and government of * * * the northwest coast of America * * * west of the Rocky Mountains." The treaty continued the boundary line westward from the Rocky Mountains along the 49th parallel, and recognized the navigational rights on the Columbia River of the Hudson Bay Company and of British subjects on an equal footing with American citizens. This is another example of the settlement of doubtful and uncertain claims of the respective parties and not a transfer of property.

4. Treaty of February 1, 1933 between the United States and Mexico (84 Cong. Rec. 9824).—this treaty rectified the boundary along the Rio Grande River in the vicinity of El Paso and the Juarez Valley. The treaty involved a typical, minor boundary matter. Nevertheless, this Treaty looked to congress for approval: Art. VIII provided that "[e]*ach Government shall respectively secure title.* * * *" Art. VII also provided that "Lands within the rectified channel * * * [that] pass from * * * one country to * * * the other * * * *shall be acquired in full ownership by the* [*respective*] *Government* * * *" The treaty was thus executory and, moreover, since it required the appropriation of money, looked to supporting enactments by the Congress of the United States and did not purport to be self-executing.

5. Treaty of August 29, 1963 between the United States and Mexico: Solution of El Chamizal, 15 U.S.T. 21.—This relocated the shifting channel of the Rio Grande River in the vicinity of El Paso and Juarez, and drew a boundary line at the center of a new channel for the river. By this arrangement, 823.50 acres of former United States land was ceded to Mexico by the treaty. However, far from this being an instance where the President attempted to transfer United States territory or property by a self-executing treaty without prior congressional act, *the treaty in art.*

*6 specifically recognized the constitutional requirement and provided that the acquisition of the lands be transferred to Mexico and the rights of way for that portion of the new river channel in the territory of the United States shall not occur until "after * * * the necessary legislation has been enacted for carrying it out * * *"* This treaty thus supports appellant's contentions and not those of the appellee. That appropriations were also required may have been an additional reason for recognizing the constitutional role of Congress but that apparent necessity here has not caused the President to recognize the role of Congress. *Cf. Per Curiam* opinion, p. 24 n.22. In its discussion of this Mexican treaty the *Per Curiam* opinion recognizes the necessity in that instance for approval by *congress* because the treaty required implementing legislation (*Per Curiam* op., n.22). The implementing legislation required by the Panama Canal Treaty will make that necessitated by the Mexican Treaty pale into insignificance.

6. Treaty of November 23, 1970 between the United States and Mexico (23 U.S.T. 371).—This is another instance where the treaty resolved boundary differences arising from the shifting of channels. This treaty likewise was contingent and not self-executing; Article ID provided, *i.e.,* that "the necessary legislation has been enacted for carrying it out." 23 U.S.T. 377. This is another treaty that supports appellants' contention and not those of the appellee.

7. Treaty of November 22, 1971 between the United States and Honduras: Swan Islands (23 U.S.T. 2631).—Both governments claimed sovereignty of the Swan Islands, but the United States had for many years maintained a navigation and communications facility there. By the treaty, the United States recognized the sovereignty of Honduras and transferred certain land, buildings, and equipment to Honduras. There was a second cooperative agreement whereby the United States was to operate the navigational facilities and Honduras was to assume responsibility for a dock and landing strip. The United States retained title to a great number of buildings and equipment except the land, and by the treaty Honduras made the areas—sites—available to the United States. This was a cooperative program for continuation of meteorological and communication facilities in Swan Islands. To the extent that any property was transferred, it was certainly minimal and hardly justified legislation. It cannot be considered as authority for transferring eight billion dollars of United States property.

8. Treaty of June 17, 1971 between the United States and Japan (23 U.S.T. 447).—This related to the reversion of the Ryukyu (includes Okinawa) and Daito Islands. Some of this property may have been transferred pursuant to prior congressional enactments, *i.e.,* 40 U.S.C. §§ 511 and 512. Section 511 authorizes federal agencies having foreign excess property to dispose of such property. That is definitely authorization for the transfer of what would be excess property of the United States after the reduction of our military operations on Okinawa. The treaty relinquished in favor of Japan all rights and interests under Art. III of the Treaty of Peace with Japan of September 8, 1951. Japan in turn granted to the United States the use of facilities and areas in accordance with the treaty of January 19, 1960, which was the Treaty of Mutual Cooperation and Security providing for collective self-defense. Art. IX of this treaty terminated our *temporary right of military occupation.* It is hard to construe this treaty as authority for transferring United States property by treaty without implementing legislation.

9. Treaty of January 25, 1955 between the United States and Panama (6 U.S.T. 2283).—This treaty, as discussed earlier, provided for the transfers of certain property. Art. V provided for the conveyance to Panama of certain lands and improvements set forth in item 2 of the Memorandum of Understanding. This included certain specified lands, including the railway terminal operations in the city of Panama, and the railway passenger station, and Paitilla Point. The treaty, however, was not self-executing as Art. V recognized the need to comply with Art. IV, § 3, cl. 2 of the Constitution, as that Article provided that the transfer of property was *"subject to the enactment of legislation by the Congress,"* and with respect to the small amount of property in Art. VI and Art. VII, Congress *did* enact legislation with respect thereto.[40]

It must be recognized that no court has had any opportunity to pass on the validity of many of these provisions, because when property or rights are transferred in a foreign country pursuant to asserted or *de facto* authority, as a practical matter, it is difficult, if not impossible thereafter, to litigate or rescind the transfer.

C. Treaty summary

In sum, no substantial support can be found in any of the 11 treaties for appellee's contention. The Indian treaties do not support his position because of their very nature, *i.e.,* the land allegedly transferred to the Indian is his land which he reserves from transfer to the United States under the treaty. The treaties with

Spain and Great Britain involved the settlement of boundary claims and this is not a boundary controversy.

* * * * * * *

CONCLUSION

From the foregoing it is concluded that a political question is not involved, that established procedures of the Department of State and past United States procedures involving similar agreements with Panama and others recognize and require that Congress approve the transfer of United States property, that the Restatement of Foreign Relations Law reaches the same conclusion, and that the adjudicated cases hold that the power to dispose of United States property is vested exclusively in the Congress. In my opinion, we should accordingly declare the law to be that those provisions of the pending treaty which dispose of territory or property belonging to the United States to the Republic of Panama cannot come into force under the Constitution of the United States until approved by the Congress. In my view, because of the parties involved, it would not be necessary to issue an injunction.

The Report of the Senate Committee on Foreign Relations of a much earlier date has much advice that could well be followed by the relevant parties in the present controversy:

"The question has been debated how far Congress would be bound to give effect, in cases requiring its cooperation, to regulations by treaty on subjects put within its express province by the Constitution. Whichever may be the better opinion, the doubt supplies reason enough against putting the question to trial in other circumstances than those in which the concurrence of Congress may be safely assumed. And the reason is the stronger for this forbearance from the fact that in the contingency of conflict it would be not the interests only, but the faith, too, of the nation which might be compromised, as this would have been committed by the adoption of the treaty regulations.

"The condition of the Government at this point is of peculiar delicacy as regards the arrangement of its imposts. Parties have been arrayed with vehemence and the greatest sensibility awakened on the subject. Regulation by treaty in these circumstances would doubtless be carried into effect by the House of Representatives. But the temper in which the supposed intrusion might be expected to be received would be anything but cordial or placid. Ought not the occasion to be considerable, the motive urgent, to warrant the exercise of the authority at this cost? This is a topic requiring only to be displayed, not dwelt on." 2 HINDS' PRECEDENTS 1000.

What is the great urgency for not recognizing the constitutional right and duty of the House of Representatives to pass on the transfer of the rare property here involved? The United States by the narrow margin of one vote was enticed into accepting Panama as the first choice over Nicaragua for the location of the Canal and the operating rights promised by Panama in the 1903 treaty were purposely designed to assure that the United States would build the Canal in Panama and not in Nicaragua.[41] Thereafter, a national treasure beyond compare in the form of an engineering marvel was created by the ingenuity and genius of American statesmen, builders, and doctors who persevered where all others had failed miserably, or failed even to begin.

* * * * * * *

The transfer of United States territory and property in the Panama Canal Zone directly affects immense vital interests of the entire nation involving as it does significant commercial concerns and our national security. Some of these matters were pointed out by Senator Hiram Johnson of California in 1939, when, in speaking on the ratification of the Hull-Alfaro Treaty, which proposed certain amendments in our relations with Panama, he remarked:

"The Panama Canal will be protected, if protected by us. The Panama Canal, if it be retained, and it it serve its purpose [as "the life line of the Republic," *id.*, 9838], will do so because of our efforts; and the Panama Canal, because of the peculiar relation we have to it, should not be in any degree tied, or hamstrung, or put in a strait jacket by a treaty made by the United States of America." 84 Cong. Rec. 9838 (1939).

The momentous nature of these national interests peculiarly qualify the House of Representatives for its constitutional role because it directly represents our entire citizenry on a uniform basis—which was the principal reason that the Framers of the Constitution directed that the entire Congress should pass on such matters.

However, regardless of disputes on other issues, one conclusion is certain. That is that if the present attempt successfully usurps the constitutional right and duty of

the House of Representatives to vote on the disposition of United States' property of the tremendous magnitude and value of our Panama holdings a precedent of such enormity will be created that the constitutional right of the House of Representatives to vote on transfers of property to foreign nations need never again be seriously recognized.

To the extent that the President may have discretion to choose between proceeding by treaty or other forms of international agreement, he cannot avoid the constitutional requirement that the entire Congress pass on all attempts to dispose of United States' territory and property to other nations. All past practices in this field indicate that prior Presidents have recognized that obligation even when property of much less value and significance was involved.[42]

FOOTNOTES

[1] "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." U.S. Const. art. IV, § 3, cl. 2.

[2] "He [the President] shall have power, by and with the advice and consent of the Senate, to make treaties . . ." U.S. Const. art. II, § 2, cl. 2.

[3] Sen. Exec. Rept. 95–12, Executive N. 95th Cong., 1st Sess. at 99 (Feb. 3, 1978) (hereafter "Committe Report").

[4] This opinion is confined to the Panama Canal Treaty and does not involve the Neutrality Treaty (for text of both agreements, *see* Appendix).

[5] Since the merits of the case are reached, the discussion of standing is set forth in footnote 42, *infra*.

[6] *See* note 1 *supra*.

[7] The *per curiam* understates the significance of many of the cases discussed here. For example, the majority concedes that United States v. Gratiot, 39 U.S. (14 Pet.) 526 (1840), does not involve a question of state-federal relations. While *Gratiot* did not involve the precise situation presented by this case, the principle relied upon therein—that the power to dispose of property rests exclusively with the Congress—should similarly, in my view, guide our disposition here. The majority seeks to distinguish away many of the Supreme Court's statements by noting that the context in which they were made involve state-federal relations and not separation of powers. *Gratiot*, among other cases, does not involve state-federal relations. While the holdings in those cases may not control our facts, it is submitted that the principle relied upon in those cases accurately states the proper construction of the provisions of the Constitution involved in this case.

[8] *See* Sierra Club v. Hickel, 433 F.2d 24, 28 (9th Cir. 1970), *aff'd*, 405 U.S. 727 (1972): "Article IV, Section 3 of The United States Constitution commits the management and control of the lands of the United States to Congress. That congressional power is unlimited." The Court stated in United States v. San Francisco, 310 U.S. 16, 29 (1940): "The power over the public land thus entrusted to Congress is without limitations." The Court has also stated:

"[C]ongress has the same power over [territory] as over any other property belonging to the United States; and this power is vested in congress without limitation; and has been considered the foundation upon which the territorial governments rest." United States v. Gratiot, 39 U.S. (14 Pet.) 526, 536–37 (1840) (emphasis added).

[9] When Jefferson was Secretary of State, he issued instructions on March 18, 1792 to the American Commissioners negotiating with Spain as to the boundary between Georgia and the Floridas, stating that the right to alternate even an inch of territory belonging to a member of the Union did not exist in the central government. American State Papers For. Rel., I 252. Jefferson was undoubtedly referring in part to the limitations imposed by Art. IV.

[10] The *Per Curiam* opinion states at note 4 that among the authorities agreeing with its position is Prof. Henkin. The quotation above is from a subsection entitled "Exclusive Powers of Congress." The subsequent section on "Concurrent Powers" does not contain a statement that the general powers addressed inm the "exclusive power" section can be exercised concurrently by treaty. This opinion does not contend that the Executive lacks the power to make a treaty disposing of property but rather that such treaty requires an act of Congress to become effective. Henkin does not address this question directly, and his comments are not inconsistent with this position. *See* Henkin, *supra*, at 149. The passage to which the majority refers as indicating that Prof. Henkin is in accord with its position begins with the statements: "Some obligations, it is accepted, cannot be executed by the treaty itself." Examples follow: appropriation of funds, enactment of criminal laws, and probably declaration of war. Nothing in that passage states or implies that the list is exhaustive.

It is not surprising that those promoting the present treaty also decide that they have power to accomplish the result they seek. It is ever thus with usurped authority. *Cf. Per Curiam*, n.4. The Senate precedent, however, is directly contrary. *See* Part IV, and particularly pages 41 to 44.

[11] At that time Congress, in accordance with the language of the treaty, did enact legislation enabling the transfers agreed to in the treaty to be perfected. Pub. L. 850223, 71 Stat. 509 (August 30, 1957) had the purpose of "authoriz[ing] and direct[ing] the fulfillment of those provisions of the [1955 Treaty], which, *subject to authorization by the Congress*, provided for the conveyence of various lands and improvements to the Republic of Panama. . . ." (Emphasis added).

[12] In footnote 7, the *Per Curiam* opinion states that "there are numerous instances in past treaty practice [of the] . . . disposition of United States property through self-executing treaty."

The correctness of this statement is challenged. *See* VI hereof. There is no instance in the entire history of the United States that has been brought to our attention where any disposition of United States property even approaching the character and magnitude here involved was ever handled by a self-executing treaty.

Said footnote further states that "we know of no instance in which the United States has been *in a formally declared war* without a congressional declaration thereof." That is a safe statement because a "*formally declared* war" can never exist without a congressional *declaration* thereof. Thus, the statement by its limitations *implicitly* carries its own proof. However, if the statement was intended to convey the impression that the President has never usurped the Congressional power to declare war, it must be recognized that there is no difference in the format of the grant of that exclusive power to Congress from the grant to Congress of the power to dispose of territory and property. Therefore, by the same token, the President has no more power from the wording of the Constitution to dispose of U.S. territory and property than he does to declare war.

[13] Citation is made to: S. Crandall, Treaties, Their Making and Enforcement (Washington: 2d ed. 1916), 171–182; 1 W. Willoughby, The Constitutional Law of the United States (New York: 2d ed. 1929), 549–552. *See also* H. Rept. 4177, 49th Cong., 2d sess. (1887). *Cf.* De Lima v. Bidwell, 182 U.S. 1, 198 (1901).

[14] *E.g.*, Dorr v. United States, 195 U.S. 138, 149 (1904) ("We conclude that the power to govern territory, implied in the right to acquire it, and *given to Congress in the Constitution in article 4, § 3,* * * * does not require that body to enact for ceded territory, not made a part of the United States by *congressional action*, a system of laws which shall include the right of trial by jury, and that the Constitution does not, *without legislation* and of its own force, carry such right to territory so situated." [emphasis added]); Benner v. Porter, 50 U.S. 235, 240 (1850) ("[The territorial governments] are not organized under the Constitution, nor subject to its complex distribution of the powers of government * * * but *are the creations, exclusively, of the Legislative Department,* and subject to its supervision and control." [emphasis added]); American Insurance Co. v. 356 Bales of Cotton, 26 U.S. 511, 542 (1828) ("Florida continues to be a territory of the United States; governed by virtue of that clause in the Constitution which empowers *congress* 'to make all needful rules and regulations, respecting the territory, or other property belonging to the United States.'" [emphasis added]).

[15] In the passage of Henkin relied upon the majority, the following statement appears in a footnote:

"It has been suggested that treaties that deal with matters on which Congress could legislate could not be self-executing * * * In the numerous instances in which acts of Congress were held to supersede treaty provisions * * *, there was no suggestion that the treaty was not law anyhow since it could not be self-executing." Henkin, *supra*, at 159 (in note).

This section is discussing the effect of treaties as law—and not where the power to *implement* the treaty resides. In this regard, a later statement in the footnote is relevant:

Congress has often insisted that treaties modifying tariffs are not self-executing and require Congressional implementation, and the Executive has generally acquiesced. Crandall, Treaties 195–200. * * * In recent years tariffs have been the subject of executive agreements authorized by Congress or requiring Congressional implementation.

Id. At best, one could say that Henkin has made some statements, which if read out of their context, might lead to conflicting results. It is my view that his statement at 94–96, quoted above, is definitive and conclusive—the Executive may not use his foreign affairs powers to dispose of United States territory or property, since that power is specifically vested in the Congress by Article IV—and points to a position opposite to the *per curiam.*

[16] The rules applicable to the construction of a statute also apply to the construction of a Constitution. Badger v. Hoidale, 88 F. 2d 208, 211 (8th Cir. 1937) (construing Minnesota Constitution); Davis V. Synhorst, 225 F. Supp. 689, 691 (S.D. Iowa 1964) (construing Iowa Constitution: "Rules applicable to statutory construction are similar to constitutional construction"). "The established rule is that *if there exists a conflict in the provisions of the same act, the last provision in point of arrangement must control.*" Lodge 1858, American Federation of Government Employees V. Webb, No. 76–1821, slip op. at 30 (D.C. Cir. March 20, 1978) (emphasis added), and cases cited at *id.*, slip op. at 30–32, n. 31. Here, the fact that Art. IV, § 3, cl. 2 was placed *after* Articles I, II, and III is entitled to some weight in construing the intendment of Art. IV; it points to the conclusion that the language of the property disposition clause is not concerned simply with state-state and state-federal relations.

[17] Indeed, it is beyond serious dispute that if the treaty becomes effective, the United States will dispose of property. Art. XIII of the Treaty provides: "The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including nonremovable improvements thereon . . ." We may take judicial notice of the public dispute as to the nature of the interest this country presently possesses in the territory of the Canal Zone from its treaty right to act in perpetuity as though soverign—whether it be a fee interest or a leasehold. In any event, the interest is a "property interest." Irrespective of the nature of this interest, this nation is definitely transferring a property interest in the fixtures and other improvements made on the real property. This includes the entire Panama Railroad, which the United States purchased as authorized by Congress (32 Stat. 481) and all the other real property that the United States purchased from the individual owners of the land, including the property and other interests of the French Canal Company for which the U.S. paid $40 million (*See* 32 Stat. 481). All of this is property within the meaning of Art. IV. A substantial payment was also made to Colombia.

[18] Public Law 85–223 of August 30, 1957 provided:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—CONVEYANCE OF PROPERTY TO THE REPUBLIC OF PANAMA AND FISCAL ADJUSTMENTS BY PANAMA CANAL COMPANY

SEC. 101. It is hereby declared to be the purpose of this title—

(1) to authorize and direct the fulfillment of those provisions of the Treaty of Mutual Understanding and Cooperation between the United States of America and the Republic of Panama signed on January 25, 1955, and of the memorandum of understandings reached signed on the same date, which contemplate, subject to authorization by the Congress, the conveyance of various lands and improvements to the Republic of Panama, including, but not limited to, conveyance of the lands and improvements in, and simultaneous relinquishment of all right, power and authority in, the area known as Paitilla Point, and including the removal of the railway terminal operations of the Panama Canal Company from the city of Panama and the conveyance of the lands and improvements known as Panama Railroad Yard in the city of Panama; and

(2) to authorize and provide for the adjustments in the fiscal obligations of the Panama Canal Company necessitated by the aforesaid conveyances.

SEC. 102. (a) In accordance with and subject to the provisions of article V of the Treaty of Mutual Understanding and Cooperation between the United States of America and the Republic of Panama signed on January 25, 1955, and item 2 of the memorandum of understandings reached signed on same date—

(1) the Secretary of State is authorized and directed to convey to the Republic of Panama free of cost all the right, title, and interest held by the United States of America or its agencies in and to the land and improvements in the area known as Paitilla Point and in the areas designated in paragraphs 1, 2, and 3 of paragraph (a) of said item 2; and

(2) the Panama Canal Company is authorized and directed to remove its operations and withdraw from the other lands and improvements designated in said item 2, and to convey to the Republic of Panama free of cost all the right, title, and interest held by the Panama Canal Company and the United States of America in and to said other lands and improvements.

(b) The market value of the property of the Panama Canal Company conveyed under this directive or by operation of articles VI or VII of the treaty and the net capital loss, if any, as established by the Panama Canal Company and approved by the director of the Bureau of the Budget, sustained in the disposal, relocation, or ——— of any facility or other property of the Panama Canal Company rendered excess, wholly or in part, by operation of articles V or XII of the treaty or items 2, 6, 9, or 10 of the memorandum of understandings reached shall be treated as extraordinary expenditures and losses incurred through directives based on national policy and not related to the operations of the corporation, within the meaning of section 246(d) of title 2 of the Canal Zone Code, as added by the Act of June 29, 1948 (ch. 706, 62 Stat. 1075). The market value of Canal Zone Government property conveyed under this directive shall be removed from the capital investment of the United States in the Canal Zone Government without charge to the costs of operation of that agency. There are hereby authorized to be approriated such amounts as may be required for the necesary replacement of property or facilities of the Panama Canal Company or Canal Zone Government conveyed or rendered excess as the result of the treaty or memorandum, such amounts to be charged to the Panama Canal Company or the Canal Zone Government, respectively.

Approved August 30, 1957. (71 Stat. 509)

[19] 6 U.S.T. at 2279–85.

[20] 38 Stat. 1900.

[21] The treaty is reprinted at 84 *Cong. Rec.* 9825–33 (1939).

[22] 6 U.S.T. at 2285.

[23] The *per curiam* opinion at notes 22–23 and the accompanying text addresses the boundary rectification point, and concludes that whether there is a dispute about the property or territory has nothing to do with whether the President can dispose of the same. This, in my opinion, is not correct: (1) the prior practices in this *unique area* are relevant, as the Circular 175 Procedure provides; (2) a bona fide boundary dispute is clearly not the same thing as disposing of our undisputed property in the Panama Canal. The point that the Western lands were the subject of conflicting claims, which causes the majority to conclude that status has no bearing on whether Congressional enactment is required to convey land, is not analogous; it is not so much the status of the land itself that is crucial but the nature of the dispute and its relation to that status—that is, in all prior boundary settlements which appellee contends involved a cession, the dispute concerned claims of the grantor and grantee, and the settlement was of those claims. A dispute between two states, or between two private individuals, over a tract does not, by itself, give the land a peculiar status that removes it from the Art. IV requirements; thus, land that is subject to competing claims of two states of the United States would still require an act of Congress for conveyance to a foreign country.

Note 23 of the *per curiam* opinion, asserts difficulty in understanding how the validity of using the treaty process should in any way depend upon whether the nation to whom the land is conveyed previously "claimed" the land. The explanation is not difficult but the statement of the *per curiam* opinion involves a false assumption, *i.e.*, that the property which the treaty recognizes as belonging to a prior claimant would be "conveyed" by the treaty. To so state is an inaccurate description, particularly of those treaties in the early days to which the *per curiam* opinion refers at p.23, n.21, where there was considerable ignorance of the territory involved. Since, for instance, Spain claimed the western lands to the 42nd parallel, the fact of their claim, based as it was on the recognized right of discovery, some minimal exploration in the most far reaching regions and very minor settlement, when that claim is recognized in a treaty by the United States it is almost impossible to conclude in view of our negligible exploration or settlement of the fringes of the Spanish claim that the United states was actually disposing of territory or property belonging to it. What rights we did possess in the eastern area flowed from

the Louisiana Purchase from France of what had originally been territory claimed by Spain. Such situations are generally recognized as *not* being an alienation of territory but merely a recognition of the particular claim and a determination of the validity of the losing claim. *See* n.24. It follows, that since we admitted our claim was inferior, that the treaty in that respect did not dispose of any territory or property belonging to the United States. Here, however, the title of the United States to the property in question is recognized by all.

[24] Writing in 1929, Willoughby stated: "In several treaties in settlement of boundary disputes areas previously claimed by the United States as its own have been surrendered to foreign powers. These, however, can scarcely be considered as instances of the alienation of portions of its own territory, for the fact that the treaties were assented to by the United States is itself evidence that it was conceded that the claim that the areas in question belonged to the United States was unfounded. *There has been no instance in which territory, indisputably belonging to the United States, has been alienated to another power.*" 1 W. Willoughby, The Constitutional Law of the United States 572 (2d ed. 1929) (emphasis added).

Crandall writes that resolutions were introduced in the House in 1829 following the Florida treaty of 1819, which would have asserted that no treaty purporting to alienate any portion of the territory belonging to the United States could be valid without the concurrence of Congress, but no vote was taken on the matter. In the debates on the resolution, Mr. Clay, who introduced the resolution, stated that a treaty could fix the boundaries of the United States without the concurrence of Congress "when the fixation of the limits simply was the object . . . In all these cases, the treaty-making power merely reduces to certainty that which was before unascertained. It announces the fact; it proclaims in a tangible form the existence of the boundary; it does not make a new boundary; it asserts only where the new boundary was. But it cannot under color of fixing a boundary previously existing, though not in fact marked, undertake to cede away, without the concurrence of Congress, whole provinces." He stated that if the subject was mixed, *i.e.*, partly cession and partly fixing a boundary, the consent of Congress was necessary. Mr. Clay believed that the Florida treaty was more than a boundary determination.

Mr. Lowndes, of South Carolina, took a different position and contended there could be no adjustment of a claim to a boundary without some cession of supposed right by one or the other party. Mr. Anderson, of Kentucky, believed that the treaty power must permit boundary settlements: "Its frequent operation on the settlement of differences of this kind, must have been contemplated by the Convention; and it could never have been intended, that, in a general grant of power, it should be construed not to apply to cases, which had been invariably, in all countries, the subjects of its operation."

Boundary rectification is not an example of cession of territory. In addition to being an adjustment of claims, it is supported by *prior practices*, as Mr. Anderson points out: the prior practice of boundary rectification involves a matter different from the wholesale relinquishment of large areas of undisputed territory.

S. Crandall, Treaties, Their Making and Enforcement 227–29 (1916).

[25] *See* note 17 *supra*, § 102(b).

[26] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That with respect to that parcel of land in the Panama Canal Zone known as the Paitilla Point Military Reservation, title to which was acquired by the Government of the United States under the conventions concluded on November 18, 1903, and September 2, 1914, between the United States and Panama, the Secretary of State be, and he is hereby, authorized and empowered to effect with the Republic of Panama, a modification of the boundary line between the Panama Canal Zone and the Republic of Panama so that such line shall then run as follows: [Property description]

SEC. 2. Nothing contained in this Act shall be construed to authorize the Secretary of State to convey or to surrender to the Government of Panama the title which the Government of the United States now holds in that parcel of land which may be detached from the Panama Canal Zone by virtue of the provisions of section 1 of this Act.

SEC. 3. No civil or criminal case that may be pending in the courts of the Panama Canal Zone at the time this Act shall become effective shall be affected thereby, either as to its present status or as to future proceedings, including final judgment or disposition.

Approved, May 3, 1932.

[27] This boundary change was not a boundary dispute where there would be no cession. *See* note 24 *supra*. Instead, the United States wanted to build a new legation in Panama, and the chosen site was in the Zone. A legation could not be built on United States territory; hence, the property was alienated to Panama, which then retransferred the property back to the United States' jurisdiction, but with diplomatic immunity and immunity from local jurisdiction for use as a legation, 75 CONG. REC. 4652–57 (1932).

[28] Agreement for the Lease of Defense Sites in the Republic of Panama, 57 Stat. 1232 (May 18, 1942).

[29] Agreement between the United States of America and Panama respecting general relations, 59 Stat. 1289 (May 18, 1942).

[30] *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and is hereby, authorized to transfer to the Republic of Panama all of the right, title, and interest of the United States in and to water and sewerage systems installed by the United States in the cities of Panama and Colon: *Provided, however,* That pending the establishment of an independent water-supply system, and so long as the Republic of Panama desires to utilize a supply of water from the Canal Zone, it shall pay quarterly to the appropriate Canal Zone authorities the rate of B/0.09 per one thousand gallons or such other reasonable rate as may be agreed upon by both Governments: *And provided further,* That the turning over to the Government of the Republic of Panama of the physical properties of the water and sewerage systems and the administration thereof, including the collection of the water rates, does not in any way modify the existing

arrangement in respect to responsibility for the public health services of the cities of Panama and Colon as specified in the second paragraph of article VII of the Convention between the United States of America and Panama, signed at Washington, November 18, 1903.

SEC. 2. The Panama Railroad Company is hereby authorized to convey to the Republic of Panama, in whole or in part, all of its right, title, and interest in and to so much of the lands of the Panama Railroad Company located in the cities of Panama and Colon as, in the opinion of the Secretary of War, are no longer needed for the operation of the Panama Railroad or for the operation, maintenance, sanitation, or defense of the Panama Canal: *Provided*, That any such instruments of conveyance shall contain a provision under which the Panama Railroad Company and any of its successors in interest agrees to fully protect the Government of the United States against any claims for damages or losses heretofore or hereafter incurred by any lessee of any of the lands covered by such conveyance. The authority conferred by this section shall not be exercised after June 30, 1944.

(a) Any conveyance of any land in pursuance of the authority contained herein shall be deemed to release any and all reversionary rights of the United States in said property.

(b) The provisions of the joint resolution entitled "Joint resolution authorizing the disposal of certain lands held by the Panama Railroad Company on Manzanillos Island, Republic of Panama," approved July 10, 1937, so far as they may conflict with the provisions of this joint resolution, are hereby modified accordingly.

SEC. 3. There is hereby authorized to be appropriated out of any moneys in the Treasury, not otherwise appropriated, a sum not to exceed $2,700,000, to enable the Secretary of the Treasury to pay to the Republic of Panama an amount equivalent to the principal and interest paid by that government on account of the credit of $2,500,000 made available to it by the Export-Import Bank for the construction of Panama's share of the Chorrera-Rio Hato Highway, and to pay to the Export-Import Bank an amount sufficient to liquidate the remaining obligation of the Republic of Panama to that bank on account of the aforesaid credit.

Approved May 3, 1943.

[31] Appellee's claims with respect to the minor matters referred to in Article VI and VII of the 1955 Eisenhower-Remon Treaty are answered at 34–36, *supra*.

[32] 2 *Farrand* 533 states: "which passed in the affirmative." *See also, id.*, 541.

[33] None of the debates or amendments at the convention referred to United States "property." The concern of the delegates was with territorial and other rights, such as navigational rights on rivers and offshore fishing rights and the rights of sovereingty over such land and areas. Property rights, such as the United States owns in the physical property of the Panama Railroad and the Panama Canal which were purchased or constructed on land that was purchased, were not debated in the convention. The clarity of the reference to "property" eliminated need for debate.

[34] In other words, appellee's argument reasons as follows: At the outset, the draft of section 4 under consideration said that a treaty required for approval a two-thirds vote of the Senate. A majority thought that peace treaties were good, and therefore adopted an amendment excepting peace treaties from the two-thirds requirement (and thereby requiring only a majority). But at least two of the Framers thought that this authorized the transfer of territory with only a majority vote, and therefore sought to except peace treaties that transferred territory from the peace treaty exception (which would require a two-thirds vote to transfer property). Eventually all amendments were defeated, and a two-thirds vote was required for all treaties. Appellee reasons that since the two Framers above "got their way," the Convention believed that territory could be transferred by treaty without an Act of Congress. This does not necessarily follow, as the text demonstrates. It may have been that when the two Framers proposed their amendment, a substantial number of the convention realized that the amendment could well pass, and that that would create a conflict—or perhaps erase—the action taken earlier, namely Art. IV, sec. 3, cl. 2, which allowed only *Congress* to dispose of property and territory. Faced with this prospect, a majority might have decided to abandon the peace treaty exception altogether, so as to preserve the language in Art. IV without compromise. Their reconsideration of the peace treaty exception, and its eventual rejection, is consistent with this interpretation.

[35] Committee report, at 68.

[36] *Id.*

[37] At 17 U.S. 247, the Court stated:

"[T]here are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political."

The cases cited in the footnote to this statement do not support the argument that the President by Treaty is empowered to transfer the Panama Canal and Railroad. The cases cited are:

1. Wilson 1. Wall, 73 U.S. (6 Wall.) 83, 89 (1867). This case is only authoritative on part of the *Holden* statement, and has no significance for the transfer of the Panama Canal and Railroad. A treaty between the United States and the Choctaw Indian Tribe entitled each Choctaw head of family to a section of land. The treaty was signed in 1830; in 1834, Wall, a Choctaw, entered into an agreement with Wilson to transfer the land to him as soon as he obtained it. He made the transfer in 1836, and was paid $750. Wall's children then sued Wilson for the land, alleging a constructive trust in their favor. Wilson claimed a bona-fide purchaser defense. The Alabama Supreme Court held for plaintiffs, and the Supreme Court reversed.

Congress became involved in 1841; complaints concerning the Indians losing the land in the manner above caused Congress to enact a statute clarifying part of the treaty. The Court said what Congress did would not affect the case:

"Now, while it is freely conceded that this construction given to the treaty should form a rule for the subsequent conduct of the department, it cannot affect titles before given by the government, nor does it pretend to do so. Congress has no constitutional power to settle the

rights under treaties except in cases purely political. The construction of them is the peculiar province of the judiciary, when a case shall arise between individuals. The legislature may prescribe to the Executive how any mere administrative act shall be performed, and such was the only aim and purpose of this act." 73 U.S. (6 Wall.) at 89.

Thus, this case merely holds that a subsequent act of Congress cannot affect titles that were valid when conveyed. It does not control or even offer any assistance on the facts in the instant case.

2. American Insurance Co. v. 356 Bales of Cotton, 26 U.S. (1 Pet.) 511, 542 (1828), involved the validity of the judgment of a Territorial Court which ordered the purchaser of cotton salvaged from a shipwreck off Key West to make restitution to the insurer. The court held in an opinion by Chief Justice Marshall that the treaty with Spain ceded Florida to the United States and thereafter *Congress* was authorized to provide for the creation of territorial courts with admiralty jurisdiction. This upheld the establishment of a territorial court by the territorial legislature. The Court simply noted that *Congress* passed an act authorizing a Territorial Government, and that such government was thereby authorized to establish the court in question.

3. Foster v. Neilson, 27 U.S. (2 Pet.) 254 (1829): This case involved a dispute over land that was located in territory acquired by the Louisiana Purchase (the Treaty of Paris, 1803). Plaintiffs claimed under a grant from the Spanish Governor in 1804; defendants answered that the land had been ceded to the United States by France in 1803, and that plaintiffs grant was void. The dismissal of the petition was affirmed by the Supreme Court. First, the Court said that the "Legislature" had undertaken certain acts amounting to a construction of the 1803 Treaty which the court could not oppose. The Acts were passed by Congress and concerned rules and regulations for the management of the new territories.

A question like this respecting the boundaries of nations, is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the Legislature. [*i.e.*, Congress]." 27 U.S. (2 Pet.) at 309.

Part of the case also involved the construction of Art. VI of the 1819 Treaty with Spain which provided in effect that grants from Spain prior to the Treaty would be respected by the United States *i.e.*, "ratified and confirmed." The question was whether the treaty was self-executing with respect to the grants, or whether an Act of *Congress* was necessary to "ratify and confirm" and thereby respect the grants. The Court said the *Legislature* must act; that it had not done so here, and thus prior laws would be respected. The Court stated:

"A treaty is in its nature a contract between two nations, not a Legislative Act. . . . Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an Act of the Legislature, *whenever it operates of itself without the aid of any legislative provision.* But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act—the treaty addresses itself to the political, not the judicial department; and *the Legislature must execute the contract before it can become a rule for the court.*"

27 U.S. (2 Pet.) at 314 (emphasis added). This is not inconsistent with the position that a legislative provision is necessary under Art. IV *to convey* property of the United States. This case is not authority for the proposition that Congress has no role; if anything, it tends the other way.

4. Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1834). This case concerns a treaty with the Cherokees. Petitioner (a missionary) was a prisoner who claimed that the law under which he was convicted was void, being repugnant to the United States Constitution. The opinion stated:

"[The Constitution] confers on Congress the powers of war and peace: of making treaties, and of regulating commerce with foreign nations, and among the several States, and with the Indian tribes. The powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by an restrictions on their free actions . . . The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties . . ."

This language of the case does not approach the issues raised by the attempt to transfer and convey the Panama Canal and Railroad and other United States property.

5. Crews v. Burcham, 66 U.S. (1 Black) 352 (1861) is another case involving a reservation of Indian lands. The decision holds that the reservation creates an equitable estate. The opinion does not discuss the authority or power of Congress.

6. The Kansas Indians, 72 U.S. (5 Wall.) 737 (1866): The issue here was whether land belonging to the Shawnees was taxable by a county government. It was held that so long as the "treaties and laws of Congress" protect the Indians, they are immune from the operation of state laws. This recognizes the authority of *treaties and Congress* in said matters. The scope and authority of Congress was not otherwise discussed.

7. Mitchel v. United States, 34 U.S. (9 Pet.) 711 (1895) similarly does not control here. Mitchel and the United States both claimed certain land in Florida under deeds of conveyance. Mitchel's claims were based on deeds from Indian tribes, and the United States claims were asserted on the basis of the treaty with Spain. The issue was whose deed was superior. In stating the facts, the Court remarked:

"In taking possession of Florida pursuant to the treaty, and in establishing a government in and over it, Congress have acted on the same principles as those which were adopted by this court in the former cases. *In the act of 1821, for carrying the treaty into execution, Congress authorizes the vesting the whole power of government in such person as the president may direct for the maintaining the inhabitants in the free enjoyment of their property.*" 34 U.S. (9 Pet.) at 736 (emphasis added).

In so acting Congress was relying upon Art. IV, § 3, cl. 2, which was the source of its power to "*make all needful Rules and Regulations respecting the Territory* . . ." (Emphasis added). Thus, the power to make rules and regulations concerning the proper management of the new

territories was recognized as existing in Congress, and since the power to dispose of United States property is subject to the same language of the Constitution, there is some support for concluding that such power was also vested exclusively in Congress. Of course, there are some inherent differences between the acquisition of property and the government of property after it is acquired; but we are not dealing here with a contemporaneous disposition of property that is being acquired, but instead are dealing with property that has belonged to the United States for a long time, some of it since 1903. So any reason for applying a different rule as to exclusively is non-existent.

Thus there is no reason why *Congress* should not be recognized as possessing the exclusive power to dispose of Government property. In other words, if disposition of property is a concurrent power, the power in general must be concurrent with respect to *all aspects* of Art. IV, § 3, cl. 2. Since such power is *not* concurrent with respect to rules and regulations of newly acquired territory, it should not be concurrent with respect to the other powers in the relevant paragraph.

8. United States v. Brooks, 51 U.S. (10 How.) 442 (1850), involved the construction of a supplemental article to a treaty with the Caddo Indians. It held that *Indian lands reserved* to Indians by treaty were held by them in fee simple since they acquired perfect title by treaty. Since it involves land *reserved* for Indians, it is in the same category as the other Indian treaty cases and it does not affect this case.

9. Doe v. Wilson, 64 U.S. (23 How.) 457, 461 (1859), involved Indian lands, but contains no reference to the scope of Congress' authority to dispose of property. The decision holds the Indian was a tenant-in-common with the United States and that the deed of conveyance by the Indian, which he executed prior to the selection of the lands, conveyed the interest he would have taken if living.

10. The last two cities are Blair v. Pathkiller, 2 Yerg. 407 (1830), and Harris v. Doe, 4 Blackf. 369 (1837). They are state cases.

Blair v. Pathkiller, a Tennessee decision, involved a claim of title and the effect of Indian Treaties and state statutes enacted before the adoption of the Constitution of the United States. The *reservation* of 640 acres to the head of each Indian family was held valid pursuant to treaties with the Cherokees of 1817 and 1819. The court pointed out that part of the consideration paid to the Cherokee Nation for its title to the land ceded was the reservation to the Indians of certain lands which were the subject of the litigation.

Harris v. Doe is an Indiana Supreme Court decision on an action in ejectment from land ceded by the Miami Indians by treaty to the United States and by the same treaty granted to Lafontaine and son, the predecessors in title of the defendant. The trial judge charged the jury that it could consider as evidence a special law of Congress as confirming the fee in the predecessor of the defendant. This decision is subject to the same infirmities as support for appellee's treaty contention as the other Indian Treaty cases and is additionally weakened by the fact that Congress did find it necessary to enact a law to confirm the title of one who claimed under a treaty.

[38] In the Supreme Court, Later-Secretary of State, Frank B. Kellogg, was a counsel on the brief of appellee and Cushman K. Davis, one of the Plenipotentiaries of the United States in the 1898 Treaty with Spain, argued the case.

[39] *See* notes 23 and 24, and accompanying text.

[40] *See* note 18 *supra.*

[41] Bunau-Varilla, Envoy Extraordinary for the Republic of Panama, in a negotiation of the treaty for the Canal decided that the prior treaty draft would not do:

The "indispensable condition of success" was to write a new treaty "so well adapted to American exigencies" that it would be certain to pass in the Senate by the required two-thirds majority. A failure to obtain that two-thirds majority, he was convinced, could still mean a Nicaragua canal after all. The major difference in the new treaty must be in the share of sovereignty attributed to the United States within the canal zone. [Perpetuity was already provided for.] D. McCullough, *The Path Between the Seas* 391 (1977).

[42] The Standing of the Members of the House of Representatives to Request a Declaration of the Law.

The district court concluded that it lacked subject matter jurisdiction over plaintiff's complaint because, in its view, plaintiffs had not met the "'irreducible constitutional minimum' of a concrete injury in fact to their legislative roles." Memo. Op. at 12–13. I disagree with this conclusion.

Recently, we have considered cases involving standing Congressmen to bring actions in the federal courts. Judge Wilkey's opinon in Harrington v. Bush, 553 F.2d 190 (D.C. Cir. 1977), provides a thorough discussion of the applicable analytical framework:

"The *most basic point* to consider is that *there are not special standards for determining Congressional standing questions.* Although the interests and injuries which legislators assert are surely different from those put forth by other litigants, the technique for analyzing the interests is the same.

"There is no single test or formula to be derived from the case law to determine if a particular complaining party has standing to sue. Rather, the case law provides a *series of inquiries designed primarily*[63] *to determine if the complaining party has suffered some injury in fact.*" 553 F. 2d at 204, 205–06 (emphasis original).

The injury in fact requirement is constitutionally mandated; it is one of the requirements designed to implement the Art. III "case or controversy" limitation on federal judicial power. Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 151 (1970); Harrington v. Bush, *supra,* 553 F. 2d at 206. Footnote 68 in the *Harrington* opinion outlined the four separate inquiries demanded by the Supreme Court cases on standing: (1) first, and most important, that there be an injury in fact; (2) that the interests being asserted by the plaintiffs are within the zone of interests to be protected by the statute or constitutional guarantee in

question; (3) that the injury result from (or be caused by) the challenged "illegal" action; and (4) that the injury be capable of being redressed by a favorable decision. 553 F. 2d at 205–06 n. 68. The district court found no injury in fact, and therefore had no reason to consider the other three inquiries. As to the critical question of whether an injury in fact exists, it is my conclusion that it does.

The prior cases in this circuit provides examples of how the analytical scheme articulated in *Harrington* applies to particular situations. Kennedy v. Sampson, 167 U.S. App. D.C. 192, 511 F. 2d 430 (1974), involved Senator Kennedy's suit against the Administrator of the General Services Administration and the Chief of the White House Records seeking a declaration that the Family Practice of Medicine Act became law on December 25, 1970, and an order requiring appellants to publish the Act as a validly enacted law. The question on the merits was the effect of President Nixon's pocket veto; a preliminary question was the standing of Sen. Kennedy to bring suit. The court found that Kennedy had a standing, as a "logical nexus" existed between the status he asserted and the claim sought to be adjudicated:

"If appellants' arguments are accepted, then appellee's vote in favor of the bill in question has been nullified and appellee has no right to demand or participate in a vote to override the President's veto. Conversely, if appellee's interpretation of the veto clause is correct, then the bill became law without the President's signature. In short, disposition of the substantive issue will determine the effectiveness *vel non* of appellee's actions as a legislator with respect to the legislation in question." 511 F.2d at 433.

Thus, in *Kennedy*, the facts presented a situation where the Executive's action had in effect nullified the Senator's vote; the validity of the action was determinative on the effect of the vote. And particularly he had been prevented from exercising his constitutional right to vote on the motion to overrule. In such circumstances, this court concluded that Senator Kennedy had standing to challenge the vote. In Mitchell v. Laird, 159 U.S.App.D.C. 344, 488 F.2d 611 (1973), in dictum we recognized the standing of thirteen members of the House of Representatives to litigate presidential war powers, when we stated that a declaratory judgment "would bear upon the duties of plaintiffs to consider whether to impeach defendants, and upon plaintiffs' quite distinct and different duties to make appropriations to support the hostilities, or to take other legislative actions related to such hostilities, such as raising an army or enacting other civil or criminal legislation. In our view, these considerations are sufficient to give plaintiffs a standing to make their complaint." 488 F.2d at 614.

We concluded that plaintiffs lacked standing to bring their claims in both *Harrington, supra,* and in Metcalf v. National Petroleum Council, 553 F.2d 176 (D.C. Cir. 1977). Neither plaintiff had demonstrated a cognizable injury to his person or to his ability to function as a legislator. Nothing impeded the legislative process whatsoever. Representative Harrington sought a declaration that certain foreign and domestic activities of the Central Intelligence Agency were illegal and also an injunction prohibiting the CIA from using the funding and reporting provision of the Central Intelligence Agency Act of 1949 in connection with allegedly illegal activities. After an extensive analysis of the supposed injuries claimed by the plaintiff, we concluded:

"Since the appellant in this case has suffered no injury in a constitutional sense, he is in effect seeking to use the court to vindicate his own political values and preferences. By so doing, appellant is asking us in large part to usurp the legislative function and to grant him the relief *which his colleagues have refused him,*" 553 F.2d at 215 (emphasis added).

Since appellant failed to show an injury in fact in the constitutional sense, we affirmed the district court's dismissal of his complaint.

A similar situation was posed in the *Metcalf* case, where Senator Metcalf sought declaratory and injunctive relief, alleging that the National Petroleum Council was unlawfully functioning as an advisory committee in violation of the Federal Advisory Committee Act and the Federal Energy Administration Act. He contended that the Council was not fairly balanced in membership and was improperly influenced by certain petroleum industry interest groups. We noted that his complaint was a generalized grievance that did not allege any specific, objective, present harm or threat of harm; the nature and effect of the unspecified harm was indeterminate. 553 F.2d at 187–88. Nothing impeded the functioning of Sen. Metcalf in his role as legislator, and we affirmed the district court's dismissal of the complaint.

We next considered a claimed controversy involving seventeen Congressmen who challenged General Services Administration regulations developed from federals funds. Our decision in Public Citizen v. Sampson, 169 U.S. App. D.C. 301, 515 F.2d 1018 (D.C. Cir. 1975), affirmed without opinion the decision of the district court, reported at 379 F. Supp. 662, granting the defendant's motion to dismiss the complaint. In evaluating plaintiffs' standing as Congressmen, the district court stated:

"It is beyond peradventure that plaintiff Congressmen could tomorrow propose legislation regulating the contractual authority of the General Services Administration." 379 F. Supp. at 667.

The powers of the plaintiff Congressmen in that case as Representatives were not diminished in any respect.

As noted above, an injury in fact is required for standing in all cases; with respect to Congressmen as plaintiff, the case law in this circuit, not surprisingly, demonstrates that this court will demand a showing of an injury in fact. We could not otherwise justify our jurisdiction. In all cases, this requirement helps guarantee that the "'controveray" has sufficient adverseness and that the parties have sufficient interests to make out a justifiable dispute that satisifes the Art. III case or controversy requirement. Yet in the Congressmen cases, another dimension underlies our insistence on an injury in fact. Our prior cases express concern that Congressmen might seek redress in the courts simply because they failed to persuade their colleagues in making a particular legislative judgment, or they fear that they cannot succeed in a future vote on a particular matter of legislative concern. To grant such Congressmen standing to litigate

their claims in the judicial system would have the effect of circumventing the legislative process. In cases in which this court has found the existence of standing, which means that an injury in fact was found to exist, there is no apparent risk that the legislative process will be circumvented or evaded by deciding the case on the merits. It is my opinion that the Congressmen in this case have suffered and are presently suffering an injury in fact, and that the concern which underlies our prior cases—namely, that we have no jurisdiction where a Member of Congress is seeking to evade the legislative process—is simply not a factor in this case.

On September 16, 1977, President Carter transmitted to the Senate for advice and consent to ratification two treaties—the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the Panama Canal Treaty. In our opinion we only consider the transfer of property provided for by the Canal Treaty and not any of the rules and regulations concerning the operations of the Canal that are in the Neutrality Treaty. The transmittal of the Senate was made without the inclusion of the usual provisions that is inserted in treaties and international agreements when any participation by the House of Representatives is called for. By this act, President Carter conformed to an earlier opinion of August 11, 1977 by the Attorney General stating that the approval of the treaties by the House of Representatives even "absent statutory authorization" was not necessary even though the Canal Treaty disposed of United States property. The procedures implemented for obtaining the Senate's advice and consent, which continue today, did not and do not contemplate approval by the House of Representatives to any portion of the treaties. It is my view that the injury in fact to the members of the House of Representatives occurred when President Carter transmitted the treaty in the form described above, i.e., without the customary provisions for enactment of necessary legislation by Congress where United States property was to be transferred. At this point, because of the form of the treaty, it was clear that the House of Representatives could not participate, and insofar as Art. IV required its participation, that this constitutional requirement was being violated. This a sufficient injury to accord standing. This injury in fact was further substantiated when the Report of the Committee on Foreign Relations of the Senate acceded to the opinion of the Attorney General of August 11, 1977. Senate Executive Report N, No. 95–12, 95th Cong. 1st Sess. 65–69, February 3, 1978.

The central point posed by the Congressmen's claim is that Art. IV, § 3, cl. 2 requires that the House *participate* in the disposition of property: an Act of Congress, it is alleged, is required by the Constitution. The submission of the treaty to the Senate in its present form (*See* Appendix) clearly obviates any participation of the House and since the Senate is presently concurring in that decision, whatever action the House may take is effectively blocked by the President and the Senate. It appears *extremely unlikely*—a near-certainty—that the Senate will amend the treaty as submitted to permit House participation in the disposition of property. The Report of the Senate Committee on Foreign Relations states:

"The Committee finds that the * * * Panama Canal Treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation." Committee Report at 69.

It is extremely unlikely that the Committee will change its position on this issue and recommend that implementing legislation be sought. It is extremely unlikely that the Senate as a whole will reject the recommendation of its Committee on this point. The injury that occurred when the advise and consent procedures were initiated continues so long as the treaty remains in its present form and House concurrence is not sought. Thus, the entire membership of the House of Representatives is suffering *present* injury to its constitutional rights.

On August 11, 1977, Attorney General Bell issued his opinion on the procedures necessary for disposition of property, with special reference to the ratification procedures for the Panama Canal Treaty. This opinion was cited and relied upon by the Senate Foreign Relations Committee. Committee Report, at 69. Therein, Attorney General Bell opined that a treaty may dispose of territory or property belonging to the United States absent statutory authorization. While an Attorney General's opinion is not binding on a court, *see* Harris County Commrs. v. Moore, 420 U.S. 77, 87 n. 10 (1975); McElroy v. Guagliardo, 369 U.S. 281, 285 (1960); Romero v. Coldwell, 455 F.2d 1163, 1165 (5th Cir. 1972), there is considerable authority that it is binding on an executive official who requests the opinion on a matter of law. Here, the Secretary of State requested the opinion, and the Bell opinion is definitive on the ratification procedure to be employed.

A long line of Attorney General opinions state that the teaching in the opinion is binding as a matter of law on those who request it. 5 *Op. Atty Gen.* 97, 97 (1849); 6 *Op. Atty Gen.* 326, 334 (1854); 20 20 Op. *Atty Gen.* 654, 659 (1893); 25 *Op. Atty Gen.* 301, 303–04 (1904). In Smith v. Jackson, 246 U.S. 388 (1918), the Court stated:

"[W]e are of opinion that it is obvious on the face of the statement of the case that the auditor had no power to refuse to carry out the law, and that any doubt which he might have had should have been subordinated, first, to the ruling or the Attorney General, and second, beyond all possible question, to the judgments of the courts below" 246 U.S. at 390–91.

United States Bedding Co. v. United States, 55 Ct. Cl. 459, 460–61 (1920) is to the same effect. The general rule does not apply when the matter is within the proper discretion of a department official; hence, the statement has been made that opinions are only entitled to weight and are not controlling. In those circumstances, the point is simply that an opinion is not controlling in a proper area of discretion. *See* Senske v. Fairmont & Waseca Canning Co., 232 Minn. 350, 359–60, 45 45 N.W. 2d 640, 646–47 (1951), 17 *Op. Atty Gen.* 332, 333 (1882).

Hence, it is clear that the opinion of Attorney General Bell with respect to the procedure by which the treaties would be ratified was, in effect, binding on the Secretary who requested it. This buttresses our conclusion that the procedure, which did not and does not involve the House, was solidified at the beginning of the transmittal process, and the injury in fact was suffered at that time.

This injury has some similarities to that suffered in *Kennedy;* the right to vote is effectively denied by the challenged action. It is claimed by appellee that the House is free to vote on any

version of the treaty; but the procedure is already decided, and the ratification process is underway. As far as the President and Senate are concerned, any action taken by the House is irrelevant, and inconsequential. The House is, in fact, being denied its right to participate, and the existence of this circumstance is enough to confer standing on this court to declare the law. This is quite distinct from the situation in *Metcalf* and *Harrington* where the plaintiffs were free to enact subsequent legislation which *could affect the merits of the issues.* Here, there is nothing the House can do which will alter the fact that they are being denied any present role in the process, as may be required by the Constitution. Moreover, there is no suggestion here that a judicial ruling on the merits will circumvent the legislative process in any way. Rather, the judicial ruling sought here would *protect and implement* the constitutional legislative process.

Under these circumstances, applying the relevant precedents in this circuit and the general principles outlined by the Supreme Court, it must be said that the plaintiffs have suffered an injury in fact sufficient to confer standing. A self-executing treaty means that if it is ratified, and the exchange of documents with Panama causes it to come into force, any objection by the House of Representatives or any other person as to its validity will receive the reply that Buanu-Varilla gave to Frederico Boyd in 1903 that protestations would be pointless "as everything is finished." D. McCullough, *supra* note 41, at 395.

There can be no serious doubts about plaintiffs satisfying the other three inquiries relating to standing. Clearly, the denial of the Congressmen's participatory role in the disposition of property is "within the zone of interests to be protected or regulated by the * * * constitutional guarantee in question." Ass'n Data Processing Serv. Organization, Inc. v. Camp, 397 U.S. 150, 153 (1970). Also, the injury must be such "that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 41–42 (1976). Here, it is the President's submission of the treaties to the Senate without provisions calling for *Congress* to act in the disposition of United States property which has *caused* the denial of the plaintiffs' participatory role under the Constitution in the disposition of property. Finally, the injury must be one "likely to be redressed by a favorable decision." *Id.*, 426 U.S. at 38. A judicial decision interpreting the Constitution and declaring the law on the controversy can afford the plaintiffs the precise relief that they request—their participation in the disposition of property to the extent that same is provided for by the Constitution.

It is my view that plaintiffs have standing to bring this action.

Appendix
Texts of Treaties Relating to the Panama Canal

PANAMA CANAL TREATY

The United States of America and the Republic of Panama.

Acting in the spirit of the Joint Declaration of April 3, 1964, by the Representatives of the Governments of the United States of America and the Republic of Panama, and of the Joint Statement of Principles of February 7, 1974, initiated by the Secretary of State of the United States of America and the Foreign Minister of the Republic of Panama, and

Acknowledging the Republic of Panama's sovereignty over its territory.

Have decided to terminate the prior Treaties pertaining to the Panama Canal and to conclude a new Treaty to serve as the basis for a new relationship between them and, accordingly, have agreed upon the following:

Article I

Abrogation of Prior Treaties and Establishment of a New Relationship

1. Upon its entry into force, this Treaty terminates and supersedes:

(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;

(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;

(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and

(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

2. In accordance with the terms of the Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve,

protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.

3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.

4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

Article II

Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

Article III

Canal Operation and Management

1. The Republic of Panama, as territorial sovereign, grants to the United States of American the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

(a) Use for the aforementioned purposes, without cost except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;

(d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) Regulate relations with employees of the United State Government;

(f) Provide supporting services to facilitate the performance of its responsibilities under this Article;

(g) Issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and

(h) Exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall the Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of American shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian National from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.

5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operating areas and in housing areas set forth in the Agreement in Implementation of Article III of this Treaty and occupied by both United States and Panamanian citizen employees of the Panama Canal Commission: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars ($10,000,000) per annun for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.

7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at high management levels of the Panama Canal Commission, as provided for in paragraph 3 of the Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.

9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to this Article, and the rights and

legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in Implementation of this Article, signed this date.

10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

Article IV

Protection and Defense

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

3. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters are:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

4. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also the Combined Board shall make appropriate recommendations to the two Governments respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canel.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Canal Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Article V

Principle of Non-Intervention

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention of the internal affairs of the Republic of Panama. The United States of America shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

Article VI

Protection of the Environment

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

Article VII

Flags

1. The entire territory of the Republic of Panama, including the areas the use of which the Republic of Panama makes available to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.

2. The flag of the United States of America may be displayed, together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at the site of the Combined Board, and as provided in the Agreement in Implementation of Article IV of this Treaty.

3. The flag of the United States of America also may be displayed at other places and on some occasions, as agreed by both Parties.

Article VIII

Privileges and Immunities

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this treaty and related agreements, and their official archives and documents, shall be inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation as such locations by the Republic of Panama.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.

3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, identifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

Article IX

Applicable Laws and Law Enforcement

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal

Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements.

2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama is conformity with its laws.

4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedure established in Article IV of the Agreement in Implementation of Article III of this Treaty, the owners shall be authorized to continue using the land upon which their property is located in accordance with the procedures established in that Article.

5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of non-profit enterprises, such as churches and fraternal organizations, the cost of purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.

6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes, they shall be compensated at fair market value by the Republic of Panama.

7. The provisions of paragraphs 2–6 above shall apply to natural or judical persons who have been engaged in business or non-profit activities at locations in the former Canal Zone for at least six months prior to the date of signature of this Treaty.

8. The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.

9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, the may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

10. The United States of America and the Republic of Panama will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component, and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their dependents, and their property. The Republic of Panama will seek from its Legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

Article X

Employment With the Panama Canal Commission

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect prior to that date.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

(c) Within five years from the entry into force of this treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

4. The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

7. Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to

United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility, as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsiblity of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

9. (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forums of collective bargaining established by the United States of America after consultation with employee unions.

(b) Employee unions shall have the right to affiliate with international labor organizations.

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which involve applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Article XI

Provisions for the Transition Period

1. The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms. In order to provide for an orderly transition to the full application of the jurisdictional arrangements, established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone.

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offienses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.

5. The courts of the United States of America and related personnel, functioning in are former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by an exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installations made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

Article XII

A Sea-Level Canal or a Third Lane of Locks

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

3. The Republic of Panama grants to the United States of America the right to add a third lane of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of

America has delivered to the Republic of Panama copies of the plans for such construction.

4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.

5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

Article XIII

Property Transfer and Economic Participation by the Republic of Panama

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas.

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this Treaty at such time as such units are made available to the Republic of Panama.

(d) Upon termination of this Treaty, all real property and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar ($0.30) per Panama Canal net tons, or its equivalency, for each vessel transiting the Canal after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a United States dollar ($0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter, successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars ($10,000,000) to be paid out of Canal operating revenues. The amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid

pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Article XIV

Settlement of Disputes

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter through consultation in the appropriate committees established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may, in appropriate cases, agree to submit the matter to conciliation, mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

ANNEX—PROCEDURES FOR THE CESSATION OR TRANSFER OF ACTIVITIES CARRIED OUT BY THE PANAMA CANAL COMPANY AND THE CANAL ZONE GOVERNMENT AND ILLUSTRATIVE LIST OF THE FUNCTIONS THAT MAY BE PERFORMED BY THE PANAMA CANAL COMMISSION

1. The laws of the Republic of Panama shall regulate the exercise of private economic activities within the areas made available by the Republic of Panama for the use of the United States of America pursuant to this Treaty. Natural or juridical persons who, at least six months prior to the date of signature of this Treaty, were legally established and engaged in the exercise of economic activities in the former Canal Zone, may continue such activities in accordance with the provisions of paragraphs 2–7 of Article IX of this Treaty.

2. The Panama Canal Commission shall not perform governmental or commercial functions as stipulated in paragraph 4 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.

3. It is understood that the Panama Canal Commission, in the exercise of the rights of the United States of America with respect to the management, operation and maintenance of the Canal, may perform functions such as are set forth below by way of illustration:

a. Management of the Canal enterprise.
b. Aids to navigation in Canal waters and in proximity thereto.
c. Control of vessel movement.
d. Operation and maintenance of the locks.
e. Tug service for the transit of vessels and dredging for the piers and docks of the Panama Canal Commission.
f. Control of the water levels in Gatun, Alajuela (Madden) and Miraflores Lakes.
g. Non-commercial transportation services in Canal waters.
h. Meteorological and hydrographic services.
i. Admeasurement.
j. Non-commercial motor transport and maintenance.
k. Industrial security through the use of watchmen.
l. Procurement and warehousing.
m. Telecommunications.
n. Protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in areas used in operation of the Canal and the anchorages.
o. Non-commercial vessel repair.
p. Air conditioning services in Canal installations.
q. Industrial sanitation and health services.
r. Engineering design, construction and maintenance of Panama Canal Commission installations.
s. Dredging of the Canal channel, terminal ports and adjacent waters.
t. Control of the banks and stabilizing of the slopes of the Canal.
u. Non-commercial handling of cargo on the piers and docks of the Panama Canal Commission.
v. Maintenance of public areas of the Panama Canal Commission, such as parks and gardens.

w. Generation of electric power.
x. Purification and supply of water.
y. Marine salvage in Canal waters.
z. Such other functions as may be necessary or appropriate to carry out, in conformity with this Treaty and related agreements, the rights and responsibilities of the United States of America with respect to the management, operation and maintenance of the Panama Canal.

4. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Commission, effective upon the dates indicated herein:

(a) Upon the date of entry into force of this Treaty;

(i) Wholesale and retail stores, including those through commissaries, food stores, department stores, optical shops and pastry shops;

(ii) The production of food and drink, including milk products and bakery products;

(iii) The operation of public restaurants and cafeterias and the sale of articles through vending machines;

(iv) The operation of movie theaters, bowling alleys, pool rooms and other recreational and amusement facilities for the use of which a charge is payable;

(v) The operation of laundry and dry cleaning plants other than those operated for official use;

(vi) The repair and service of privately owned automobiles or the sale of petroleum or lubricants thereto, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other privately owned property, including appliances, electronic devices, boats, motors, and furniture;

(vii) The operation of cold storage and freezer plants other than those operated for official use;

(viii) The operation of freight houses other than those operated for official use;

(ix) The operation of commercial services to and supply of privately owned and operated vessels, including the construction of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;

(x) Printing services other than for official use;

(xi) Maritime transportation for the use of the general public;

(xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;

(xiii) Educational services not for professional training, including schools and libraries;

(xiv) Postal services;

(xv) Immigration, customs and quarantine controls, except those measures necessary to ensure the sanitation of the Canal;

(xvi) Commercial pier and dock services, such as the handling of cargo and passengers; and

(xvii) Any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal.

(b) Within thirty calendar months from the date of entry into force of this Treaty, governmental services such as: (i) Police; (ii) Courts; and (iii) Prison system.

5. (a) With respect to those activities or functions described in paragraph 4 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such such activities or functions by the Panama Canal Commission to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof.

(b) In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 4 above which is necessary to the efficient management, operation or maintenance of the Canal, the Panama Canal Commission may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal

The United States of America and the Republic of Panama have agreed upon the following:

ARTICLE I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

ARTICLE II

The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world. The foregoing shall be subject to the following requirements:

(a) Payment of tolls and other charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Artcle III(c);

(b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III;

(c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and

(d) Such other conditions and restrictions as are established by this Treaty.

ARTICLE III

1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

(b) Ancillary services necessary for transit through the Canal shall be provided;

(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

(d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of vessels owned or operated by a State or for which it has acknowledged responsibility, a certification by that State that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility.

(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government non-commercial service.

2. For the purposes of this Treaty, the terms "Canal," "vessel of war," "auxiliary vessel," "internal operation," "armament" and "inspection" shall have the meanings assigned them in Annex A to this Treaty.

ARTICLE IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

ARTICLE V

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

ARTICLE VI

1. In recognition of the important contribution of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means or propulsion, origin, destination, armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

2. United States of America, so long as it has responsibility for the operation of the Canal, may continue to provide the Republic of Colombia toll-free transit through the Canal for its troops, vessels, and materials of war. Thereafter, the Republic of Panama may provide the Republic of Colombia and the Republic of Costa Rica with the right of toll-free transit.

ARTICLE VII

1. The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all nations of the world the Protocol to this Treaty whereby all the signatories will adhere to the objectives of this Treaty, agreeing to respect the regime of neutrality set forth herein.

2. The Organization of American States shall act as the depositary for this Treaty and related instruments.

ARTICLE VIII

This treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

Done at Washington, this 7th day of September, 1977, in the English and Spanish languages, both texts being equally authentic.

ANNEX A

1. "Canal" includes the existing Panama Canal, the entrances thereto and the territorial seas of the Republic of Panama adjacent thereto, as defined on the map annexed hereto (Annex B),[1] and any other interoceanic waterway in which the United States of America is a participant or in which the United States of America has participated in connection with the construction or financing, that may be operated wholly or partially within the territory of the Republic of Panama, the entrances thereto and the territorial seas adjacent thereto.

2. "Vessel of war" means a ship belonging to the naval forces of a State, and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew which is under regular naval discipline.

3. "Auxiliary vessel" means any ship, not a vessel of war, that is owned or operated by a State and used, for the time being, exclusively on government non-commercial service.

4. "Internal operation" encompasses all machinery and propulsion systems, as well as the management and control of the vessel, including its crew. It does not include the measures necessary to transit vessels under the control of pilots while such vessels are in the Canal.

5. "Armament" means arms, ammunitions, implements of war and other equipment of a vessel which possesses characteristics appropriate for use for warlike purposes.

6. "Inspection" includes on-board examination of vessel structure, cargo, armament and internal operation. It does not include those measures strictly necessary for admeasurement, nor those measures strictly necessary to assure safe, sanitary transit and navigation, including examination of deck and visual navigation equip-

[1] Not printed here.

ment, nor in the case of live cargoes, such as cattle or other livestock, that may carry communicable diseases, those measures necessary to assure that health and sanitation requirements are satisfied.

Mr. ALLEN. Now, Mr. President, on another matter, I will say that I have read in the paper that Mr. Torrijos is said to be dissatisfied with the DeConcini reservation.

Well, I do not see where he should be dissatisfied. I feel sure he knew the reservation was coming because there was an exchange of notes on March 15 between the President and the dictator. As I pointed out, when they finally came up with the letters, both of them were dated on the 15th. They must have been cables, or something of that sort. But Torrijos was raising the proposition that he did not feel they ought to make any changes, that he had heard rumors of reservations and the like.

The letters are in the record, but I am now recalling from memory. The President said:

Yes, the reservations are being considered and are going to be accepted, but I assure you nothing will be done. These reservations will not interfere with the spirit of the treaty that we have worked out.

It is the same as to say, Mr. President, that the reservations really are not going to change the agreement; therefore, they have very little effect.

As we recall, the DeConcini reservation was offered as an amendment to the treaty and turned down by the very people who accepted it as a reservation.

An interesting thing came to light in correspondence with me. Reed Irvine, of a concern called Accuracy in the Media, wrote the Washington Star, I believe Mr. Beveridge of the Washington Star, about the fact that he had been informed by a reporter for the Washington Star that he, the reporter, had these letters on the 15th of March, this exchange of letters between the President and the Dictator as to the meaning and effect of the reservations that were going to be agreed to—that he had these letters but that "the desk" stopped their publication.

Mr. Irvine was asking the question, "If you had the letters"—and in colloquy on the floor, I pointed out that if those letters had been made public on the 15th, inasmuch as we did not vote until the 16th, if we had had those letters on the 15th in which the President was saying that the reservation was not going to adversely affect the agreement that they had, then we might have taken a different view of these reservations and possibly in turn the treaty. Accuracy in Media was requesting—I have the letter here and I shall ask unanimous consent, Mr. President, that this letter, dated March 22, 1978, from Mr. Reed Irvine to Mr. George Beveride, who is Ombudsman of the Washington Star, be printed in the Record. Mr. Irvine frequently takes Mr. Beveridge to task for improper or inadvisable activities on the part of the newspaper. Mr. Irvine was asking why, if they had these letters on the 15th, why was it they waited until the 17th to run it in the paper? He asks a question or two about it. I quote from the letter:

If the Star had these letters and deliberately withheld from its readers any mention of them, it would appear to subject itself to the charge that it was withholding a news story because publication might have influenced a vote, as Senator Allen suggested.

I read the Star almost every afternoon and Saturday morning and Sunday morning, but I have not seen any reference to this letter, asking them why they withheld these letters that could have had an influence on the vote on the first treaty, whey they withheld that from their readers.

Mr. President, I ask unanimous consent that the letter and the item in the Star referring to Mr. Torrijos' dissatisfaction, back in March, with these reservations—this publication in the Star was on March 17, 1978—that both be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER (Mr. Matsunaga). Without objection, it is so ordered.

[See exhibit 1.]

Mr. ALLEN. First, Mr. Torrijos said he was not concerned about the debate on the treaties, they were both going to be approved. Now, as we come to the close of the debate on the Panama Canal Treaty, dictator Torrijos voices concern with the DeConcini amendment. He is not satisfied with the way that amendments are being turned down here in the Senate just as rapidly as they are offered. He must have some sort of fear that there is danger that constructive amendments might be passed on this other treaty. So he is rushing in and saying, "Well, I am dissatisfied with what you have already done; therefore, you had better not do anything else."

It seems to me that is just a ploy on the part of dictator Torrijos to continue to influence the action of the Senate. He has had more influence, as I see it: his wishes have had more influence on the final action of the Senate in these matters of amendment than have the Senators. It looks like everything that has happened has had to be cleared with Torrijos—"Clear it with Omar."

Mr. DOLE. Will the Senator yield?

Mr. ALLEN. Yes.

Mr. DOLE. The Senator just touched on a point that has been raised by the Senator from Kansas. The Senator from Kansas has been told time after time that our amendments are redundant and unnecessary. We have been assured by the leadership from time to time that everything has been worked out, everything is understood, clearly understood. It seems to this Senator that perhaps it is now time for the leadership on both sides to get a clarification from Mr. Torrijos. I think it would be very helpful to those of us who have offered our amendments in good faith and had them shot down by the floor managers and the leadership. It would also provide a service to the American people. I hope we could have some clarification of this issue. I think perhaps the leadership ought to help us get that clarification. They have been burying our amendments one after another. Perhaps now they can find out from General Torrijos what his real thoughts may be.

Mr. ALLEN. I thank the Senator for that suggestion. I call his attention to the fact that there has been no doubt about the position of dictator Torrijos on the leadership amendment. He adopted a different view than that which the United States had.

When the memorandum, which has now become the leadership amendment, which is now in the Neutrality Treaty, was agreed to between him and President Carter, he went back to Panama and said:

Oh, that memorandum did not give the United States the right to intervene in Panama to protect the canal; it just gave them the duty to intervene when and if I press the button to call on them to come down and defend it.

He has never recanted from that attitude. Apparently, now, with respect to the DeConcini amendment, he still has the same view. So there never really has been a meeting of minds. That is the reason we need it, not just as a reservation to the treaty, as the DeConcini amendment was. It ought to have been a direct amendment to the treaty. But the leadership saw fit to turn down our efforts to put it directly in the treaty.

Mr. President, I think that is what dictator Torrijos' present-day attack is aimed at, preventing amendments or meaningful, it there be such, reservations being added to the resolution of ratification. That is his strategy. He will convince the proponents of the treaties that he is dissatisfied with what the Senate has already done. And you know he is laughing up his sleeve, because just as quickly as these treaties are approved, $100 million a year will be coming in to uphold and protect and maintain the dictatorial regime of dictator Torrijos. So he is putting up this smokescreen, saying. "I am dissatisfied with what the Senate has done," in an effort to see to it what we do not attach meaningful amendments and meaningful reservations to the resolution of ratification.

I dare say he will succeed. He has succeeded thus far. He has succeeded thus far in seeing to it that no amendments are added to these treaties other than the leadership amendment on which he disagrees as to its interpretation by the United States.

He has a pretty fair record. No amendment has been adopted, not a single one, except the two meaningless, or well-nigh meaningless, leadership amendments based on the memorandum. Of course, it had a little paragraph in there that took care of dictator Torrijos. It said we could not interfere with the internal affairs of Panama, we could not impinge on their territorial integrity, and we could not interfere with the independence of Panama. That is the same as saying we are going to do nothing to upset the dictatorial regime there.

So he has a pretty good track record here, in the Senate, in getting what he wants. I predict he will get, so far as amendments are concerned, pretty well what he wants with no amendments.

But I am hopeful, Mr. President, because there were 32 votes cast against the first treaty, and only 34 are needed to defeat the second treaty, a defeat which would also defeat the first treaty, even though it has already been approved.

It is not altogether inconsistent, I would think, for a Senator, who voted for the Neutrality Treaty or the Defense Treaty on the assumption that the other treaty also would be approved, to vote for the Neutrality Treaty to provide for the defense of the canal starting in the year 2000 without being in the least for giving the canal away.

That is the issue now, the main issue. Are we going to give the canal away?

All that has been decided is that if we give it away we are going to defend it. So if a Senator voted to defend it there is nothing wrong with that. I said here on the floor that I thought if they would reverse the treaty, got the Panama Canal Treaty approved

first, then there would have been possibly up to 99 affirmative votes for the other treaty.

But they insisted in putting the cart before the horse and 32 votes were cast against the treaty that nearly everybody approved of because it was part and parcel of the whole question of giving the canal away.

I would hope that the 68 Senators who voted to approve the first treaty will become somewhat disillusioned with Mr. Torrijos' mastery of this question, mastery of the results that takes place here in the Senate. I hope they will quit opposing every attempt at trying to shape these treaties, will quit trying to keep them in a shape approved by the Dictator, and will agree to amend these treaties for the best interests of the American people and the taxpayers of this Nation.

I am hopeful that two of the Senators who voted for the first treaty will recognize that even though they have voted to defend the treaty, that does not necessarily mean they are going to vote to give the canal away.

I would like to call attention to the parable that Jesus related that is somewhat analogous to the situation of Senators that come here at the last moment, before the realization of what is involved, and will vote against giving the canal away.

On one occasion, Jesus gave the parable about the master of the vineyard, that early in the morning he employed workmen to go out and work in the vineyard and be given reward or pay, I believe, which was said to be a penny—it was an English coin in the King James translation.

Then in the third hour, he employed men to go into the vineyard, and at the 6th hour, then finally the 11th hour he employed people to go in and work in the vineyard.

When the day was up, he paid them all the same and said that those who came at the 11th hour were going to the same reward that those received that worked all day.

So I believe that these Senators who voted for the first treaty, but now come at the 11th hour, Mr. President, I say to the distinguished Senator from Hawaii (Mr. Matsunaga) who is presiding, if they came at the 11th hour—I am not talking about a Senator personally, but Senators who voted for the treaty—if they come at the 11th hour and vote against the Panama Canal Treaty, they will come in for as much credit as those who have been working in the vineyard since dawn.

I am hopeful they will come in for the same reward, the same acclamation, that might be accorded to the distinguished Senator from Utah (Mr. Hatch) who has been working even before the first hour.

Mr. President, I yield the floor.

EXHIBIT 2

ACCURACY IN MEDIA,
March 22, 1978.

Mr. GEORGE BEVERIDGE,
Washington Star,
Washington, D.C.

DEAR MR. BEVERIDGE: Attached is a copy of a story by Jerry O'Leary that appeared in The Star on Friday, March 17. You will note that it quotes from the

letters exchanged by President Carter and General Torrijos on the previous Wednesday.

This correspondence became the subject of a serious discussion on the Senate on Friday. On page S 3977 of the CONGRESSIONAL RECORD of March 17, 1978, I find Senator ALLEN saying: "I say to the distinguished majority leader, if the letters were dated the 15th, it might have been of some benefit to the Senate to have had them up here on the 16th. They might have influenced a vote."

Senator BYRD. responded. "Mr. President, that could be said both ways. We could say what might have been,"

Senator ALLEN. "I doubt if it would have made votes for the treaty."

Senator BYRD. "I do not know. I have not read them yet. I have tried to secure them for the Senator because of his interest. Of all sad words of tongue or pen, the saddest are these: 'It might have been.' "

Mr. O'Leary told me in a phone conversation that I had with him on Saturday that he had obtained the letters that Senator ALLEN was referring to on Wednesday from the Panamanian Embassy. He said that the "the desk" made a decision to hold up publication of the story mentioning or quoting them until Friday, after the Senate vote on the treaties.

I would appreciate it if you would investigate this matter. If The Star had these letters and deliberatly withheld from its readers any mention of them, it would appear to subject itself to the charge that it was withholding a news story because publication might have influenced a vote, as Senator ALLEN suggested.

The question is, why were these letters news on Friday and not on Thursday? Why was publication delayed? Was there any discussion about the desirablity of publication with administration officials, senators or others who might have influenced this decision?

I shall be looking forward to your reply.

Sincerly yours,

REED IRVINE.

[From the Washington Star, Mar. 17, 1978]

PANAMA COOL TO TREATY ALTERATIONS

(By Jeremiah O'Leary)

Brig. Gen. Omar Torrijos has hinted displeasure at a last-minute amendment to the neutrality treaty on the Panama Canal and his nation is giving a cool reception to the Senate's ratification of the first portion of the pact.

But the Panamanian leader declared that he will withhold judgment until the Senate has voted on both treaties.

Torrijos expressed concern over an amendment by Sen. Dennis DeConcini, D-Ariz., because it spells out too specifically the right of the United States to use military force if the Panama Canal is ever shut down for any reason.

"We all understand the realities of what the U.S. would do if the canal was threatened from any quarter," said one Panamanian bitterly, "but this amendment rubs our noses in it."

Torrijos and other Panamanian officials made it clear that there is no elation among them over the narrow administration victory on the first phase of the treaties. Torrijos telephoned his ambassador, Gabriel Lewis, in Washington shortly after the 68-32 vote and curtly instructed him to return to Panama City immediately for consultations.

Hundreds of thousands of Panamanians, including Torrijos, monitored the radio broadcast of the Senate vote, which interpreters of the Organization of American States rendered in Spanish over a 52-station nationwide hookup.

First reports indicated that there were no demonstrations of either joy or outrage, probably because most Panamanians are uncertain of the meaning of the amendments.

Shortly after Torrijos called Lewis home, Lewis was called to the White House where he and his counsellor, Ricardo Bilonick, had a 10-minute meeting with President Carter.

The Panamanians gave Carter a copy of a letter from Torrijos in response to a Carter message about the changes being made in the treaties.

Lewis thanked the president and aide Hamilton Jordan for working so hard for ratification of the treaties.

The exchange of correspondence took place late Wednesday, well before yesterday's vote, but the letters typified the concerns of both Carter and Torrijos about the Senate's changes in the language previously agreed upon by the two leaders.

Carter's letter in effect suggested that Torrijos not be concerned with the changes the Senate was likely to make in the treaty language.

He said, "The Senate will almost certainly attach a number of reservations, conditions or understandings reflecting certain of its concerns. We have made every effort and have been successful to date in insuring that that these will be consistent with the general purposes of our two countries as parties to the treaty. I hope you will examine them in this light.

"I know that the long public discussion of the treaties in the U.S. has involved difficulties for you and your country. It has been a necessary element in informing the American public of the reasons for negotating the treaties."

Torrijos' reply referred both to the Carter letter and to a phone conversation Carter held with the Panamanian leader Wednesday afternoon.

Torrijos replied, "In your letter and conversation you have informed me that the Senate will introduce some reservations but that they do not alter or lessen the contents of what was agreed upon in the Neutrality Treaty or in our statement of October 14, 1977. On this matter, I wish to express that the Government of Panama will proceed to carefully study these reservations and will determine its position once the Senate concludes voting on both treaties."

Torrijos informed Carter he would wait until the Senate acts on the second part of the treaties, probably in April, because Panama's plebiscite was voted on jointly, not separately.

But Torrijos said, "it will be unacceptable for Panama to have any reservations staining the national dignity, which changes the objectives of the treaty or which impedes the effective exercise of Panama's sovereignty over all its territory. That is why I receive with high regards your words that these objectives will not be changed at all through amendments or reservations. The Panamanian people would not accept words, improperly placed commas, or ambiguous phrases which have as its purpose or meaning the occupation in perpetuity disguised as neutrality or an intervention in its internal affairs."

Mr. HATCH. Mr. President, I also rise to speak on the issues raised by the distinguished Senator from Alabama, who has played a noble role on the floor for these past weeks and who has been one of the great leaders, in my opinion, not only in this issue, but in many other issues as well. I appreciate the comments that he made.

This morning's Washington Star has an article on the front page entitled "Canal Treaty Critics Lose Suit on House Vote." It reads:

Critics of the Panama Canal treaties have sustained what probably is a fatal setback in efforts to block the controversial agreements in the House.

The U.S. Court of Appeals for the District, in a split decision, ruled yesterday that the United States may cede the waterway to Panama through constitutionally prescribed treaty ratification procedures—thus, without concurrence by the House.

Mr. President, the distinguished Senator from Alabama has mentioned that yesterday a three-judge panel of the Circuit Court of Appeals for the District of Columbia ruled, in the case of Edwards against Carter, that the President has the authority to dispose of property by a self-executing treaty. The decision was 2 to 1. Justice George MacKinnon was the lone dissenter.

It is now clear, then, contrary to the views expressed by the managers of this treaty, that the constitutional issue raised in my amendment is a valid one. Moreover, I believe that the position taken on April 5 by 38 Senators has been fully vindicated by Judge MacKinnon who supported our arguments in a 97-page opinion that contains many new points of law and is a tribute to his skills as a highly respected legal craftsman.

The per curiam opinion of the majority, which seems to be little more than a summary of the specious arguments propounded by

the State Department and the five-page statement of the Foreign relations Committee, does not, in my judgment, offer any new insights or challenge any of the countless facts and precedents that we have raised here in Congress and Judge MacKinnon has brought to light in his searching analysis of the case.

Judge MacKinnon, as my colleagues will recall, was also one of the few dissenters in the landmark decision of Buckley against Valeo. His argument that the provisions of the Federal Election Campaign Act respecting the Federal Election Commission violated the separation of powers was later upheld by the Supreme Court, and I am confident that the Court will uphold him once again when it considers this case.

At the same time, I would like to share with Senators a matter which gives me some concern and raises a question of possible conflict of interest in the case of Edwards against Carter.

It is my understanding that the 85-year-old senior circuit judge who presided over this case, the Honorable Charles Fahy, has a long history of State Department connections that date back nearly 40 years. According to Who's Who in Government, Judge Fahy served as an adviser to the U.S. delegation to the San Francisco Conference in 1945 which drafted the U.N. Charter, and subsequently was an adviser to the U.S. delegation to the U.N. and an alternate representative of this Government to the U.N. Moreover, Charles Fahy was the legal adviser to the State Department from 1946 to 1947.

Mr. President, I do not know Judge Fahy, and I am confident that he is a man of honesty and integrity. I assure my colleagues that I am making no accusations or charges that would in any way cast aspersion on his character as a Federal judge. But I do find it somewhat disconcerting that he was formerly associated with the very same office of the State Department with which we are presently contending, and am puzzled by the fact that he did not disqualify himself from this case.

Be that as it may, a Federal appellate court has decided that, "Because the merits of this controversy present a pure question of law * * * it is appropriate to proceed directly to the merits of this case." The Supreme Court of the United States will now be called upon to examine the constitutional merits of the State Department's arguments. It is hoped that we shall at last get an answer to the many issues raised in this controversy that the Foreign Relations Committee and two Federal judges have thus far managed to avoid.

Mr. President, I would like to share with my colleagues the opinion of the circuit court of appeals in the case of Edwards against Carter, and I ask unanimous consent that the per curiam opinion of the court and the dissenting opinion of Justice MacKinnon be printed in the Record at this point.

Mr. SARBANES. Mr. President, reserving the right to object, I would not object ordinarily to such a request; the Senator from Alabama already has put that material in the Record, and I was thinking of doing so. The Senator from Alabama has done it.

Mr. HATCH. If it already has been offered, I am happy the distinguished Senator from Maryland brought the fact to my attention.

The PRESIDING OFFICER. The Senator from Utah withdraws his unanimous-consent request.

Mr. HATCH. I certainly do.

And I might add that I think it is important to be in the Record so that every Senator who has to vote on the ultimate decision in this matter will be able to read it. I think they will reason in their own minds, after reading it, that Justice MacKinnon has done a tremendous job and has not given the kind of cursory treatment to the issue that the Foreign Relations and the two majority judges, the per curiam opinion judges, have given in this matter.

I think what is important is for everyone to know that in the district court this case was dismissed, because the district judge said that the plaintiffs had no standing, that there was not a pure question of law to be decided.

What is interesting is that all three of these judges basically have admitted that there is. Two of them have disagreed with our position, that we have advocated on the floor, but now the stage is set for the U.S. Supreme Court to make the final decision. I hope with all my heart that they will also agree that it is important to have a decision on this pure question of law if the Senate does not reverse yesterday's vote on my amendment, and thereby make the issue moot.

So I am happy to have the opinion of the judges and frankly I am pleased that one of the judges accepts the merits of our position. But above all I think I should make it clear that rather than have the courts decide this, I would prefer that the Senate fully address this issue and not defer to the courts.

I think everyone in America should be looking with a great deal of anticipation as to what the Supreme Court of the United States will finally decide with regard to this monumental constitutional issue, if we fail to make the issue moot in our attempt to amend this treaty to require congressional approval for the disposal of property.

I think that the case law, the statutory law, the historical precedents, the congressional precedents, and the other precedents which we raised are overwhelming. I think that the minority opinion from the Circuit Court of Appeals is overwhelming when one considers it in the light of the majority opinion which seems to just parrot the tired arguments of the State Department.

In addition, I also comment on what the distinguished Senator from Alabama and my friend and colleague from Kansas have said. It is amazing to me that Mr. Torrijos, who is getting everything that he wants because my colleagues on the floor of the Senate, the majority of them, are constantly shooting down every substantive amendment and stonewalling every other amendment regardless of substance, in fact stonewalling all amendments, has come out and made such a fuss about the DeConcini reservation.

I think it does raise the point, because we have been told here that these treaties are so well understood by both sides that there just cannot be any points of conflict or difficulties in the future. "We cannot imagine how anyone is going to have any problem arise as a result of these wonderful treaties," which have been negotiated by the State Department.

The fact of the matter is as to something like the DeConcini reservation, which was pretty simple and basically reinforces what the majority amendments or the leadership amendments have said and we would get anyway in the very least, I think it is important for us to understand that these treaties are not easily understood, that they are filled with ambiguities, that there are substantive defects in these treaties which will cause great problems, great contradictions, and great upheavals in the future, if not downright warfare, and that there are translation difficulties in both treaties. As to the amendment which have been offered, I cannot think of one which has not been substantive, which has not been important, which has not been offered for the purpose of protecting the United States of America and really protecting Panama as well. After all, if we do not on both sides know what these treaties stand for, we are going to be in trouble in the future.

So I think this fuss presently being raised by the dictator down there in Panama is pretty important, because I think what he is saying is "We want it all our way, we do not want any amendments, we do not even want the leadership amendments, and we do not understand that the leadership amendments really mean anything."

What bothers me is that I am afraid that people on our side are telling us, "Do not even worry about the DeConcini reservation, because it does not mean anything unless you have a plebiscite to honor it," which is true, incidentally, under Panamanian law. But apparently they want it even more true that it is.

But what I wish to say is that I am concerned, very concerned, about the stonewalling which has gone on with substantive, decent, corrective, rational, and valid amendments which have been offered during these last number of weeks. I have had people come to me and say:

> Senator, why offer any more? They are going to stonewall everything. They have the votes. You are just wasting your time and butting your head up against brick walls.

The answer to that is that we have an obligation to this country to set the record straight to do everything we can to point out the defects in these treaties and hopefully try to convince our colleagues that what they are doing is wrong for America. If we have to have these treaties, then let us at least have them be good treaties and not the invalid, poorly drafted, and unprotective treaties that they are.

That is what is at stake here.

Frankly, the constitutional issue is not over in any way, shape, or form. It looms ever stronger and ever more powerful after the Circuit Court of Appeals decision yesterday, because now we know that the Supreme Court has to face it fair and square and there has to be a decision if the Senate fails to follow the Constitution. That decision may come down against us, but if it does the Supreme Court better know that they are extending the President's power beyond that which was contemplated by the Founding Fathers when they wrote the Constitution of the United States and beyond that which it should be extended by any good sense or logic.

I think it is important to realize this is one of the most monumental, important constitutional issues raised in this country; and it is not over.

As a matter of fact, it will not be over if the Supreme Court came down on the same side as the majority in the Circuit Court of Appeals did yesterday, because the final say is really going to come from the House of Representatives anyway, because implementing legislation will have to be considered and enacted pursuant to many other provisions of these treaties. The House could say, "We are sorry, fellows, you over there in the Senate and President Carter, but we are not going to implement any of the other provisions of the treaty because you have ignored the House of Representatives and have excluded the disposition of the property as a matter for House action. Remember 235 Members have demanded the right to pass on the transfer of $10 billion of American property, a colossal transfer of American territory and property by treaty without approval of Congress—meaning both Houses.

If they want to they can hold up legislation in these other areas until some cognition is given to their property disposal rights under the Constitution. I do not know that they will do that, but I would be sorely tempted to do it if I were a representative representing my people back home and representing the rest of the people in this country, because the issue is that important.

Maybe sometimes the legislative branch has to teach some lessons to the President of the United States and even the State Department, as powerful as it is and, it seems to me, in some ways more powerful than almost any other branch of Government, at least in this matter.

I think it is a new low in our country's history for a President and the State Department and the ambassadors and, yes, the proponents of this treaty, to refuse to allow the Senate to advise as well as consent on this point of law when the Constitution is so clear.

I think to come here and say that we cannot have treaties until we have exactly what the dictator wants is wrong.

Mr. President, as Congressman John Murphy, Chairman of the House Merchant Marine and Fisheries Committee, said yesterday:

> The action of the Senate yesterday in rejecting an amendment to the Panama Canal Treaty that would have recognized the Constitutional role of Congress in disposing of the property of the United States provided in the treaty, should be a matter of profound concern to every Member of the House and of the Senate as well.
>
> The action flies in the face of the plain provision of article IV, section 3, cause 2 of the Constitution and the uniform practice of this Government from the earliest days of the Republic. It represents a radical departure from the theory of the Constitution establishing a balance of power between the three branches of the Government. It is especially in derogation of the role of the House of Representatives in the structure of Government in that Senate concurrence in the action of the Executive is substituted for enactment of legislation by the House and the Senate as the Constitution requires.
>
> The denial to the House of the opportunity to exercise its constitutional authority will bring into question the legal effect of the treaty, inasmuch as the Supreme Court has repeatedly found that a treaty, like any other law is invalid to the extent that it violates any provision of the Constitution.
>
> The language of the Constitution is plain and unambiguous in committing to the Congress the authority to dispose of property of the United States. The action of the Senate in arrogating this power to the President and the Senate should not and cannot be accepted by this body.

Meaning the House of Representatives.

The wisdom of the Senate vote in refusing to recognize the legitimate role of the Congress must be questioned when it is recognized that the vote adopts a constitutional interpretation which has been advocated by the Executive and which has historically been opposed by the Congress from the First Congress.

Whether or not a vote of the House of Representatives can be taken with respect to the congressional property disposal power before the Senate disposes of the Panama Canal Treaty of 1977, it remains of paramount importance that House Members sign discharge petition No. 6, relative to House Concurrent Resolution 347. The discharge petition is the most expeditious means of bringing the resolution to this floor and allowing all Members to express a position on a matter that vitally affect the powers of which we are trustees.

I think Congressman Murphy laid it out pretty fairly, and I urge my fellow Members of Congress in the House of Representatives to do exactly that and to bring this matter to a head.

Mr. President, the point is to be made that this article in the Washington Star, though well written, is incorrect in saying that this circuit court decision was a fatal setback. This decision clears the air and has rejected the idea that these Congressmen lacked standing or that this is a "political question." It sets the stage that there is a real issue raised, a constitutional issue, if you will, which cannot now be ignored by the Supreme Court of the United States—unless, of course, we make it moot.

I have confidence that the Supreme Court, in looking into this, in looking upon the record which has been made here on the floor this week and in the past and in looking at the opinion, the cursory per curiam opinion, which is not nearly as well reasoned or as well founded as the dissenting opinion, will decide in favor of the Constitution.

AMENDMENT NO. 38

Mr. President, at this time, with the express understanding that no motion will be made or any vote be taken upon my amendment until Monday, and after we have been given a reasonable time in which to make our case in the matter, I call up my amendment No. 38 and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. HATCH. I am delighted to yield.

Mr. SARBANES. Mr. President, this is the understanding that we will make no motion with respect to the amendment today, and the Senator will certainly have a reasonable time next week. I wish to note that Senator Dole has an order entered for the consideration of his amendment on Monday.

Mr. HATCH. We would be delighted to set it aside for Senator Dole's amendment, and we will certainly cooperate in every respect. We will call it up at this time and ask for its immediate consideration under that agreement.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Utah (Mr. Hatch) proposes an amendment numbered 38:

In paragraph 3 of article III, at the end of the text immediately above subparagraph (a), add the following: "The operating revenues of the Panama Canal Commission shall be deposited in the Treasury of the United States of America.".

In the first sentence of paragraph 5 of article III, strike out "Panama Canal Commission shall reimburse" and insert in lieu thereof "United States of America

shall reimburse, only after the amount of such reimbursement has been appropriated,".

Mr. HATCH. I shall not argue the merits of my amendment today, but I think my colleagues should know that this amendment raises another very important constitutional issue which is that the United States of America cannot contribute in any way to the operation of the Panama Canal in the future, assuming that these treaties are ratified, without the money coming directly from the Treasury.

So this amendment will correct what happens to be a serious constitutional defect, and we will talk about this in great detail next Monday.

With that I yield the floor to the able Senator from North Carolina.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. HATCH. I would be happy to yield to the distinguished Senator from North Carolina (Mr. Helms).

Mr. HELMS. I listened to the eloquent remarks of my friend from Utah, and I was struck again, when he was talking, about the fact that I suppose all of us will admit that there is a wide gap between the perception of the American people and the perception of so many of their representatives in the U.S. Senate with regard to this giveaway of the Panama Canal.

I am wondering if the distinguished Senator from Utah saw the editorial in the Wall Street Journal of this morning headed "Panama and Pax Americana"?

Mr. HATCH. I did indeed.

Mr. HELMS. I commend it to the consideration of all Senators regardless of the side they may take on this issue.

I am also reminded, I will say to my friend from Utah, that only last month the prestigious Opinion Research Corp. of Princeton, N.J., reported in a nationwide poll that 72 percent of the people of the United States—this is based upon a scientific sample—are opposed to giving up ownership and control of the canal.

Then we have the anomaly of two-thirds of the Senate, in face of all of this, having already agreed to the Neutrality Treaty, in other words, the perception of the American people and the perception of two-thirds of the U.S. Senate, it would seem to me, are, in reverse.

The author of the article in the Wall Street Journal to which I have just alluded addressed himself to this paradox.

What accounts for these perceptions being so much at odds? Are the American people so dumb and so emotional, while so many of the U.S. Senate are so wise and objective? The Senator from North Carolina has seen little evidence to support that contention.

The difference, it seems to me, may be accounted for by a lag in perception by many Members of the Senate of the true situation of the United States around the world. I suspect that some Senators, because they live at the very seat of power, bombarded with information from the national media and from official Government sources, make the assumption that they are more up to date and more sophisticated than some of their constituents who do not have access to the same information.

Yet there is a built-in bias in the information that we receive from these so-called up-to-date sources. They are all institutional

sources—the national news media, the universities, official Government agencies, international organizations. All are staffed with people, particularly at the decisionmaking or interpretative level, who were trained 5, 10, 15 years ago. Their experience is from another time, not from today. So, consciously or unconsciously, they apply a screen, a bias in judgment, to the "facts" which form the basis of their estimates.

Now of course, experience can be good or bad, depending on the nature of the experience. It may no longer be a reliable guide if experience is not evaluated in the light of the present day. The practice of judgment may train a person to make a good judgment at the present time; but if present judgments are based on the facts of the past, those judgments will be faulty.

Mr. President, we have been talking about the economics of the treaty today. But what do those economics represent? And what will be the impact in the world of our taking such steps?

Mr. President, today's Wall Street Journal carries an article that goes into this problem very carefully. It is a very perceptive piece by Jude Wanniski, an associate editor of the Journal.

Mr. Wanniski summarizes the calculations of President Carter and treaty supporters as follows:

> For the last dozen years or so, unhappily the cost of membership in the Pax Americana have been rising and the benefits have been falling. American imperialism has been getting a bad name. People are trading in dollars for yen. France and Italy are on the brink of switching to the other guys. German citizens are taking up collections to help support our tattered legions stationed there. And when Omar Torrijos rattles his Panamanian saber, our Kissingers tremble.
>
> President Carter and two-thirds of the U.S. Senate are correct in their calculations. A shrinking Pax Americana cannot keep clients against their will. One must cut the empire down to size, smiling as we wave bye-bye to former customers. So long, Cuba. Goodbye. Vietnam and Indochina. Adios, Angola. Goodbye, Canal. Shrink the U.S. Navy to bathtub size. Ban the neutron bomb. Take what you can get at SALT, and start thinking about kissing Taiwan goodbye.

That is Mr. Wanniski's summary of the protreaty forces. Now here is what he says the American people are thinking:

> The American people are making different calculations, and seem to be saying it is too soon to throw in the towel on Yankee world leadership. Heck, we hardly had a decent run at it, and when the President and Senate reach so far down into the barrel to give away the Canal, it seems premature. Sure, if the economy continues to bleed itself with inflated currencies and debt finance, we'll have no choice but to retreat to lighten the load. But so soon?

Now, Mr. President, Mr. Wanniski comes to the economic issues:

> The chief reason by far that the people of Panama want the canal is economic. In addition to getting a big bag of money to take the Canal off our hands, Panama gets the right to boost Canal tolls, and milk it for everything the traffic will bear. The people of Panama seem to have a vague hope the revenues will go to reducing their domestic taxes.
>
> Why are Panamanians taxes so high? The main reason is that for the last decade Gen. Torrijos ran the government the way Nelson Rockefeller ran New York State. Spend and tax, spend and borrow. Mr. Torrijos was advised that this was the best way to build a modern economy by his friend Nelson Rockefeller, who a decade ago sent a team of experts to Panama to help him out. Panama's external debt is at least $2 billion and debt service takes 37 cents of every dollar of national revenue. For the most part, New York banks hold the paper. Mr Rockefeller is the only American we know who exhibits genuine passion on behalf of the treaties and Mr. Torrijos.

Mr. President, Mr. Wanniski admits that the picture is not quite as he paints it. He goes on in the following manner:

We shouldn't pin this to Mr. Rockefeller, either. He was, after all, only one of a crowd of Americans who circled the globe since World War II selling a British brand of economics. It never occurred to the American Keynesians that the British Empire crumbled under the idea that public debt and high tax rates were the correct, modern formula for growth. Mr. Rockefeller was honest. He practiced what he preached. New York has not recovered, just as the former British colonies have not recovered, just as Panama has not recovered. And observe the prosperity of Egypt 22 years after Mr. Nasser grabbed Suez from the dying Pax Britanica.

Mr. President, Mr. Wanniski's presents an ingenious solution to the problem of the treaties, but it is a solution I do not think that the Senate is yet ready to accept. Further, he believes that Keynesianism is on its last laps, in the perceptions of the American people, even if the President and his advisers do not seem to think so. This entire column is very well worth reading.

Mr. President, I ask unanimous consent that the article "Panama and Pax Americana" by Jude Wanniski, from the Wall Street Journal, of today, be printed in the Record at the conclusion of my remarks.

There being no objection, the article was ordered to be printed in the Record, as follows:

PANAMA AND PAX AMERICANA

(By Jude Wanniski)

One of the most puzzling political phenomena of the year is the wide gap between the people and the politicians on what to do with the Panama Canal.

Who doubts that if there were provision in the Constitution for a national referendum, and one were held on the Canal treaties, that the voters would bury them? The opinion polls suggested the public opposes the treaties by roughly a two-to-one margin. Yet the representatives of the people, in the White House and in the U.S. Senate, by an astonishingly lopsided margin of roughly 70% to 30%, back the treaties, interpreted by the people as "giving away" the Canal.

Of course it's true that in a representative form of government we expect as natural the frequent discrepancies between the apparent wishes of the citizens and the votes of their delegates. This is because we expect our political delegates to weigh the intellectual arguments and passions of their constituents in addition to the numerical majority. In other words, Americans accept the idea that majority rule is not inconsistent with the notion that the squeaky wheel gets the grease.

But how can we explain this Canal voting? Not only has antitreaty sentiment among the citizenry amassed a wide numerical majority. It also commands the passion of that majority. There is scarcely any intensity among the minority of citizens who support the treaties. Senators Howard Cannon of Nevada and Paul Hatfield of Montana, for example, can hardly find any of the citizens who they represent agreeing with their protreaty votes.

AN EXPLANATION

There must be a rational explanation. And there is, I think, an honest difference of opinion here between the people and their representatives. When you come right down to it, President Carter and two-thirds of the Senate base their decision on the idea that "imperialism" is a bad thing and that the Panama Canal (which we "stole fair and square") is a symbol of American imperialism (Teddy Roosevelt, gunboat diplomacy and all that). Furthermore, they believe imperialism is antihistorical, as witness the crumbling of the Roman and British empires.

The American people, on the other hand, still think Yankee-style imperialism is not a bad thing, all things considered. By this we'd mean an extension of hegemony not by conquest, but through superior example, leadership, and salesmanship. Americans more or less think our system of government is the best in the world. For 60 years the U.S. economy has been preeminent. For a good part of that time U.S. military power has protected the interests of democracy and freedom. The U.S. dollar has been the world currency. American culture has become an international language. A benign imperialism, mostly.

Nor do Americans, generally speaking, believe "imperialism" is antihistorical. On the contrary, if the world is going to be unified someone has to be in the lead. If it is

not the United States it looks to the man in the street, that it will be the Soviet Union. The problem with empires, like any club, is that they are good only as long as people really want to belong to them. Previous empires broke down because the costs of belonging finally overtook the benefits.

For the last dozen years or so, unhappily, the costs of membership in the Pax Americana have been rising and the benefits have been falling. American imperialism has been getting a bad name. People are trading in dollars for yen. France and Italy are on the brink of switching to the other guys. German citizens are taking up collections to help support our tattered legions stationed there. And when Omar Torrijos rattles his Panamanian saber, our Kissingers tremble.

President Carter and two-thirds of the U.S. Senate are correct in their calculations. A shrinking Pax Americana cannot keep clients against their will. One must cut the empire down to size, smiling as we wave bye-bye to former customers. So long, Cuba. Goodbye, Vietnam and Indochina. Adios, Angola. Goodbye, Canal. Shrink the U.S. Navy to bathtub size. Ban the neutron bomb. Take what you can get at SALT, and start thinking about kissing Taiwan goodbye.

The American people are making different calculations, and seem to be saying it is too soon to throw in the towel on Yankee world leadership. Heck, we hardly had a decent run at it, and when the President and Senate reach so far down into the barrel to give away the Canal, it seems premature. Sure, if the economy continues to bleed itself with inflated currencies and debt finance we'll have no choice but to retreat, to lighten the load. But so soon?

What, though, is the alternative? It goes without saying that internal economic disintegration must be halted and real expansion renewed. But even if Mr. Carter and two-thirds of the Senate had a clue as to how this could be done, it would not be enough to boom the host country of this empire. The American failure of the last 30 years, as an imperialist host, is that it unwittingly poisoned the poor countries of the world with unfortunate advice. In the next run at a Pax Americana, this has to change.

Consider Panama. The chief reason by far that the people of Panama want the Canal is economic. In addition to getting a big bag of money to take the Canal off our hands, Panama gets the rights to boost Canal tolls and milk it for everything the traffic will bear. The people of Panama seem to have a vague hope the revenue will go to reducing their domestic taxes.

Why are Panamanian taxes so high?The main reason is that for the last decade Gen. Torrijos ran the government the way Nelson Rockefeller ran New York State. Spend and tax, spend and borrow. Mr. Torrijos was advised that this was the best way to build a modern economy by his friend, Nelson Rockefeller, who a decade ago sent a team of experts to Panama to help him out. Panama's external debt is at least $2 billion and debt service takes 37 cents of every dollar of national revenue. For the most part, New York banks hold the paper. Mr. Rockefeller is the only American we know who exhibits genuine passion on behalf of the treaties and Mr. Torrijos.

A BETTER WAY

There must be a better way of redeeming Mr. Rockefeller for his dreadful advice to his friend than giving up the Canal and a lot of money. Sen. Harry Byrd of Virginia thinks the U.S. taxpayer costs will hit $10 billion before the deed is done in the year 2000. And chances are slim that Mr. Torrijos will use the money to relieve his people of oppressive taxes. He'll buy a lot of military trinkets and build a replica of the Albany Mall.

Why not pay off Panama's $2 billion debt if the government agrees to cut tax rates by 37% (the amount of revenues now going to debt service). The Panamanians would love it.

We shouldn't pin this to Mr. Rockefeller, either. He was, after all, only one of a crowd of Americans who circled the globe since World War II selling a British brand of economics. It never occurred to the American Keynesians that the British Empire crumbled under the idea that public debt and high tax rates were the correct, modern formula for growth. Mr. Rockefeller was honest. He practices what he preached. New York has not recovered, just as the former British colonies have not recovered, just as Panama has not recovered. And observe the prosperity of Egypt 22 years after Mr. Nasser grabbed Suez from the dying Pax Britannica.

Imperialism becomes malign when the Empire disseminates poisonous advice. Lucky for us that countries like Germany, Japan, Taiwan and several others ignored our advice, and kept the Western economy buoyant.

Perhaps this partly explains why there is such a gap between the people and the politicians on the Canal. The citizenry may sense that Keynesianism is on its last

laps, and we'll soon abandon the idea that an American hegemony can succeed with economic theories that destroyed the British Empire. American global leadership must surely become more attractive once we stop advising the Panamas of the world to search for happiness in debt, devaluation and taxation.

This is an optimistic view. The President and the Senate clearly do not believe any of this foolishness, which is why they vote the way they do. The people haven't given up on another run at a Pax Americana, which is why they are putting up such a fuss.

Mr. HATCH. I appreciate the remarks of the distinguished Senator from North Carolina.

Mr. President, I yield the floor.

Mr. SARBANES. Mr. President, I intend to take just a few moments to address the matter of the opinion of the U.S. Court of Appeals for the District of Columbia which was handed down yesterday, on an issue which has been of considerable interest to the Senate in recent days.

I must say, Mr. President, that in a way I am gratified that the court's opinion came after the consideration of this issue in the Senate, and after we had reached our own decision on it.

The time at which the amendment was laid down, before the Easter break, gave Members an opportunity to go home to their constituencies and then resume again, at the beginning of this week, the extended debate on Monday and Tuesday, and to vote on Wednesday morning. The decision which the Senate made on this matter on Wednesday corresponded with the decision and judgment reached by a majority of the Court of Appeals for the District of Columbia Circuit on yesterday, but our judgment was reached prior to the court's opinion, and I think the Members of the Senate participating in that consideration, who reached that independent judgment, can now refer to the court's opinion to sustain their position. Members on both sides, of course, can refer to the court's position in support of the positions they have reached on the Senate floor; but it is interesting that a very clear majority here on the floor and a 2-to-1 majority on the court of appeals reached the same conclusion.

The court of appeals affirmed the judgment in the case of Edwards versus Carter in the District Court for the District of Columbia dismissing an action brought by 60 Members of the House of Representatives. The plaintiffs sought a declaratory judgment that the Constitution requires the approval of both Houses of Congress for the disposal of U.S. property, and that the Panama Canal Zone may not, therefore, be returned to Panama by treaty.

In rejecting that contention the court decided the question directly on the merits—in part, it said:

> Because these merits are so clearly against the parties asserting jurisdiction. . . .

The district court had decided the case against the plaintiffs, but had decided it on a procedural matter, which dealt with the timing and their right to bring the suit at a particular point. But the court of appeals did not proceed on the procedural ground; they went to the merits in contention, in part, the court said:

> Because these merits are so clearly against the parties asserting jurisdiction.

The court found the construction the plaintiffs were asserting for, that the approval of both Houses of Congress was necessary for disposal of U.S. property, "to be at odds with the wording of" the

property clause as well as "similar grants of power to the Congress and, most significantly, with the history of the constitutional debates."

Of course, Mr. President, those were among the very points that were asserted in the debate on the floor of the Senate on this very issue. The court observed, in its opinion, that the Committee on Foreign Relaltions—

> Has thoroughly considered and rejected appellants' argument. That Committee reported the treaties with Panama to the full Senate by a 14 to 1 vote, and the one dissenting Senator did not dispute the power of the President, by and with the advice and consent of the Senate, to transfer United States property.

I think in fairness to Senator Griffin, if I understand his position, he did not contend that it was constitutionally required that both Houses act on the transfer of property. He did contend that as a matter of policy, simply of comity between the Senate and the House of Representatives, we should decide here to send the matter over to the House for their approval as well; but he did not assert that as a constitutional argument and a constitutional requirement.

Mr. HATCH. Mr. President, will the Senator yield at that point?

Mr. SARBANES. Yes, I yield.

Mr. HATCH. I might add that Senator Griffin did vote for our amendment, or he voted against tabling it, and he did tell me personally that he would have voted for our amendment on the merits, because it did involve a very important constitutional principle. I think the record should stand corrected on that particular point.

Mr. SARBANES. I do not quarrel with any statement the Senator has just made. I tried to be fair to Senator Griffin, because this point was not raised by him, the purported constitutional question, and I recall quite clearly during the debate his stating that while he was not asserting it as a constitutional question, he felt it to be the better course as a matter of congressional policy. That is different from the position asserted by the amendment, that this was constitutionally required.

Mr. HATCH. That is true. But it was the opinion of Senator Griffin expressed to me personally that that position was constitutionally sound. And although Senator Griffin did not raise the issue in the committee report, he did support it here.

I thank the distinguished Senator from Maryland for permitting me to interrupt him.

Mr. SARBANES. In its opinion, Mr. President, the court, after reviewing the language of the Constitution, concludes that—

> On its face, the property clause is intended not to restrict the scope of the treaty clause, but, rather, it intended to permit Congress to accomplish through legislation what may concurrently be accomplished through other means provided in the Constitution.

So the court, in effect, endorsed the theory of concurrent powers, and Senators will recall that the committee report, in dealing with this issue, stated:

> The constitutional text is no reason to assume that the power to dispose of property may be exercised only by statute and not by treaty.

The court, in discussing the property clause, concluded that the property clause "was not intended to preclude the availability of self-executing treaties as a means for disposing of U.S. property. The history of the drafting and ratification of that clause confirms this conclusion. The debates in the constitutional convention clearly demonstrate that the property clause was intended to delineate the role to be played by the Central Government in the disposition of Western lands which were potential new States."

[Mr. Riegle assumed the chair.]

Mr. SARBANES. Mr. President, the committee report came under such an attack in the course of our debate that I think I ought to observe that on this very point on which I have just been quoting the court's opinion, the committee report stated:

> The Framers evidenced no intent to preclude the United States from disposing of governmental property by treaty. A review of the discussion of the disposal-of-property clause indicates that the Framers' concern was that the Federal government have primacy over the States in resolving disputes among the States over certain Western lands—suggesting, again, an intent to delineate Federal power versus that of the States. A number of statements, indicating that territory and other property could be transferred by treaty, were made by the Framers during the debate on the treaty power after Article IV was adopted.

The court, in discussing judicial authorities, concluded that, "Those cases were persuasively supportive of the authority of the President and the Senate under the treaty clause."

Members will recall that that was the contention that was made here on the floor by this side in the debate, and it was the contention put forth in the committee report with respect to judicial authorities, where the report stated:

> The Supreme Court appears to have favored a construction of the Constitution which would permit the disposal of property by self-executing treaties.

We also discussed past treaty practice. Of course, the court in that area concluded:

> Past treaty practice is thoroughly consistent with the revealed intention of the framers of those clauses.

Mr. President, there were some very sharp attacks on the quality of the work of the Committee on Foreign Relations during the course of the debate. My distinguished and able colleague from Idaho (Mr. Church) spoke to that matter towards the close of that debate. In fact, he then said:

> Upon examination, the statements made in the report of the Committee on Foreign Relations, and the legal basis on which this treaty has been drafted, have been shown to be well founded.

Mr. President, I think it is very clear that the majority opinion of the Court of Appeals for the District of Columbia fully bolsters that conclusion. The opinion has been included in full in the Record so that Members will have the opportunity to read it for themselves and carefully examine all of the court's reasoning.

I am grateful in two respects by this opinion: One, that it came after we finished the debate and vote here so that we had our debate straightforwardly with respect to the merits of this matter without a court opinion to make constant reference to; and, two, that the court opinion, now that it has come, fully supports the position taken in the committeee report. I think it really answers the charges which were made against the quality of that work. The

court's opinion fully supports the position that was taken by the clear majority of the Members of the Senate in voting to table the amendment which had been offered by the distinguished Senator from Utah.

Mr. LAXALT. Mr. President, the Senate has recently been focusing its attention on the Panama Canal Treaty. This is the treaty which would actually turn the Panama Canal over to Panama.

It is appropriate that most of our attention be focused on the canal treaty since it is the pending business of the Senate, and because it is still important to fully debate the question of whether it is a good idea to turn such a vital asset over to another nation.

However, Mr. President, I would like to call the attention of the Senate to the fact that there still remains unresolved problems relating to the Neutrality Treaty, which the Senate considered and approved, but only by the narrowest of margins, I might add.

It is fair to say, Mr. President, that the Neutrality Treaty would not have been approved were it not for the agreement of the administration to accept the DeConcini reservation to the instrument of ratification. Therefore, the true effect of the DeConcini reservation is a very important question for anyone concerned about the effectiveness of the Neutrality Treaty.

It is in this effect, Mr. President, that I find of great interest recent development with respect to the DeConcini reservation. I refer to the recent reaction of the Panamanian Government to the DeConcini reservation.

I have had a chance to review the materials that the Panamanian Government recently sent to the United Nations with respect to the Neutrality Treaty, and this material raises questions in my mind, and I am sure also in the minds of others, concerning the intentions of Panama with respect to the treaty and, particularly, with respect to the DeConcini reservation.

If Panama agrees with the nature of U.S. defense rights embodied in the DeConcini reservation, then why has it sent documents to the United Nations, which I shall submit for the Record, and to other heads of state raising questions about this reservation? In light of these actions by Panama, would it consider itself bound by the reservation, or would it feel free to reject it at the time we sought to exercise our supposed rights?

Mr. President, these latest developments reinforce the position that treaty opponents have taken all along, which is that U.S. defense rights were not adequately protected under the Neutrality Treaty and that there had been no meeting of the minds between the two sides on the crucial question of our defense rights after the year 2000.

Mr. President, I urge all Senators to carefully review these latest developments and consider once more the basic question of whether the proposed treaties adequately protect our interest in the continuous and efficient operation of the Panama Canal; and whether Panama agrees with the administration's interpretation of the treaty. The inescapable conclusion is in the negative of both of these questions.

Mr. RIEGLE. Mr. President, I ask unanimous consent to proceed for 15 minutes, as in legislative session.

The PRESIDING OFFICER (Mr. Sarbanes). Is there objection to the unanimous-consent request? The Chair hears none. The Senator from Michigan is recognized to proceed for 15 minutes, as in legislative session.

[From the Congressional Record—Senate, Apr. 10, 1978]

THE PANAMA CANAL TREATIES—REACTIONS IN PANAMA

Mr. STEVENS. Mr. President, I have a series of translations of reports from the Panama news media, both the printed and the oral media, concerning discussions that have been going on in Panama about the actions of the U.S. Senate.

I ask unanimous consent that these translations of articles which appeared in those media from March 20 through April 5, 1978, be printed in the Record at this point.

There being no objection, the translations were ordered to be printed in the Record, as follows:

TORRIJOS CALLS FOR MEETING TO STUDY TREATY SITUATION

Our chief of government, Gen. Omar Torrijos Herrera, today convened a meeting of the National Foreign Policy Council [consejo nacional de politica exterior] in order to study the new situation that has arisen regarding the ratification of the canal treaties by the United States.

The meeting took place at Farallon. During the meeting it was pointed out that the reservations and amendments to the neutrality treaty approved with 68 votes in favor and 32 against in the U.S. Senate have been analyzed on the following basic principles that Omar stated in a letter sent to President James Carter hours before the treaty was voted on: Any reservation that may represent a blemish to national dignity of that alters or changes the objectives of the treaty or that is aimed at blocking the true exercise of Panamanian sovereignty over all territory will be unacceptable to Panama. Our government will not pass judgment on the amendments and reservations, made to the Torrijos-Carter treaties until the U.S. Senate concludes the ratification process, since our people did not ratify the treaties separately but together.

At a forthcoming meeting in which the members of the Council of State and our ambassador to the United States will participate, the policy to be followed in face of the new situation that the most conservative sectors in the United States are creating around the ratification of the treaties that give our country control over the Canal Zone before the year 2000 will be discussed. This is what policy based on principles means.

The spirit of the Panamanian revolutionary process is flexible, it is broadminded and patient, but our people and the revolutionary government have principles that are not abstract but arise from the blood shed by our martyrs in order to eradicate the colonist from the fatherland.

Treaties are a peaceful solution sought by us in order to prevent a high social cost for liberation. However, our sentiments and our flexibility must not be confused with something else. The attitude of our people is reflected in Omar's watchword: "Either on our feet or dead, but never kneeling."

NEGOTIATORS ESCOBAR, ROYO HOLD PRESS CONFERENCE

Romulo Escobar Bethancourt and Aristides Royo, who were part of Panama's treaty negotiating team, met this afternoon with the local press to report on the status of the new Panama Canal treaties which are midway in the process of ratification by the United States.

Escobar and Royo explained that we are experiencing a moment which is not one of euphoria but neither is it one of defeat. They asked press, radio and television newsmen to help the government maintain an atmosphere of calm and watchful waiting. They explained the differences between the amendments and the reservations by the U.S. Senate to the international agreements. Amendments change an article of the pacts totally while reservations are Senate opinions which are added to the pacts and are only obligatory when they are accepted by the other country in the exchange of instruments of ratification.

Escobar indicated that a reservation such as the one presented yesterday by Sen. Dennis DeConcini and approved by the Senate may oblige Panama to present its own reservations when the instruments of ratification are exchanged. For this reason, the Panamanian Government has decided not to make any statement until the Senate decides on the second treaty, the canal treaty.

At that time, the Panamanian Government will analyze each and every one of the amendments and reservations and will take a postion.

However, Royo said, if the Senate continues whittling away at the treaties as it has done so far, it may turn out that Panama will have to tell the world that there are no new canal treaties.

Both negotiators agreed that the canal pact itself, which contains a series of revindications of an economic nature for Panama, will be much more difficult for the U.S. Senate. Royo pointed out: the neutrality treaty was easy for them and very hard for us. Now comes the treaty which is hard for them and good for us. That canal treaty has still not been subjected to discussion and already has 27 amendment proposals. Until the Senate makes a decision, the atmosphere in Panama should be one of calm, never one of frustration or defeat. There should be an atmosphere of analysis without reaching states of despair.

Among the measures adopted to maintain the atmosphere of calm is the postponement of the beginning of classes until 17 April. Escobar explained that the objectives of the conservative senators are to defeat the treaties or to lead Panama to another plebiscite and also to cause problems in Panama by exasperating the people by offending them. Escobar said we will have to endure those provocations because the most important thing now is the treaties' approval. Our irritation in this case is of secondary importance.

Escobar pointed out that one of the articles of the canal treaty which will be torpedoed by the senators is the one referring to the sea level canal. He explained that Panama never wanted this article and that General Torrijos himself said it was equivalent to a second marriage by the same couple.

Further Report

Panamanian negotiators Aristides Royo and Romulo Escobar Bethancourt held a news conference at 14:30 with local newsmen in the offices of the Cerro Colorado Corporation located in the National Bank Building to explain the position of the Panamanian Government.

Royo said that the position of the Panamanian Government at this crucial moment in the history of the nation is prudent, wise and politically adequate. He added that the neutrality treaty has some aspects which are hard for the Panamanian people to accept. However, he added, it is the treaty by which the United States returns the Panama Canal to Panama which really contains concessions favorable to the Panamanian people. Therefore, in the opinion of the negotiators, this treaty, which the U.S. Senate will soon begin discussing, is the one that will undergo a long series of amendments, of which 27 have already been announced.

Meanwhile, Escobar Bethancourt told newsmen that it was necessary to understand that the Panama Canal is part of the U.S. defense system and, for this reason, it was hard for the U.S. Senate to give up the canal to Panama. Escobar Bethancourt said that last night the Panamanian Government was facing a state of uncertainty and could not express any joy over something which still is incomplete.

He added that the last reservation to the neutrality treaty touches upon the Panamanian Government's main concern not to have the U.S. Government meddling in Panama's domestic, political or state affairs. Further, he said that nonetheless, our government is highly optimistic regarding the power of understanding of the two countries linked together by the canal.

Royo and Escobar Bethancourt said that the Panamanian Government's final position will be established when the Torrijos-Carter ratification instruments are exchanged and that Panama has only two options: to accept the ratified treaties as they stand or to consider that they violate the nature of the Torrijos-Carter treaties approved by the Panamanian people during a plebiscite on 23 October 1977. For this reason, the Panamanian Government is maintaining a cautious attitude and wise prudence, Escobar Bethancourt said, and is waiting for the final results of the U.S. Senate debates.

Critica on Treaty Amendments, Reservations

While the nation analyzes the real meaning of the word "amendment—which changes the true nature of an article of the treaty and affects its essence, implyng, according to some, the "rejection" of the document—and while the legal effects of the notorious "reservations"—which is a weaker term than "amendments" but stronger than "interpretations"—are considered, the local media researches, gathers

information and evaluates the scope of the U.S. Senate sessions on the Torrijos-Carter treaties.

The fruitful meeting held yesterday afternoon with treaty negotiators Romulo Escobar Bethancourt and Aristides Royo was part of this search for information. The dialog revealed through details on the treaty negotiating sessions and the way in which the United States views certain articles of the treaty.

This is how we found out that despite the existence of Spanish and English versions of the documents, the characteristics of our different legal systems—the Anglo-Saxon and Latin systems—have led to interpretations being made from very particular viewpoints and this, together with the idiomatic concepts, produce adverse effects in each country every time the texts are analyzed.

The necessity of making serious and thorough studies without haste, concerning what has occurred so far and what is yet to be discussed, was clearly established after the exchange of opinions. We are aware of the lack of experience of President Carter concerning the ways in which the senators operate, even those of his own party. This inexperience has been the cornerstone of the obstacles to ratification, but it has been useful since it was his "virgin" spirit which led him to materialize the negotiations. This fact must be taken into consideration because if they are not ratified in this first [as published] year of the U.S. President's term, several decades would have to pass before another president would decide to follow in his footsteps or thousands of lives would have to be lost to end definitely the American colonialist presence in our country.

For now, the DeConcini amendment can be considered to be part of the "Torrijos-Carter understanding" although it was made in bad faith. The final conclusion about its scope will be given by us later. However, that was the general conclusion. We must be prepared to hear more amendments and, especially, dozens of additional reservations being proposed with greater diatribe against Panama and its rulers since thus far we have heard very few heirs of the intelligence of a Jefferson, a Lincoln or a Benjamin Franklin.

Reaction to Treaty Ratification Generally Mild

Two minor demonstrations by extreme leftwing university students have been the only reaction on the part of the Panamanian people following yesterday's ratification of the first of the Panama Canal treaties which was voted on in the U.S. Senate. Aside from that, Panamanians received the news of the ratification of the neutrality pact with almost total indifference.

The Americans who live and work in the Canal Zone and had firmly opposed the new agreements also received the ratification of the neutrality pact with overwhelming apathy.

Last night, the extreme leftwing students staged a demonstration against the ratification on the campus of the University of Panama. The group of demonstrators was small, as was the demonstration staged this morning in front of the office building of the American Embassy.

Olimpo Saenz, leader of the Camilo Torres Circle, said that the important thing is not the number of participants but the essence of the protest movement against the canal treaties.

On campus last night and this morning at the U.S. Embassy, the demonstrators symbolically burned the new treaties. There was no violence reported during any of the events.

The Panamanian Government reacted by announcing that it will call a special general State Council meeting with Panamanian Ambassador Gabriel Lewis Galindo in attendance. The Panamanian Foreign Ministry revealed last night that the Council of State meeting will be held only after the U.S. Senate considers the second treaty, the one that actually refers to the Panama Canal.

One office worker explained the people's apathy toward the ratification by noting that we Panamanians feel that the conventions negotiated between the two countries do not fully meet Panamanian expectations, let alone doing so following the amendments and reservations made by the U.S. Senate.

Student Group Denounces Treaty Changes

Members of the University Anti-imperialist Front (FAU) yesterday picketed the U.S. Embassy to protest and denounce the efforts by U.S. Senators to change the

political conditions of Panama [condiciones politicas de Panama] in favor of their plans of oppression.

The group issued a communique pointing out that everything indicates that the U.S. Government is maneuvering with amendments, understandings and reservations in an effort to reverse the essential gains that the Torrijos-Carter treaties provide Panama.

Ambassador to U.S. Returns, Comments on Canal

(Special report from Washington By Diana Arosemena—presumably recorded)

Gabriel Lewis Galindo, Panamanian ambassador to the United States, and his legal adviser, Ricardo (Bilonic) Paredes, returned to Panama early this morning at the request of Chief of Government Gen. Omar Torrijos to participate in the very important meeting which General Torrijos will hold with his government team concerning the ratification of the neutrality treaty.

Ambassador Lewis, before leaving the United States and being besieged by television, press and other communications media representatives, said the following: Our government has declared radio silence because, in international politics, very often the best word is the one that is not spoken. General Torrijos and President Carter, before the television cameras and with the world as a witness, designed a suit of clothing which replaced the colonial cloak that covers 1,442 square km of our land. This cloak was created in 1903 by a Frenchman who claimed to represent Panama and by then U.S. Secretary of State Hay, a well-known colonialist and expansionist figure.

President Carter more closely approaches the sense of morality and dignity of his people than some government spokesmen. What Senator DeConcini added to the neutrality treaty and what he said during his speech yesterday has wounded the depest feelings of almost 2 million Panamanians.

I pray to God that in the scale of values of our people, 32 [as heard] will be the number that will inspire us to continue fighting until we achieve our ideal. Panama is a small country, but it is a nation that is large in pride and dignity and it will never be a land of eunuchs. Latin America is awakening. We have all be humiliated 32 times over.

Costa Rican, Nicaraguan Presidents Comments on Ratification

Costa Rican President Daniel Oduber has stated that the ratification of the Panama Canal neutrality treaty by the U.S. Senate was a struggle of all America and that the United States has shown that it is possible to discuss any hemispheric problem on an equal footing.

(Question by unidentified interviewer—begin recordings.) Here with us is the president of the Republic of Costa Rica, Daniel Oduber Quiros, who will speak to us about the approval of the Panama Canal treaty today. [as heard] Don Daniel, what do you think about the approval of this treaty?

(Answer) Look, Marcia, it has been such a long struggle—as far as I can remember, at least 16 years—dating back to when I first assumed the office of foreign minister of Costa Rica. Since then we have waged what I would call a hemispheric struggle along with the Panamanian people and all its government representatives so Panama could recover its rights over the canal. I still do not know in depth the amendments that I have been told would be added to the treaty. However, if this whole set of concepts, this whole set of legal provisions, is acceptable to the Panamanian people, I would say that a struggle of all of America has been won and that the United States has been able to show the world that it is possible for a large and a small nation to negotiate on an equal footing on the American continent. The approval of the treaty has a profound meaning. In the few days that I have left in office, I will make this known to all the people, groups and countries whom I asked to be patient for many years in order to negotiate and draw up a treaty that marks the beginning of a new era for the Republic of Panama.

(Question) Don Daniel, what effects do you think the approval of this treaty will have on U.S. relations with the Latin American countries?

(Answer) The most important thing is that President Carter has demonstrated that an American president can believe in fraternal relations on an equal footing with the nations of the American continent. Many times as a government leader and politician throughout all the years that I have been engaged in these activities, I came to doubt the good faith of the U.S. Government leaders as far as their relationship with Latin America is concerned. However, in the specific case of

President Carter, since he was elected I realized that Latin America meant something to him and during the times that I have talked to him and other officials of his administration, I have reached the conclusion that Latin America has a lot to expect from the United States under Jimmy Carter's rule. [end recording]

In the meantime, Nicaraguan President Gen. Anastasio Somoza today came out in favor of the ratification of the neutrality pact in Washington yesterday. President Somoza said it was a step forward toward international equality.

(Question by another unidentified interviewer—begin recording.) What meaning does the ratification of the Torrijos-Carter canal treaties have for you and for the small and weak nations?

(Answer) Well, (aware) that there is international law, that we live according to treaties and that legal power has greater value than force, the world has come to recognize the interests of nations, whether large and powerful or small. I think this is a step toward international equality.

(Interviewer) that is right! (end recording)

Independent Lawyers Express Concern Over Treaty Amendments

The Independent Lawyers Movement today expressed what it termed deep concern over the approval of some amendments, understandings and reservations to the neutrality treaty, especially the approval of the reservation by Senators Dennis DeConcini and Sam Nunn, which they consider to be more harmful to the interests of Panama.

Workers Central Rejects Treaty Amendments, Reservations

(Article by Mario Martinez P.)

Several unions in Panama and the Canal Zone have expressed concern over the ratification of the neutrality treaty with the inclusion of certain amendments and reservations which curtail the gains achieved by the people of Panama.

At the same time, the National Central of Panamanian Workers (CNTP) recommended that "the unity of all forces which support the (revolutionary) process be strengthened around the great anti-imperialist front." In a statement to the media yesterday, the CNTP expressed "unrestricted support for Gen. Omar Torrijos and the reaffirmation of our revolutionary position." It urged its members and all progressive sectors of Panama "to seek international economic and technical support and to massively participate in the upcoming elections for popular power."

The CNTP issued a statement yesterday expressing "its most vigorous rejection of the U.S. Senate maneuvers which curtail essential gains of the Panamanian nation." According to the statement, the labor organization, one of Panama's largest, rejected the so-called amendments, reservations and understandings of the neutrality treaty.

The document, which was signed by the plenum of the CNTP executive secretariat, made certain recommendations to its members and asked them to "close ranks" in view of the present situation. It also encouraged its members to demand that the U.S. Government faithfully comply with the treaties approved by the Panamanians. It made clear that it is necessary to avoid desperation and "imperialist" provocations. Similarly, it requested support for Gen. Omar Torrijos and the process he heads.

Regarding the position to be followed by CNTP members, it called for "the rejection of any attempt by the U.S. Government to perpetuate the presence of its soldiers in our territory."

The reaction of the different labor organizations is in regard to certain last minute amendments or reservations to the neutrality treaty ratified by U.S. Senators on Thursday. According to the Panamanians, the amendments or reservations curtail in practice the hopes for national liberation to recover the territory described as the Canal Zone. The CNTP statement notes that the amendments and reservations to the neutrality treaty "are for imposing conditions on our people and government with the preconceived purpose of perpetuating the presence of murderous troops in the canal strip, the colonial and neocolonial enclave and everything that goes with it."

Torrijos, Aides Studying U.S. Senate's Treaty Amendments

(Article by Luis Castilla Bravo)

Without making any sort of public statement in reply to the U.S. Senate, Panamanian Chief of Government Gen. Omar Torrijos Herrera and his chief aides have been meeting in permanent session since Friday to assess the extent of the well-known Senate amendments, particularly the DeConcini amendment (as published), and the reservations established by the U.S. Senate to the treaty on neutrality signed by the United States and Panama.

As may be recalled, Panama approved a "package" of two documents that make up the treaties on the Panama Canal. Both were initimately linked and therefore subject to a single condition: the disappearance on 31 December 1999 of the last Yankee boot from our national territory.

These documents, submitted to the Senate's scrutiny after being signed by President Carter, underwent minute and thorough consideration by that august chamber but did so in reverse, that is, instead of first analyzing the document that indicates the end of the Hay-Bunau Varilla Treaty and sets a date for the end of U.S. presence on that part of the territory, the Senate ratified the second part, which is practically military in nature.

General Torrijos indicated on the same day the Senate was voting that under no circumstance would he accept amendments that injure national dignity. On his part, Carter has said that these amendments do not affect the spirit of the treaty, but the senators have already begun to express serious concern since, in the opinion of some of them, the treaty has been violated.

Although the national and foreign press has attempted to penetrate into the residence on 50th Street owned by the chief of government's economic adviser, where the permanent sessions are taking place, all efforts have been futile.

It has been learned behind the scenes that General Torrijos, in addition to consulting with his main advisory team, is also consulting the main leaders of the world before giving an official reply. in the other hand, in yesterday's session, the Senate began to show concern regarding Panama's reaction since up to now there has only been quiet, and quiet generally comes before the storm.

Robert P. Griffin, for example, one of the treaties main opponents, said yesterday that he could not understand how the senators could vote in favor of one of the treaties and against the other. "As I see it," he pointed out, "the two of them constitute a whole."

Government Officials Discuss Treaty Ratification Process

(From "La Llorona" column)

Aristides Royo, Adolfo Ahumada, Perez Valladares, Rory Gonzalez, Ambassador Lewis Galindo and Foreign Minister Gonzales Revilla make up the group of ranking state officials headed by Vice President Gerardo Gonzales who left Pasitilla Airport yesterday for Parallon, presumably to discuss the course taken by the treaty ratification process in the U.S. Senate.

Columnist Calls for Unity in Face of Treaty Changes

("Conciencia Publica" column by Miguel Angel Moreno Gongora: "Unity and Sorrow of the Fatherland")

The voting on the neutrality treaty and the reservations, understandings and amendments adopted show how wrong were those who once thought that President Carter's political ability and the Senate's respect for him were in direct proportion to his self-esteem and Christian good faith toward Panama. In the eyes of U.S., Panamanian and world public opinion, his personal prestige and political stature have been dealt a serius blow. They have been very seriously wounded.

President Carter has to be either naive, very blind or very insincere not to realize that the final result of what occurred in the Senate at 16:30 on 16 March does not represent the Panamanian people's aspirations and is not in keeping with the promises he made to the world that justice would prevail for Panama.

In view of the imminence of an adverse vote and seeing himself weak and incapable of fulfiling his promises and predictions regarding the voting, the U.S. President had to make concessions to senators in one group or the other. In the end, these concessions resulted in a treaty patched, scratched out and rough drafted against Panamanian interests because it grants the United States the right to

reserve for itself the interpretation and acceptance or rejection of situations that will be humiliating for Panama because they distort the objectives of the treaty, confirm and reaffirm perpetuity, make acceptable the right to intervene in our domestic affairs and prevent us from fully exercising our sovereignty even after we physically recover the canal, as we will demonstrate shortly.

The Panamanians' votes for the treaties were aimed at responding affirmatively to a question concerning the text of the documents that were later submitted to the Senate. That was the will of the majority, that was the watchword and that was what our sovereign people consented to. We may or may not have agreed with the treaties, but as Panamanians and in the face of the accomplished fact, the only thing left for us to do was to wish that the voting would favor the bright destiny of our national greatness. Nonetheless, this was not the case because in a new demonstration of secular imperialism the senators of both parties adulterated the contents of the treaty, making it unacceptable to every good Panamanian. From the standpoint of international law, our public laws and honest diplomacy, this simply and clearly means that the treaty has been virtually rejected because it definitely is not what we Panamanians voted for.

The amendments, reservations, understandings and interpretations—terms under which the adulterations that the senators included in the treaty are euphemistically masked—automatically lead to its rejection because they render ineffective the will of the Panamanian people as set forth in the October plebiscite.

Now that the text of the treaty has been changed, we must begin a new stage of negotiations. The results of these negotiations must later be subjected to a new plebiscite in accordance with the constitution, which establishes that any treaty regarding the canal, its adjacent zones, the canal's protection, or the construction of a new sea-level or a third set of locks will be subjected to a national plebiscite.

We must face this new stage in our national suffering with unity and patriotism and with serenity and prudence. In particular the government leaders must avoid all prejudices, malice or reservation toward those that oppose it, because those opponents are above all Panamanians as patriotic as they are. They feel the fatherland's sorrows with the same intensity.

Close Analysis of Treaty Modifications Urged

(Editorial: "The U.S. Senate and the Neutrality Treaty")

The U.S. Senate yesterday took a stand regarding the "Treaty for the Permanent Neutrality and Operation of the Panama Canal" in ways and in terms which have already been disseminated by the various media and which we have covered in our reporting section. We now have to wait for the debate on the "Panama Canal Treaty"—announced for the immediate future—to start. We also have to wait for the U.S. Senate to reach a decision on it. Consequently, considering that the two treaties will become effective simultaneously, one should feel that it is too soon to express definite judgments and opinions on what was agreed upon in Washington yesterday, which is only a part—although a substantial part—of the matter that is covered as a whole by the two aforementioned treaties.

In spite of everything and even though, we repeat it would be wiser to wait for a final U.S. Senate decision, differing opinions, both for and against, will be made known regarding yesterday's decision. Naturally, the opinions expressed will be varied and probably of a discordant nature.

One of the first questions to ask ourselves would be to what extent and how the reservations, modifications, additions—or whatever they are called—introduced by the U.S. Senate will alter the scope, meaning or goal of the dispositions established in the articles of the original texts, which were signed by President Carter and General Torrijos and ratified by an overwhelming majority of Panamanians in a plebiscite held for that purpose. It is necessary to read and analyze with care, attentiveness and a great deal of calmness the so-called modifications before reaching a definite opinion on the matter. If after such an analysis one should consider them as unimportant, secondary and having no affect on the essence of what had been previously agreed upon and signed, then there should be no objection to accepting them, thereby avoiding a situation in which the treaties—which were so laboriously negotiated—will not be put into effect. At any rate, what is most advisable now is to keep an alert and vigilant attitude until complete Senate ratification is achieved after the "Panama Canal Treaty" is voted on.

Possible Effects of Carter's Letter to Torrijos Examined

("Bona Fide" column by Camilo O. Perez: "The President's Serious Problem")

We have been weighing the contents of the letter that President Carter sent from Washington to the Panamanian chief of government immediately following the executive's acceptance of the DeConcini reservation. The letter states that Panamanians should not be worried about the "reservations" or amendments.

President Carter's statement seems to be opposed to the will of the Senate and at the same time a contradiction of the U.S. legal system. The effect of Carter's statement can be seen in the light of two possibilities:

1. It is an imprudent and naive maneuver. However, it is made in good faith befitting a man devoid of puritanical philosophical ideas. In this respect, Carter is a good Baptist.

2. It is a reply which seeks only one thing: to placate the various Panamanian sectors who do not see eye to eye with the amendments, reservations and understandings.

Besides, there is a danger that might directly affect the U.S. Senate's acceptance of the Panama Canal treaty. When the undecided senators realize that none of the amendments or reservations already approved in the neutrality treaty will meet with the President's approval, according to the letter we are commenting on, President Carter better be prepared for the second round of debates on the treaty that will return the Canal Zone to Panama.

We are more than sure that the senators will intensify their strategy on the Senate floor, and that, aware of the President's position, they will not believe in other agreements [as published] and will propose amendments and reservations which will be even more harmful and frustrating to Panama.

This means that President Carter and his Senate aides will have to struggle harder to avoid the defeat of a strategy as complicated as the one they carried out recently.

When statements are made, however, we must consider they way they will be interpreted domestically as well as abroad.

A calm study must be made so as to establish a sort of security cordon. [as published] The same thing happens here. There are serious sectors that believe that the reservations and amendments are a change in the text of the treaty. They are not mistaken. Therefore, the senators who will propose amendments and reservations will be rejecting the treaties and will work toward that end.

FEP Issues Communique Rejecting Senate's Treaty Changes

(Communique issued by the Federation of Panamanian Students at special session held at the University of Panama on 21 March 1978)

"For organized vigilance by the people to defend the dignity of the fatherland":

1. Through the information media, the country has received with surprise the postponement until 17 April of the opening of classes for elementary and high schools and subsequently for the university. The same surprise was felt by the national leadership of the Federation of Panamanian Students (FEP), which was never consulted about the measure. The published report states that there was a request from the Board of Directors of the National Federation of Parents Associations employing the "argument" that Holy Week was at hand and that there are material problems unvolved in the opening of classes.

2. However, this postponement occurs in the context of the discussions of the Torrijos-Carter treaties, which are currently the subject of debate by the U.S. Senate. Unofficially, it is being maintained that the measure was designed to forestall possible provocations on the part of antipatriotic forces within the student movement. Although we concede that such a possibility exists, such a position reflects a great lack of confidence in and an underestimation of the maturity of the Panamanian student movement and of the masses in general.

3. For this reason, the FEP, based on its historic principles and on its revolutionary authority derived from the sacrifices of its militants and its martyrs, in response to the DeConcini reservation and the possible amendments that may be made to the Torrijos-Carter treaty, declares its firmest and most militant support for the position hased on principles and national dignity that was outlined by Commander Torrijos in his letter to Carter on 15 March: "Panama will consider unacceptable any reservation which sullies the national dignity, which distorts or changes the objectives of the treaty or which seeks to prevent the exercise of

sovereignty by Panama over all its territory, the turnover of the canal and the military withdrawal on 31 December 1999."

4. It is obvious that the imperialists, taking advantage of the failings of the process and depending on their unquestioning supporters in Panama seek by means of the amendments and reservations to halt and destroy the process of national liberation which is being led by the military. Consequently, although it is true that the FEP realizes that the popular movement and Panamanian patriots in particular must exercise great patience, it is no less true that this calm should not be interpreted as passivity or as a sign of weakness or desperation. In this lies the hope of the enemy who wishes to isolate Commander Torrijos from his people and promote wavering within the forces committed to the struggle for national liberation, as well as to exclude the masses, its only guarantors, from this patriotic struggle.

5. Despite all the pressure, blackmail, provocations and attempts to anesthetize the patriotic conscience of our people, the popular movement has received with indignation and without cowardice the "reservations" approved by the U.S. Senate, which have only caused concern among those who trusted in the kindness of the imperialists, those who placed their own interests above the sacred interests of the fatherland and those who never believed that we were involved in a real struggle for national liberation and who did not realize that if there is no ratification, our people, fearing nothing, will take the path imposed by the circumstances in order to achieve their full independence—even taking up arms if necessary.

6. Therefore, we oppose the method used to decide on the postponement of classes because it introduces mistrust and suspicion about the fate of the treaties.

7. In addition, we demand the publication, as soon as possible, of the amendments and reservations attached to the neutrality pact by the U.S. Senate and [an explanation of] the extent of these amendments and reservations.

8. Moreover, in order that our people not be left of of this patriotic struggle, we demand the inclusion of all the active forces of the country into the process of determining and preparing the alternative actions to be taken as a result of the demands of the U.S. imperialists.

On our feet or dead, but never on our knees.

The FEP is on the march; nothing and no one can stop it.

(Signed) Federal Executive Council of the FEP.

Foreign Ministry Releases Text of Canal Treaty Changes

(Text of Panamanian Foreign Ministry communique dated 27 March 1978)

In our communique of 16 March we expressed the government's decision not to make any pronouncement on the Senate's resolutions concerning the treaty on the permanent neutrality of the canal and the operation of the Panama Canal. We said our reason for this was that the Panamanian people had approved two treaties, that is, the one referring to neutrality and the treaty on the Panama Canal, and until the Senate decides on the latter Treaty it will not have given an answer to the decolonization program approved by the Panamanian people.

We also said in that communique that the government as whole would analyze the conditions under which the Senate gave its advice and consent to the neutrality treaty and the conditions it would express when pronouncing itself on the Panama Canal treaty. We have undertaken this process. But since the national liberation process is a national commitment which requires that each citizen be totally aware of the Senate understanding on the treaties, the Foreign Ministry has deemed it advisable to publish the text of the Senate resolution on the neutrality treaty without waiting for its official text to be delivered to us through the regular channels.

We are experiencing a crucial moment in our history. Now more than ever, the fatherland demands of its children calm, dignity and a sense of national unity.

Panama views its future with the calm of a nation that is enveloped in an irreversible national process of decolonization.

Let us recall that only peace-loving peoples can be free. Panama has decided on its definitive liberation. We are accompanied in this process by the peoples of the entire world, as we evidenced at the Security Council meeting held in March 1973 in Panama. There the world, in view of the veto of the U.S. delegates, vetoed [veto] the United States for not resolving the causes of conflict produced by the presence of a foreign government on Panamanian territory.

We recommend that our fellow citizens objectively study the documents which are being published today in Spanish and English so that they can assist the government in adopting the most patriotic decision which, as Panamanian Chief of Gov-

ernment Gen. Omar Torrijos Herrera has said, will be within the framework of a vast national consensus.

Foreign Ministry.

Negotiator, Ambassador Leave for Washington

Education Minister Aristides Royo left yesterday for Washington together with Panamanian Ambassador to the United States, Gabriel Lewis Galindo. No official source has disclosed the reasons for the departure of minister and negotiator Royo for Washington, but it is believed that his trip is related to the Senate debate on the Panama Canal treaty. It was also not disclosed if Dr. Royo is carrying any special message from the Panamanian Government to U.S. authorities.

BAYANO Sees Treaty Amendments as Deliberate Provocation

BAYANO, an organ at the service of Panamanian workers, has stated in its editorial that the incorporation or reservations, understandings and amendments into the treaty on the neutrality of the canal and the functioning of the waterway is a political maneuver designed to produce an unsettled situation within Panamanian society.

The newspaper, which is published biweekly, later states that by means of the attitude adopted by the U.S. Senate, the Carter administration is skirting its historic responsibility by transferring the problem to the national government, particularly to its top leader, General Torrijos.

In his letter to the U.S. President on 15 March, our chief of government said that no amendment or reservation that harms the truly just aspirations of the Panamanian people will be accepted. The biweekly BAYANO emphasizes that U.S. Government circles have directed the first amendment and reservations toward the issue that is most sensitive where the Panamanian nation is concerned—the nation's right to the sovereign and independent exercise of effective neutrality, with intervention or foreign military aggression—in other words, to make the Panamanian liberating process react to the provocation.

The BAYANO editorial emphasizes the people's devotion to peace and to the construction of a future without the wounds of a bloody struggle for liberation. However, in the face of an attempt to keep the aggressive imperialist boot on their soil eternally, our people will be prepared to take action, whatever the consequences, in order to achieve total independence, BAYANO says in closing.

Columnist Equates Senate Canal Treaty Changes With Rejection

("Bona Fide" column by Camilo O. Perez; "Amendments to Amendments and so on Until the End of Time.")

We have read in the front page of yesterday's issue of La Estrella de Panama a paid advertisement consisting of a translation of a quotation from Time magazine's latest issue. It deals with President Carter's change of attitude in the face of pressures from some senators, including Mr. DeConcini.

In spite of the commitment between President Carter and General Torrijos regarding a "certain pledged word," the powerful U.S. political and monopolistic forces have prevailed over this "pledged word."

Our position in this connection is characterized by calm study and a cautious wait-and-see attitude. This is so because, as we have repeatedly said, this is a problem of U.S. politicians and not of Panamanians. However, we would not be surprised if things changed in the future and Washington decided to pass on to Panama the responsibility for rejection.

Notwithstanding the foregoing, we feel that the first treaty has already been rejected by the U.S. Senate. Thus, the waiting in regard to the other treaty, that is, the treaty concerning the Panama Canal, involves only a matter of procedure to formalize the rejection.

Mr. Carter faces a serious political problem that will lead to decisions which will for the first time bring to the surface the crisis which has existed for decades in the relationship between Congress and the Executive branch.

Furthermore, once the treaties and the declarations containing the reservations and amendments are returned, we Panamanians will face the possibility mentioned above, which Time has mentioned in order to attack Carter.

We have begun a study of history and found that there is a particular precedent justifying what the Senate is now doing. In other words, when the Thompson-

Urrutia treaty was negotiated, the U.S. Senate returned it with certain amendments after discussing it, feeling that it had approved the treaty in that manner. It was then that the Colombian Government, in view of that fact, returned the treaty to the U.S. Government with its own observations and amendments to the proposed amendments. This forced the Senate to discuss the matter again. The rest is history.

In this case, after the treaties reach Panama with all of the detailed observations, we will have to analyze the cited precedent in order to keep the responsibility for crisis from being passed on to the Panamanian people.

This is so because if violence arises as the only possible argument to achieve our patriotic demands, let the first shot be fired there and not here. This is the way the Vietnamese acted.

Commentator Expects Public Debate on Treaty Changes

("Analysis of the News" commentary by Mario Velasquez)

Following the holy week break, which the Panamanians take advantage of to escape from reality a little, by vacationing in the country's interior and participation in religious celebrations, the country returns to normalcy and to its daily cares.

We notice with satisfaction that the week begins with the official public announcement by the Foreign Ministry of the amendments, reservations, and understandings which the U.S. Senate introduced to the resolution of ratification of the Treaty on the Permanent Neutrality of the Canal and the Operation of the Panama Canal.

The public announcement of these important documents is accompanied by a Foreign Ministry communique which reiterates the government stand announced in its previous communique of 16 March to the effect that it will not make any pronouncement on what the Senate had agreed to in relation to the neutrality treaty until the Senate has decided on the Panama Canal treaty, on which it will probably vote in late April.

I feel that both Foreign Ministry communiques—the one dated 16 March and the one of this morning—display a clear sense of responsibility in handling a very delicate issue. It is a sensible and patriotic thing for the government to make a very serious evaluation and a thorough study of these amendments, reservations and understandings prior to taking a decision which, due to the nature and dimension of the problem, will be a most important one. Likewise, the public announcement of these documents and the recommendations included in the last paragraph of the communique published this morning, which asked the Panamanians to study the documents published in order to help the government make the most patriotic decision, is an invitation to a public debate on these amendments, reservations and debates. This is the only possible means by which the community will be able to discuss the scope of these amendments and make public its opinion, and in this manner the government will have sufficient data to permit it to make a decision within the framework of a great national consensus, as this morning's Foreign Ministry communique said:

Actually, the Foreign Ministry communique which we are commenting on is in the spirit of the letter which Gen. Omar Torrijos sent President Carter on 15 March. In fact, in this letter Torrijos told the U.S. President that the Panamanian Government will begin the careful study of these reservations and will announce its position once the Senate has completed the voting on both treaties. Then, in a strong worded paragraph which is a reiteration of a political decision and which really voices the unanimous feeling of the Panamanians, Torrijos told Carter that such a study will be based on the following concepts: Panama will not accept any reservation which offends national dignity, which distorts or changes the objectives of the treaty or which is aimed at impeding the effective exercise of the sovereignty of Panama over all of its territory, the turnover of the canal, and the end of military occupation on 31 December 1999. Torrijos then added in the same letter sent to President Carter that the Panamanian people will not accept any words, misplaced commas or ambiguous phrases which are aimed at or mean an occupation in perpetuity disguised as neutrality or an intervention in Panama's domestic affairs.

It seems very clear that these paragraphs we have quoted define the national position shared by all conscientious Panamanians. In the light of these concepts Torrijos is transmitting to Carter the manner in which the amendments, reservations and understanding which the Senate will add to the two Panama Canal treaties will be studied. In other words, Torrijos has established parameters, points of reference for the studies to be made of the amendments. This is not a matter of

legal speculation or intellectual loopholes, but very clear and precise terms of consideration which pertain to our national dignity and sovereignty. The serious part, the obscure part of this issue is found in the U.S. counterpart, where a series of situations and interests, visible and complex, are having a negative influence on the handling of the problem of the ratification of the treaties.

If there is any doubt in this respect, the Panamanians should at this stage of our relations with the United States be convinced that U.S. national interests prevail in these relations and that there has never been anything which we could call generosity or altruism in Washington's policy toward our country.

As for the senators, a large majority of them are immersed in the political problems of their states, in their reelection possibilities, and concerned solely about what they call the national security interests of the United States. We witnessed the 7-hour U.S. Senate debate on Thursday, 16 March, when the neutrality treaty was approved. Together with Luz Maria Noli [Televisora Nacional reporter], we were the only Panamanians inside the U.S. Senate during those dramatic hours. We lived that historical moment and were not able to notice at any time any moment of grandeur or a sense of history on the part of the dozens of speakers who came up, one after another, to reiterate their concern over the military, economic, and political interests of the empire, totally removed from and indifferent to the interests of a small republic which has lived for 75 years tied down to the fate of the U.S. nation.

Nothing reflects the spirit of the Senate better than the conversation between President Jimmy Carter and Republican Senator Edward Brooke, when the only black senator told Carter that he was creating a sort of Frankenstein by not permitting changes. Carter told him that he had given his word to Torrijos and he could not back down. Senator Brooke then answered him: Look, that is the Panamanians' problem; that is not our problem. The report on this conversation is carried in today's issue of the Time magazine, dated 27 March. The report adds that the Senate leaders then convinced President Carter to back down, and subsequently negotiations began with Nunn, Talmadge, DeConcini and other senators who insisted on amendments.

And this concludes our analysis for today. Tomorrow, we will continue with more on the same subject.

Critica Sees Need for Plebiscite on Amendments

(Editorial: "Foreign Ministry Communique")

The Foreign Ministry yesterday released a press communique which was widely disseminated by all the information media in the country. The Foreign Ministry began by recalling that on 16 March it had said that the "revolutionary government had decided not to make any pronouncement on the Senate's resolutions in relation to the treaties on the 'Permanent Neutrality of the Canal and the Operation of the Panama Canal.' "

As was clearly stated on that occasion, the revolutionary government decided to abstain for now from giving an opinion on the Senate decision. The reason was obvious: The Panamanian people by constitutional mandate in the 23 October plebiscite gave their approval, without reservations or amendments, to the two treaties that were signed on 7 October 1977 in Washington before the chiefs of state of the continent in the OAS Room of the Americas, the so-called Torrijos-Carter treaties which form, under their signature, a single legal entity.

However, the U.S. Senate recently began debating the canal treaty, which is the more important for Panama, without lessening the importance of the neutrality treaty. Therefore, the Foreign Ministry affirmed that the national liberation process is a national commitment, which is why it decided to publicize the Senate resolution so that all the changes made to the neutrality treaty may be studied by all the people in order to achieve the broadest patriotic consensus of national opinion before making a decision on a matter of such vital interest.

We want to be totally clear regarding the reservations, understandings and amendments to the treaty which have passed the great test before the U.S. Senate. In light of the constitutional provisions which authorized the plebiscite for approving or disapproving the Torrijos-Carter treaties, we consider that any addenda [aumentos] to those treaties made by the U.S. Senate will have to be submitted to a plebiscite in Panama.

Some of those amendments are acceptable, such as that agreed upon between President Carter and General Torrijos before the plebiscite was held. But there is one which, because it affects the sole responsibility of Panama in the canal's

operation after the year 2000, cannot be accepted, primarily because it would permit U.S. armed intervention in the event of a canal stoppage, which is something that has happened more than once to its actual "owners."

We will try to study these amendments in order to pinpoint their lack of reasoning. Meanwhile, the revolutionary government can also prepare its reply, duly approved by the people, in case President Carter cannot manage to eliminate the humiliating and intolerable aspects of these amendments.

Radio MIA Forecasts New Treaty Plebiscite

(Unattributed commentary)

The Foreign Ministry communique did not reveal the official position of the Panamanian Government. The ministry merely issued a document to enlighten the nation on the amendments, reservations and changes made by the U.S. senators.

We do not know, however, what the position of the Panamanian Government, of General Torrijos or of the foreign minister is. In fact, they have turned the problem over to us that we might express our opinion as Panamanians.

Mario Velasquez' statements, however, have made us wonder, because he would appear to imply, as far as I can see, that President Carter was able to obtain the ratification of the first treaty by modifying his position concerning his promise to General Torrijos and allowing the amendments to be included. If Carter had not negotiated with DeConcini and the others, the treaty would probably not have been ratified.

The above leads us to believe that the treaty has not been altogether satisfactory to the chief of government's original position. Yesterday, for example, we approached Dr. Cesar Quintero while visiting the Finance Ministry and asked him about the matter. Quintero told us that the situation was one which demanded that every Panamanian express an opinion on the treaty and that he is considering initiating a serious analysis of the significance and effects of the amendments.

Taking all the above into consideration, we venture to advance the following journalistic prediction; first, that we will have to hold another plebiscite. Neither the government nor General Torrijos is going to assure sole responsibility for accepting a treaty with amendments which constitute changes.

Amendment means correction. Reservation, as far as we have been able to determine, means that the U.S. Government includes some considerations to the treaty which are attached to it and, once it is delivered to Panama with said reservations, if Panama fails to respond to them within a specific period of time as established by international law, then the reservations become part of the treaty, tacitly accepted through Panama's silence.

Consequently, we believe the government is again considering passing on the responsibility to the people. We do not believe that General Torrijos is considering accepting the treaty, as many claim. Thus, it is quite probable that we will have to hold another plebiscite on the ratified documents. We have come to this conclusion in view of the official silence, since nobody knows what the position of the govenment in this respect is.

Second, after the statements made last night by Mario Velasquez, who has all along been close to General Torrijos and who has usually followed the line of the government, we have concluded that the treaty was ratified because Carter failed to fulfill his promise to General Torrijos, and we believe that in view of this failure, the chief of government will not accept full responsibility.

And third, we believe that a meeting of General Torrijos with President Carter in Venezuela, with Carlos Andres Perez as mediator, is imminent. This meeting could be official or unofficial. As you know, our chief of government could get in his plane here, take off, and suddenly appear in Venezuela, even without the knowledge of President Perez. However, they will meet and talk, for such is the modern diplomacy introduced by General Torrijos, which has been criticized by some sectors because it dispenses with diplomatic coordination. Nevertheless, whether good or bad, such is the way General Torrijos has handled things in the country, and in doing so he has placed the problem of Panama on an international level.

We repeat, the three scoops we have for you today, the products of our journalistic deductions, are: first, that the government is not pleased with the ratified treaty; second, it is being implied, according to my understanding, that President Carter had to yield ground in his promise to General Torrijos, which will be sufficient reason for the treaties to be subjected to a new plebiscite; and third, a meeting

between President Carter and General Torrijos during Carter's visit to Venezuela—or perhaps before—is imminent. Such are our scoops for today.

Foreign Ministry Communique on Treaty Changes Praised

(The "Los Hombres y Los Hechos" column)

The communique issued recently by the Foreign Ministry under Nicholas Gonzalez Revilla's leadership revealing the amendments and reservations attached to the neutrality treaty by the Senate is very timely and patriotic. This has helped to determine the national consensus sought by the government.

It has been disclosed that one of the main points in the agenda Carlos Andres Perez has set up for President Carter's visit to Caracas is a review of the situation regarding the Panama Canal treaties. This is most important because it is another sign of Latin American solidarity with our country.

Matutino Urges Resistance to Treaty Changes

(From the "Bitacora de la Redaccion" column)

The amendments and reservations attached to the neutrality treaty and those which may be attached to the Panama Canal treaty will be discussed within the context of an extensive national consensus. The decision taken in this respect places in the hands of the people, of all Panamanians, the historic responsibility that must be borne. The measure is a wise one and in line with the October revolution's philosophy of dialog and consultation.

Let those who have denied us the patriotic right to end the causes of conflict stemming from the Hay-Bunau-Varilla treaty examine carefully the pronouncements to be made from now on.

It is our belief that our country has honestly lived up to its part in the negotiations which resulted in the Torrijos-Carter treaties.

And our leaders, like the people who ratified those legal instruments in a democratic plebiscite, recognized the many failings of the treaties and stated for the historical record that we remained "under the umbrella of the Pentagon."

But from that to having to accept the whims and power struggle of a group of senators who seek to wound Panamanians and their leaders with insults and humiliate us with amendments and reservations without name is something else.

Panama and its leaders cannot be called intransigent. But we should be intransigent in face of a situation which does not settle the causes of conflict but which, on the contrary, multiplies them in an offensive way.

In the meantime, it is up to the citizens to form an opinion, to evaluate the documents and measure the consequences and sacrifices and decide if we must continue struggling for the irreversibility of the process of decolonizing our fatherland.

At this time the Panamanian chief of government, Gen. Omar Torrijos, should be aware that he has never been alone and will never be alone in the struggle which he has led honestly.

TV Commentator Analyzes DeConcini, Nunn Reservations

("Analysis of the News" commentary by Mario Velasquez)

Of the group of reservations, understandings and amendments approved by the U.S. Senate, there are two which cause the most concern. They are the reservations presented by Democratic Senators Sam Nunn and Dennis DeConcini. Nunn's reservation states that nothing in the treaty shall preclude Panama and the United States from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate at any time after 31 December 1999 the fulfillment of their responsibilities to maintain the regime of neutrality established in the treaty, including agreements or arrangements for the stationing of any U.S. military forces or the maintenance of U.S. defense sites in the Republic of Panama after that date that Panama and the United States may consider necessary or appropriate.

In fact, what this reservation intends is to leave open the possibility to negotiate for the maintenance of U.S. armed forces in Panama after 31 December 1999, the date after which, according to the canal treaty, there will be no foreign troops in

our country. Although a reservation of this nature has the strength of the fact that one of the signers is the foremost military power of the world, which today has military bases in our country and inexhaustible resources to force negotiations this amendment, in its specific wording, in any case leaves open the alternative of negotiations between the two parties, Panama could or could not negotiate, reach an agreement or not reach an agreement on the maintenance of U.S. defense sites in our country after the year 2000. This is a power or prerogative which it would have anyway, whether Senator Sam Nunn's reservation existed or not.

However, it would seem very premature to include in the neutrality treaty a clause to negotiate for an eventuality which could occur in any case within 23 years.

The other worrisome reservation is the one submitted by Senator Dennis DeConcini, Democrat from Arizona. This reservation states textually: Notwithstanding the provisions of Article V or any other provision of the treaty, if the canal is closed or its operation, are interfered with, the Republic of Panama and the United States shall each independently have the right to take such steps as it deems necessary, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

This reservation, approved by the Senate with the consent of President Carter, constitutes the real crux of the problem. Its text is fairly clear, and the conclusion is simple: This amendment establishes the unilateral U.S. right to intervene in Panama with military force to reopen the canal and reestablish its operation, as the case may be.

Some might think that Senator DeConcini's reservation is a kind of expansion, with different wording, of the principles contained in the Torrijos-Carter joint declaration of 14 October, which refers to the responsibility which the United States and Panama have to insure that the canal will remain secure and open to the ships of all nations, which says that each of the two countries, according to their respective constitutional processes, will defend the canal against any threat to the regime of neutrality and consequently shall have the right to act in case of aggression or threat directed against the canal or against the peaceful transit of ships through the canal.

However, this declaration of understanding incorporated as an amendment to the treaty ends by saying that it does not mean and will not be interpreted as the rights to U.S. intervention in the internal affairs of Panama. Any action on the part of the United States will be directed toward insuring that the canal will remain open, secure and accessible and that it will never be directed against the territorial integrity and political independence of Panama.

Let us now see what Senator Dennis DeConcini says about his reservation approved by the Senate. We have already read the text of the reservation, and the local press has published it. If that reservation worries us after reading it, let us now see what Senator DeConcini said in the U.S. Senate on the afternoon of 16 March when he explained the scope of his reservation: The purpose of this reservation, Mr. President, is very simple. It is designed to establish a precondition for the acceptance of the neutrality treaty by the United States. This precondition establishes that, disregarding any reason and in spite of any other measure which the neutrality treaty may establish or to whatever other interpretation it may be subjected, if the Panama Canal is closed, the United States has the right to enter Panama by any means that may be necessary to reopen the canal.

Senator DeConcini added: There are no conditions, no exceptions or limitations to this right. By the terms of this amendment the United States will decide when that necessity exists and will exercise its own judgment about the means necessary to insure that the canal will remain open and accessible.

Many of the discussions with respect to the Panama Canal treaty, added DeConcini, have centered on threats which might come from third parties, specifically from communist countries. While this concern is certainly justified, I have been equally concerned over the possibility that internal Panamanian activities could also become a threat to the waterway. Labor strikes, the actions of an unfriendly government, disorders and political uprisings, each one, separately or jointly, could cause the closing of the canal. As I read the treaties, there is no specific guarantee that any stoppage of the canal arising from the internal activities of the Panamanian may be rapidly and adequately handled.

DeConcini goes on to say: Although General Torrijos has brought a substantial degree of stability to Panama in these recent years, it can be argued that Panama's history is one of instability and political unrest. Senator DeConcini goes on to say that under normal circumstances the United States should not contemplate interfering in the internal affairs of another nation. However, there exist unique and special circumstances surrounding the relations between the United States and

Panama. Since the turn of this century, the United States has exercised de facto sovereignty over the Panama Canal Zone. We have maintained this control over the canal for a simple reason. The Panama Canal is vital to the security, economy and armed forces of the United States.

This fact, DeConcini says, must be recognized in any treaty contemplating fundamental changes in U.S.-Panamanian relations. The amendment contains a very specific reference to the use of military force in Panama. I believe, DeConcini says, that these words are absolutely crucial because they establish the right—which I am not convinced is adqequately contemplated in the body of the treaties or in the leadership amendments—of the United States to take military action if warranted by the circumstances. Furthermore, DeConcini says, this amendment makes it very clear that the United States can take military action in Panamanian territory without the consent of the Panamanian Government.

The Arizona senator then goes on to say: This issue of consent is also crucial because this amendment is directed primarily at situations in which the canal is closed due to internal trouble in Panama, such as strikes, political uprisings or other similar events, in which case Panamanian permission to take military action would be meaningless.

He then adds: If the United States must have a right under this treaty, that right must be to act independently to protect and keep the canal open.

Concluding, Senator Dennis DeConcini adds the following in one of his closing paragraphs: I hope the Senate will support this amendment I am submitting to the resolution of ratification granting the United States the right to keep the canal open. I am also pleased to announce that the U.S. President has supported this change and has indicated that it will be a constructive step toward achieving the goals of the neutrality treaty.

I feel this supporting speech deliverd by Senator DeConcini will be a very important factor when the time comes to evaluate the nature and the scope of the reservation he submitted and which the U.S. Senate incorporated into the resolution of ratification. This closes our analysis for today.

Tomorrow, dear listeners, we will continue with our comments on and analysis of this topic, which is so important and exciting topic to Panamanians.

Camilo Torres Circle Member Criticizes Treaty Changes

(Statement by Olimpo Saenz, member of the Camilo Torres Circle, on the 27 March Foreign Ministry communique on the U.S Senate resolution to the Panama Canal neutrality treaty, during the "Canonero de Domplin" program—live)

The nation, the Panamanians of today and tomorrow, can never accept, under any circumstances, these amendments, which are extremely humiliating to the nation and to every Panamanian. Neither can they accept the reservations and understandings, for similar reasons.

The treaty submitted to the consideration of the Panamanian people in the 23 October plebiscite did not include these reservations, understandings, or amendments. Since a treaty is a document between two nations and since the United States added resevations and amendments and the Panamanians approved a treaty in a plebiscite that did not include these reservations and amendments, then the Panamanian people must express its position concerning these amendments, reservations and understandings.

According to the U.S. Constitution, it is the Senate's duty to ratify the treaty. According to the Panamanian Constitution, the treaty must be approved by the Panamanian people in a plebiscite, as approved by Article 274.

Romulo [Escobar Bethancourt] may say anything, just as he has been doing since he became Torrijos' adviser. He said these reservations and amendments are palatable. The only palatable thing here is the Panamanian people, who must express themselves; the only palatable thing here is the predominance of the nation's permanent interests over the government's interest, over the chief of staff's interests, over the interests of the $50 million offered to the National Guard, over the interests of the permanence of Torrijos as head of state, over the interests of all those close friends, or, as Diogenes de la Rosa said, the close enemies in power who have been feasting for the last 10 years on the public treasury which they refuse to give up. That is why they tell Torrijos the amendments and the reservations are palatable. Nothing in those amendments is palatable to the Panamanian people. On the contrary, it is dirty water, contaminated with germs that will last for 23 years and, in fact, perpetuity, but only the terms have been changed. The people have

been deceived on many occasions. In the Spanish and English languages, perpetuity and permanence mean the same thing: something that is forever, that never ends.

Independent Lawyers Favor Rejection of Treaty Amendments

In a lengthy communique to the nation delivered to the communications media this afternoon the Movement of Independent Lawyers (MAI) makes an extensive analysis of the amendments, reservations and understandings attached to the resolution of ratification of the neutrality treaty and ends by asking the government to reject said reservations.

The MAI notes that this is the only way the Republic of Panama can safeguard its sovereignity and give proof that it is consistent with the people's struggle and the tide of history, which will eventually raze all colonialist structures still existing in the world.

The extensive communique is signed by Carlos Ivan Zuniga, Bolivar Davalos, Carlos Enrique Adams, Joaquin Ortega, Juan Felipe de la Iglesia, Garcia Almengor, Mario Galindo, Tomas Herrera, Rodrigo Sanchez, Jose Manuel Faundez, Natividad Pinango, Elsa de Garcia and Diogenes Arosemena.

Matutino Urges Calm Study of Treaty Amendments

(Editorial: "At the Edge of the Great Decision")

With a high sense of responsibility that will go down in history, the revolutionary government, through the Foreign Ministry, has released to the nation the text of the U.S. Senate resolution on the Panama Canal neutrality treaty.

This information, which has reached the public before the document is officially delivered to the Panamanian Government, is intended by the government to educate our people about the changes to the treaty so they can express their comprehensive, calm and, above all, patriotic opinion.

The language used in that resolution is clear, precise, without any contradictory terms or legal jargon. The senators say what the United States wants, how it wants it and how long it wants it. They also state what that nation will not do, what must be conceded both on their part and on Panama's regarding certain clauses of the neutrality treaty. In effect, what the Senate documents convey, according to the resolution, is how the senators feel, how we should feel, how they speak and how they must be interpreted. To all of this they add how we should feel regarding their interpretation of that treaty and how they want us to interpret what is written therein.

Going even further, the added documents specify the cases in which Panama and the United States jointly can or must act accordingly to given circumstances. And going even further they also state when they can act unilaterally in circumstances which they and/or we, jointly or by supposition [por supuesto], consider an attack against the Panama Canal's neutrality.

It is left up to the analytical minds of Panamanian jurists to make a deep and detailed study of these amendments and the amended treaty. To us, the men in the street, the Panamanians who feel and who by feeling give an opinion of mind and soul, we have only—but not least—to make an evaluation of those amendments in terms of the whole. We will obtain a clear concept of them in the light of the debates which surely will be elicited by such a significant topic and await the government's decision on behalf of the Panamanian people.

That decision (it is good to know this and to trust that it will not be any other way because there is no reason to doubt it) will never be made without regard to the interests of the fatherland. In making the decision the team led by General Torrijos will listen to as many Panamanians as wish to state their opinion regarding an issue which commits us before history. And it will be a decision born of national dignity and the course set by the people when they approved the Torrijos-Carter treaty in the 23 October 1977 plebiscite—that treaty, and not another with added documents which distort the essence of the one approved by Panama.

Because if they present us a disfigured, altered document in place of the one signed by a Panamanian in the presence of the chiefs of state of America, then we would face two treaties, that of 1903 and that of 1978, the latter having been subjected to Senate surgery without the benefit of an anesthetic and containing no Panamanian signature. The watchword of the moment is to wait calmly, analyze thoroughly and decide with dignity.

Strength Seen in Government Silence on Treaty Changes

(Danilo Caballero commentary)

The calmness of our people is tantamount to struggle. The approval of the Torrijos-Carter neutrality treaty—with the amendments, reservations and other limitations imposed on the original test by the U.S. Senate—is undoubtedly the vital focus of political expectations in Panama. This is understandabel if we take into consideration that the canal problem is not only a matter of extreme sensitivity for our people but one of primary importance to the revolutionary process because it establishes a landmark in the true beginning of the decolonization of our territory. The attitude adopted by the people and the government has been the right one.

The position to be adopted now is one of impartial, comprehensive and sensible analysis of the amendments we already know and those that will undoubtedly be added to the second treaty. This position has nothing to do with the passions and resentments of the fatalism regarding our geographic position which prevailed in Panama in previous decades. An impartial analysis should be made because what is at stake is the destiny of the fatherland, the very existence of our people who are in a difficult position. A comprehensive analysis also should be made because it is impossible to analyze the new situation created by the amendments and reservations without looking at all the implications at the national and international levels. It should be a sensible analysis, because it implies that a people with our pride and sensitivity will never accept anything that would offend, even in the slightest, our dignity and our condition as free men.

The stand taken by Omar has, then, been the correct one. It is that no official position will be stated until the debates on the second treaty are held and it becomes evident what new cats the senators are going to let out of the bag. Meanwhile, the amendments and reservations are being studied from two necessary angles: the legal and the political. We Panamanians possess the basic ability to visualize the future without hurrying and in terms of the revolutionary line.

There are the 9 years of struggle of the revolutionary government and even more directly the historic words of Omar's letter to President Carter. In this letter, our people, through the chief of government, reminded U.S. imperialism that neither our geographical size nor the difference in wealth of the two countries allows a large nation to offend the dignity of a courageous people.

Our historical struggle has been for decolonization—to remove the ignominious enclave and the U.S. military presence from our territory.

Our people approved the Torrijos-Carter treaties because they realized that we were smaller in strength and saw the treaties as a guarantee of decolonization. Logically, if the treaties deviate from their original aim of decolonization they are no longer what the people approved in the October Plebiscite. It is worthwhile to recall all of this, especially because it is the stand adopted by Omar, who together with the people and the national guard will make sure that decolonization becomes a tangible reality for the generations to come. Consequently, we must have a clear picture of this game of amendments and reservations. We must realize that what is really desired is to limit the development of the revolutionary process by circumscribing all our aspirations. This is only one part of the problem. The other is the defeatist attitude of certain sectors which have never understood that a struggle for national liberation and a revolutionary process in a country such as ours are determined by complex situations which are not evident at first glance.

No, gentlemen of the historic fatalism, the revolution is not a party or a game. It is a very difficult science. It is a continuous struggle, and its duration cannot be determined by individual desires but by specific conditions.

Those of us who were born with the revolutionary process as a coherent voice in the media have complete trust in Omar and in our people. We know as well as everybody should that negotiations were chosen as the sacrifice with the least social cost. But the calmness of our people and revolutionary government should not be confused with apathy or lack of enthusiasm. On the contrary, that calmness is synonymous with struggle because those who are ready to give everything for the fatherland do not have to brag about it. In the revolutionary struggle calmness is a basic condition which reflects maturity. And in the same manner in which we calmly analyze the meaning of amendments and reservations we will confront any new situation that may arise and defend the honor of Panama. We are certain that the man who has placed our fatherland in a position of international dignity for the past 9 years is the one who will take up the final victory.

Columnist Examines Senate's Treaty Approval Role

("Bona Fide" column by Camilo O. Perez)

When the canal and neutrality treaties were still being negotiated, we wrote in this same column about the U.S. Senate's role in the treaties' ratification. We were not mistaken when we said that there were three alternatives:

1. That the Senate would ratify the treaties as accepted by Panama.
2. That it will definitely reject them.
3. That it will return them with reservation and amendments.

Today we are faced with the third alternative. Therefore, we believe that it would be well to reprint the column published last August. It reads as follows:

Can the Senate change or amend a treaty? Article II, Section 2, Paragraph 2 of the U.S. Constitution determines that the president can make international treaties "with the Senate's advice and consent based on a two-thirds majority vote of the senators present at the time of voting."

Notwithstanding this constitutional precept, practice as well as jurisprudence have reduced the senatorial function to the simple ratification of treaties. Therefore, the power and prerogative of negotiating international treaties has been left exclusively in presidential hands.

It is understood, however, that a pragmatic president will do everything possible to have both chambers on his side when negotiating treaties. This can be done by keeping Congress constantly informed, having the Congress' prior approval of the treaty in question or at least keeping the Senate Foreign Relations Committee informed about treaties that could present problems.

In 1936 the U.S. Supreme Court handed down a decision in this respect in the case of the United States versus the Curtiss Wright Corporation.

The Senate's specific functions begin when it is asked to approve a previously negotiated treaty. When this situation arises, the alternatives are the following:

A. Unconditionally approve the treaty in question.

B. Deny its approval.

C. Accept the treaty with conditions by stipulating a series of changes or amendments to the treaty.

However, the third option will practically create another treaty and would call for negotiations between the two parts involved. The Senate cannot, by means of amendments, impose its will on a sovereign nation. This was clearly established by the Supreme Court in the case of the Fourteen Diamond Rings versus the United States.

The above article, based on a consultation made by Dr. Hugo Spadafora, means that the third possibility, previously considered and a reality today, establishes the criteria for a rejection by means of amendment and reservations from the point of view of U.S. jurisdiction. Whatever Mr. Carter says now is in conflict with this juridical tradition. We shall continue.* * *

Aristides Royo Returns From U.S. Visit

With the return of Dr. Aristides Royo, negotiator of the Torrijos-Carter treaty, from the United States yesterday, the day ended in a suspenseful atmosphere with regard to the status of ratification of the canal documents. Approached by CRITICA at the Tocumen Airport terminal, the young negotiator was very cautious and sober in making statements, since his mission to Washington was carried out to express the official opinion of the Panamanian Government.

Dr. Royo did, however, call attention to the climate prevailing in Washington among members of the Senate. Specifically, it was learned that several senators who were in their respective states for Easter week found quite a bit of discontent with regard to the senatorial decision to ratify the neutrality treaty. In fact, it is well known that there are already 200,000 signatures on the petition to revoke the mandate of Senator DeConcini of Arizona, despite the fact that that senator suggested the famous reservation which harms the interests of Panamanians.

It is rumored in news circles that the purpose of Royo's trip to the U.S. capital was to express officially to President Carter's team of advisors the Panamanian Government's displeasure with the reservations and amendments introduced into the neutrality treaty.

Reports to Torrijos

In Farallon, Chief of Government, Gen. Omar Torrijos received a direct and confidential report from Aristides Royo, education minister and negotiator. Royo arrived from Washington last night, where he had been on an official mission.

Commentator Fears Precedent Set By Neutrality Treaty Changes

("Analysis of the News" commentary by Mario Velasquez)

The results of the voting on the neutrality treaty were described by the U.S. press and political analysts in that country as a victory for President Carter.

The narrow margin by which the treaty was approved came about after what has been termed the greatest and most intense public relations and publicity campaign ever carried out by the White House. The approval of this treaty and the approval of the treaty which will be voted on in a few weeks constitute a vital objective for Carter and his administration.

It was not only a matter of Carter's interests in solving an old conflict with Panama but also a concern with other domestic and international problems connected with the treaties. In his 14 months in office the neutrality treaty has been the first document of true importance which the Carter administration succeeded in having approved at the Capitol. During these 14 months the Carter administration has been going downhill in the eyes of the U.S. public. Several news articles and commentaries have questioned the President's ability and competence to deal with the complex and difficult public affairs of the United States. The rejection of the Panama Canal treaties—after the extraordinary publicity campaign carried out by the Government in favor of the treaties and after the degree of Carter's participation in it—would have had devastating effects on the image of the White House and the Preident. Carter spoke with each of the 100 senators at least once. He made 87 telephone calls in the past 2 weeks and called or sent messages to certain stubborn senators at least half a dozen times. The President also held meetings with civic and political leaders and newsmen from at least 35 states to elucidate and brief them on the treaties. The day before the voting, Carter made 16 telephone calls in a desperate search for the magic number of 67 senators. Despite the spectacular decorations of this White House publicity campaign, I have the feeling that in a way President Carter and his advisers miscalculated the level of influence they could exert and the degree of resistance they would find in the senators. The fact which speaks for itself in this sense is that it was not until the morning of 15 March, 30 hours before the voting that President Carter, by accepting the dismal DeConcini reservation, gathered the votes necessary to reach the key number of 67 senators.

In effect, the 23 March issue of Newsweek magazine affirmed that the DeConcini reservation was an instrument to help persuade at least three other senators, Bellmon of Oklahoma, Brooke of Massachusetts, and Paul Hatfield of Montana, who in the end voted for the treaty. Carter accepted the DeConcini reservation because it was the only way to get the 67 votes. Despite the fact that Carter admits in the Time magazine article that he had given his word to Torrijos, the President of the United States could not lose the vote. He had to win it at any price. This decisive fact occurred after the U.S. media had denounced certain maneuvers made by the White House to satisfy the requests of certain senators and thus win their support. At the end of the long debate on the neutrality treaty the U.S. Government realized that a defeat would not only have negative effects on its bilateral relations with Panama and multilateral relations with Latin America, but that it would affect the image of the Carter administration in important matters such as the energy bill, the SALT talks with the USSR—a pact which, in fact, is expected to meet strong resistance in the Senate—and U.S. Middle East policy. The treaties have even been connected to the existing concern over the presence of sizeable Cuban armed forces in the Horn of Africa.

Carter administration experts estimated that the rejection of the treaties would have a negative effect on the Government, especially on Jimmy Carter himself, in the future handling of other affairs and on the political future of the President and his reelection possibilities for 1980.

In regard to the fate of the other treaty, which is the main treaty of the documents, I have the feeling it will also be approved. My fear is that since the door to amendments has been opened, and a precedent has been established on reservations and understandings in the ratification solution, this treaty will also be approved with a series of reservations that could change the spirit and wording of the treaty. If that occurs, it would be up to the Panamanian Government and people to

adopt a decision on the treaties, amendments, reservations and understandings. Insofar as this decision rests with General Torrijos, I believe that we would be experiencing one of those crucial moments in the life of a country and its leader, in which case Torrijos would probably be facing the most important decision ever confronting a Panamanian in the 75 years of the Republic's existence.

Treaty Changes Called Unacceptable Without New Plebiscite

(Article by Antonio J. Sucre: "How Do You See the Treaties? Quite Mistreated!")

Neither the question nor answer are mine. They were offered by two prominent Panamanian jurists shortly after the U.S. Senate's approval, with amendments and reservations, of the neutrality treaty.

This is the case, and I define my position as follows:

The amendments consist of the word-for-word addition of the Torrijos-Carter declaration into Articles IV and VI of the neutrality treaty. Such amendments are "palatable" [potable], according to Romulo Escobar Bethancourt, personal adviser to the chief of state.

If we apply this gastronomic term to diplomatic terminology, it would appear to indicate that the national government has decided to support such amendments, employing the formality that, since the aforementioned unsigned declaration had received wide publicity in Panama before the plebiscite, it was tacitly approved when the treaties were approved.

However, the reservations do have a deep effect and cannot be termed anything but sophisticated surgery.

Panama cannot reject such reservations without rejecting the treaty. If Panama chooses to accept the altered treaty, it would be committing itself to negotiate the concession of military bases after the year 2000.

One way or the other, sooner or later it would have to give its consent to the presence of military bases on its territory beyond the year 2000.

And this contradicts the spirit and text of the treaties submitted to plebiscite.

Mistreated as they have been by the U.S. Senate, such treaties, once they were approved by the United States, would require a new plebiscite in Panama.

To become "palatable," such reservations would have to be filtered through a new democratic process, which is obviously what they are trying to avoid.

Torrijos, National Guard Officers Discuss National Situation

Panamanian Chief of Government and National Guard Commander in Chief Gen. Omar Torrijos met with the General Staff, the military zones chiefs and the chiefs of several National Guard combat units at the Tinajita military post and from there left for Pedregal on a 15-km military administrative march [marcha administrativa militar] which ended at air force installations at Tocumen airport.

Along the march route a large number of people greeted the participants. During the march, General Torrijos, as well as Col. Garcia Ramirez, second in command, members of the general staff and the rest of the officers exchanged opinions on various matters and evaluated the situation of the country which awaits ratification of the new canal treaties by the U.S. Congress.

Col. Garcia Ramirez noted the importance of the equality existing among the National Guard officers and the high command. During the meeting, recently commissioned officers held cordial talks with General Staff members who later met separately, apparently to discuss the future of the canal treaties.

This meeting was held behind closed doors at the air force installations at Tocumen airport. Nothing has been revealed publicly about the subjects discussed or agreements reached. So far, no authorized spokesman has made any comment.

Torrijos Address Journalists on Canal Treaties, Elections

(Speech by Gen. Omar Torrijos Herrera during opening of Fifth National Journalists Congress in Santiago, Veraguas Province, on 1 April—recorded)

Executive board members of the National Union of Panamanian Journalists, Monsignor Numez [as heard], all comrades: I wanted to take advantage of this opportunity during the national press meeting in Veraguas to make certain pronouncements which directly affect the course of the domestic and political life of the country. However, I first want to commend you on the organization, the hours of

work that I know went into organizing a congress such as this one and for the great many truths that have been uttered here, truths which I know and which I will summarize by recalling a single incident.

When Dr. Escobar Bethancourt spoke about the role of youth guide played by Manuel Celestino Gonzalez, I could remember that during my early years as first lieutenant and second lieutenant in the National Guard, Manuel Celestino Gonzalez used to visit the prison house regularly. From the place where we picked him up and took him to his almost regular residence, which was the model prison—the regular residence of all those whose views were opposed to the system—along that route, whether as sermonizing or advice or plain conversation, everything he said was true. Everything he said was true, and that is how one came to realize that the mission of the armed forces could not continue to be the persecution of anybody for his ideas or because his way of thinking asked for changes in the status quo.

We are almost 75 years from the day of our independence. The country's social calendar is 22 years away from the 21st century.

I mention these dates because it is necessary for us to understand that whatever we do now or fail to do is directly related to the way in which the future generations will greet the dawn of the 21st century.

This year, to speak even more specifically, this year, 1978, rife with emotions, triumphs, unpleasantness and victories, each Panamanian has to think over and become convinced that his views on the treaty should be responsible and well thought out, so that his final decision will be a contribution, will contribute to the national life a view that was well thought out in his own conscience since the government will not express any views or make final decisions or condemn or applaud what is going on right now until they return to us the treaty that we forwarded. Then, within an overall framework, we will examine what the people approved during the plebiscite and how the U.S. Senate interpreted the views that the people approved in the treaties that were submitted for discussion and approval during the plebiscite.

After that, in a wide-reaching and far-ranging way, using all means of communication, we, the government, will consult the views of this people, and within the framework of those views we will decide on the answers and the way to respond to what the United States has sent back.

This is the time when all of us, including myself, must make great efforts not to feel, feel and feel but to think, think and think and not fall into the unsound attitude of considering the returned treaty to be bad if it affects the interests of the group that it represents even if it is good for the country or the opposing view—bad for the country but good for the stability or survival of the government.

In this respect I can give full assurances to the people through all the newsmen present here that if the treaty harms the interests of the country it has to be bad for the interests of the government. This is not an observation that I have made by myself. I made it after consulting with the ranking military commands and after observing that my daily promenades [partrullaje], daily conversations and the daily dialog begun almost 10 years ago have made me realize that if the permanence in power of General Torrijos and his government team depended on selling out the homeland, selling out its dignity, selling out the dignity of those who have not even been born yet, then we would not stay in power a single minute after such a sell-out plan or idea came to light. I say this because back in 1969 and 1970, when we had not even formed a government team and when many of our plans and desires were mere ideas and not programs as they are now, we were threatened along with other guard officers who held views similar to those of the people who maintain the enclave. We were threatened that if we did not carry out what the government that we had just overthrown had agreed upon in the sense of ratifying the treaties as soon as possible, the stability of the government would be jeopardized.

That was the time when at the International Hotel—and I think in the presence of Dr. Romulo Bethancourt [as heard] and others—I said that if in order to stay in power I had to betray my country, I would rather leave right away. And I say this because it has been my consistent, consistent, consistent way of thinking, and when a man is consistent in his way of thinking no fear can be harbored that he will change his conceptual, intimate, worthy truth overnight for a truth based on convenience.

I attach great importance, almost historic importance to these elections, the electoral process that has already started and whose initial stages are already being carried out, because this event coincides with the greatest international event that our country has experienced, the ratification or refusal to ratify [the treaties] and because this event comes at a time when history sees all the countries that support the Panamanian cause.

All countries without exception—not one has failed to voice its solidarity so far—have their eyes set on the domestic and political behavior of the government and people of Panama.

I understand that every era, every year, every political year, every stage has its development plan and its political leadership plan. I understand that every era is marked by a certain attitude, and I think it is high time to say that the government is willing to assume an attitude, to assume the initiative of an attitude of realignment of the political structures. In this sense, the executive branch has not adopted and does not plan to adopt an unyielding, sectarian attitude because unyielding and sectarian attitudes destabilize the government and could perhaps lead to the reappearance of the elements of social unrest which compelled the National Guard to become involved in national life. What we do will be done with the conviction that we should make an effort to end the causes of discontent that permanently placed the population—the students, the workers, the Panamanians [as heard]—in opposition to the public forces, and we would not even want to remember those things of the past. That is why we cannot be unyielding, precisely because we were used almost in a (sports-like) fashion to correct the intransigent attitudes of other governments.

If after August, which I am leaving open for you to think about or to analyze, the incumbent and the elected representatives feel that adjustments have to be made to the constitution to accommodate the legislative, administrative and political structures so that the country can enter a stage of increased consultations, the government will not take issue with this, and it is willing to take the initiative to discuss whether the next representatives assembly can include with effective voice and vote, with full legislative powers, the vice presidents elected in every province into the National Legislation Council.

Furthermore, as food for thought, if you do not feel that this is sufficient, we are even [willing] to include the entire assembly, to grant the entire assembly the real power to legislate and not have any laws that are not approved by consensus, a consensus of half the members plus one, and this would compel the executive branch to consult more extensively, more profoundly and more regularly on laws which have great significance in the national life. This also compels the representative to consult the various opinion groups existing in his electoral jurisdiction because if he does not consult with them and airs views that are not checked out with the people who elected him, he could make any of the mistakes that would lead to the revoking of his mandate.

All these ideas are aimed at achieving a somewhat more flexible administration, a legislation that is closer to the people and is the result of greater consultation. The executive branch would also be willing to share its responsibilities in certain important administration posts, such as certain autonomous agencies, by submitting the appointment of certain directors to the approval of the representative assembly. In other words, if the executive branch submits the appointment and the assembly does not confirm it, the assembly would be involved in the election of those who from prominent positions have to cope with major national work groups. Thus we are giving the 505 representatives what in the United Nations could be called a veto power.

The public forces which I am honored to command do not harbor and have never harbored the intention of making incorrect, domineering, terrorizing use of Article 2 of the Constitution. What does scare the public forces, and I want to state its through the most outstanding representatives [of the people], is the prospect of going back to those times when the public forces were consulted only to be ordered to fix the bayonet and disrupt the tranquility, the liberties of all those men who, filled with extreme emotion regarding the cause of their country, could not endure so many injustices and consequently disrupted order by staging demonstrations. What order did they disrupt? I wonder. The order established by the governments of the chosen group and for the chosen group.

Indeed, the officers have asked me that if there is any change, any constitutional adjustment, [cualquier cambio, cualquier ajuste constitucional] it reduce the possibilities that the public forces may be used as forces of revenge or reprisal to correct the errors, the neglect, the carelessness and the frauds of the governments, as we were so often used in the past.

I am airing all these views because I am convinced of the value of the system, a system which honors the natural leaders in every community, a system which gives opportunities to all those who really deserve them and a system in which leading a man to the polling booth to cast his vote of support for the natural leader is a fact that is viewed as a conversation between two neighbors and as a commitment that one neighbor enters into with another. It is a system that is based on real, not

apparent, democracy, a system which tackles real, not apparent, problems, a system which aims for real solutions and not apparent solutions. If, despite the system, isolated instances have occured in the administration, and isolated instances have indeed occurred, they had to occur. [sentence as heard] Let us not deceive ourselves, they will not be completely eradicated. But they are isolated instances. They do not constitute the overall conduct of the government. Proof of this is that, once they were discovered, punishment was meted out. How? The greatest punishment for whoever misuses state funds or his powers is not prosecution, because prosecutors hardly even punish anymore since the thieves do not leave a bill, and if one does not have a bill they are not punished. The greatest punishment is publicity. That is it. The press commending, or punishing [sancionando] someone who does not deserve to be applauded. I say that this system aims for real solutions [causas], because throughout 9 years we have been able to introduce many real solutions. We have been able to eradicate many problems the lack of solution of which once kept the people in a constant state of protest. But back then it was much easier for the governments to stay in power because they had a well-behaving and ordinary [adocenada] guard which was capable of hurting, imprisoning or killing even the lowliest student representative or even the lowliest son of this poor people. Thank you. [applause]

Negotiator Lopez Guevara Analyzes DeConcini Reservation

The government has sponsored a series of informational meetings with communications media representatives to explain those points of the treaties which the government feels should be made clear to the community. The second meeting of this series was held today with negotiator Carlos Alfredo Lopez Guevara presiding. Lopez Guevara began by saying that there is a basic problem in the usage of the words, conditions, reservations and understandings. According to Lopez Guevara, these are terms used by the Senate in its internal relations with the U.S. President. What must be clear, Lopez Guevara said, is that the two countries are bound by the contents of the notes exchanged on the ratification documents. He added that whatever is said in exchange notes will also be negotiated, and the two countries will be bound by it.

However, Lopez Guevara said that Panama has formally requested these documents in order to have a more specific idea of the scope of the terms used by the Senate and their connotation in the U.S. legal system.

Lopez Guevara explained the meaning of the word reservation as it is used in international law. He said that it means a counterproposal made by one party to the other. This counterproposal can be accepted, rejected nor negotiated upon by the other party. If one of the parties rejects the counterproposal or reservation and at the same time presents another, this must be done before the exchange of notes because one cannot participate in the exchange ceremony with reservations.

Lopez Guevara described the exchange of notes as a ceremony that should be carried out based on the identical English and Spanish versions of the text previously approved by the two parties, the United States and Panama in this case.

During the question and answer period, Lopez Guevara expressed his point of view by stressing that he feels it is important for Panama to reiterate the principle of nonintervention in the exchange of notes. According to Lopez Guevara, not as a negotiator or government official, but in his own personal opinion, the two amendments known as the leadership amendments are an expansion of the Torrijos-Carter memorandum of understanding issued on 14 October 1977. According to Lopez Guevara, the Nunn reservation does not contradict specific regulations of the treaty because in the same fashion in which Panama can negotiate commercial and agriculture treaties with the United States it can also negotiate in the future a possible U.S. military presence.

Lopez Guevara added, still expressing his personal opinion, that just as a constitutional regulation could be used to dispose of the Nunn reservation, there are legal arguments which could also be used to detract from the value of this reservation.

Lopez Guevara answered a question regarding Aristides Royo's recent trip to Washington by saying that today's meeting was not held for the purpose of releasing news but for the journalists and government officials to talk. He referred to Royo's trip to Washington as a dialog held by the two parties.

During the meeting Lopez Guevara said on three different occasions that the national government has not adopted a position regarding the amendments and reservations introduced by the U.S. senators in the ratification process in the United States. He said that the government will adopt a position as soon as the U.S.

Senate completes the U.S. ratification process. He described a preliminary statement as unnecessary.

Replying to questions, Lopez Guevara said that the documents issued by the Foreign Ministry would open what he termed to be a full range of possibilities regarding a national consensus. In giving his opinion as a lawyer, he stressed that if the amendments and reservations introduced by the Senate and included in the ratification resolution involve substantial changes to the treaties approved by the Panamanian people, then another plebiscite would have to be held.

However, Lopez Guevara made his very personal interpretation of the DeConcini reservation. He said that it is a naked and bare-faced interpretation of Article 4 of the neutrality treaty. He said this naked and bare-faced presentation is in fact more offensive, but that it does not detract from what is stated in Article 4 of the neutrality treaty. However, Lopez Guevara conceded that DeConcini's reasons for the reservation given to the Senate on 16 March would serve, in case of doubt, as a reference point to clarify the extent of the reservation approved and included in the resolution of ratification. Lopez Guevara estimated that if Panama makes an effort to reaffirm the nonintervention principle expressed in the exchange of notes, this principle would prevail over the DeConcini reservation because it has legal precedence. In any case, Lopez Guevara replied to questions of possible U.S. intervention in Panama as a result of the DeConcini reservation. First, he said, the U.S. attitude at the present time would not permit the disembarkation of Marines, as in Santo Domingo. Second, after the U.S. experience in Vietnam, the Senate would not permit U.S. troops to be sent abroad again. Third, the attitude of the U.S. people is changing. He noted in this respect that it had not taken him, Lopez Guevara, more than 10 minutes to change the mind of an average U.S. citizen by explaining things to him. Fourth, he has faith in what he perceives to be the honesty of U.S. youth.

Lopez Guevara rejected the notion that during the neutrality treaty debates the U.S. senators made a show of arrogance by taking into consideration only the interests of their own country without any consideration for the small country they were dealing with. Lopez Guevara mentioned the names of two or three senators, including Frank Church, who spoke in favor of Panama. The Senate is made up of 100 senators. He did not make any comments on the statements of minority leader Howard Baker, who immediately after the voting on the neutrality treaty told the U.S. press that he had never before received such a large amount of mail as that received by the Senate against the Panama Canal treaties.

Even though Lopez Guevara showed respect for freedom of the press, a freedom accepted by the Panamanian Foreign Ministry itself, he warned of the danger of elaborating on the possibilities of intervention opened by the DeConcini reservation, noting that this could serve as a precedent and that there was no reason to play into the hand of the North Americans.

Columnist Calls Some Treaty Amendments Acceptable

("Macheteando" column by Mario Augusto Rodriguez: "Acceptable Amendments")

Among the additions which the U.S. Senate made to the Torrijos-Carter treaty to transform it into a different treaty, there are, in my opinion, some which would be acceptable or, even more, would have to be accepted by our government and people, I refer to those which constitute only a transciption of the memorandum of understanding agreed to by President Carter and Chief of Government Torrijos before the treaties were submitted in a plebiscite to the Panamanian people. It is true that the memorandum was never signed by either Carter or Torrijos. But it was publicly accepted by both government leaders, that is to say, it is backed by their word. And the word of a statesman, of a government leader, is worth as much as or more than his signature. In Panama's case it is true that the memorandum was not included among the documents specifically listed on the ballot. But it is equally true that its text was known much in advance, that it was public knowledge that General Torrijos had not only approved it but had expressed his willingness to sign it. That is to say, when we went to the polls and chose the affirmative answer by a majority of over two-thirds, we knew exactly that the corresponding texts were interpreted and would be applied in accordance with the explanation contained in the memorandum subsequently added as an "amendment" by the Senate.

In addition, the text of the memorandum of understanding in no way changes the significance of the dispositions originally included in the Torrijos-Carter treaty concerning neutrality.

Immediately after the "amendments" consisting of the Torrijos-Carter memorandum of understanding come the "understandings" added by the Senate on its own

account and at its own risk. The first "understanding" refers specifically to Article V of the Torrijos-Carter treaty on neutrality. It is the most important article for Panama and in a clear and precise way guarantees our rights and responsibilities after the year 2000.

That article is also convenient for the United States because it guarantees that Panama will not be able to permit the military forces of any other country to occupy areas which up until that date had been occupied—although in an evidently arbitrary way—by the U.S. military. But it appears that not even that guarantee was sufficiently satisfactory for the minority of conservative senators who were able to impose their prejudices and perplexities "democratically" upon the majority of their colleagues and even the Government of the United States.

Torrijos Letter Explains Stand on Treaty Ratification

Dr. Jorge E. Illueca has explained to each and every one of the United Nations permanent delegates Panama's official position on the amendments, reservations and agreements introduced into the Torrijos-Carter neutrality treaty.

Dr. Illueca, our representative at that important international organization, explained to all the delegates that the Panamanian Government has a specific method to deal with the recent developments connnected with the Senate's decision to introduce reservations and amendments into the neutrality treaty. At the right moment, he added, the Panamanian Government will announce its final decision. The document was drafted by our Foreign Ministry.

The Panamanian document was immediately translated into all the official working languages of the United Nations.

Meanwhile, it has been learned that the Panamanian chief of government has sent a letter to all presidents, chiefs of government, kings and other leaders through the representatives of the more than 115 states that comprise the United Nations. The letter explains Panama's position on the U.S. Senate's current process of ratification of the treaties.

Jurists Score DeConcini Treaty Reservation

At a panel meeting sponsored by the Panamanian Executive Association [APEDE] last night, Panamanian jurists Julio Linares and Cesar Quintero advocated the complete rejection of the DeConcini reservation to the neutrality treaty.

Both agreed that the DeConcini reservation contradicts the originally signed neutrality treaty because it grants the United States the right to intervene in Panama, to occupy our entire territory militarily and to exercise sovereign rights at least over the occupied areas.

The two jurists pointed out that any reservation to a treaty entered into between two nations is considered to be a rejection of the treaty, since it is an attempt to modify or limit the scope of the treaty, and that the reservations made to the neutrality treaty affect the structure of the treaties as originally approved.

Dr. Quintero said he doubts whether the U.S. Senate will ratify the Panama Canal Treaty without reservations and amendments. To him, this is the more important of the two treaties.

Dr. Quintero also pointed to the serious threat to the integrity of Panama as a nation posed by the reservation presented by Senator Nunn, which states that after the year 2000, Panama and the United States may at any time after 31 December 1999 make agreements on the fulfillment of their responsibilities to maintain the neutrality regime, as well as on the stationing of U.S. military forces or the maintenance in the Republic of Panama of U.S. defense sites after the date that both nations may deem appropriate. Dr. Quintero explained that he feels that sooner or later Panama will have to consent to the presence of military bases on its territory beyond the year 2000.

The distinguished Panamanian lawyers agreed that for approval of the neutrality treaty, the national government must call a second plebiscite because the constitution of the Republic of Panama establishes that to ratify a treaty of the type with which we are concerned, it is imperative to have the approval of the Panamanian people and the executive branch. On the other hand, the jurist explained, if the treaty is rejected by the Panamanian people, the national government does not need to call a plebiscite.

Dr. Quintero said he is of the opinion that President Carter is committed to the ratification of the treaty. It is clear, however, he added, that he cannot reject any of the amendments or reservations introduced by the U.S. Senate.

If the treaties are rejected by the Republic of Panama, they would become ineffective, and a new period of negotiations could be reopened.

The reservations made to the neutrality treaty, according to Dr. Linares, are contrary not only to the UN Charter but to a number of treaties which prohibit the intervention of a state in the internal affairs of another.

Dr. Carlos Sucre, another panelist invited by APEDE to take part in the broad debate on the reservations, amendments and accords to the neutrality treaty, reserved the right to express his opinion after the U.S. Senate decision on the Panama Canal treaty.

Some persons attending the panel, members of APEDE, questioned the need to wait until the Panama Canal treaty ratification, while others opposed ratification of the treaties with the reservations introduced by the U.S. Senate.

Independent Lawyers Call for Rejection of Treaty Changes

(Manifesto No. 4 Issued by Movement of Independent Lawyers)

The Movement of Independent Lawyers (MAI), which has carefully followed the development of the U.S. Senate deliberations regarding the ratification of the Torrijos-Carter treaties, believes that since the first phase of the ratification process is over, it should explain its position on what that legislative body has done so far.

As the public knows, the MAI opposed the ratification of the Torrijos-Carter treaties by the Republic of Panama on the grounds that the treaties, far from satisfying the legitimate aspirations for which the Panamanian people have struggled, imposed onerous burdens on our country which are in no way justifiable and which deeply harm the most cherished national interests.

When the U.S. Senate began formal consideration of the treaties, the MAI decided to refrain from making a public pronouncement regarding the treaties or the process of ratification. Two basic considerations justified this decision: first, that anything the movememt said would not exert any desirable influence on the decision reached by that legislative body with regard to the matter concerning all of us. The second and perhaps more important reason concerns the MAI's interests in not having its position regarding the treaties confused with that of the Senators who, for reasons very different from ours, opposed ratification of the treaties.

In the face of the fait accompli of the amendments and reservations (hereinafter to be called the senatorial changes) which the U.S. Senate has introduced into the misnamed "Treaty Regarding the Permanent Neutrality and Operations of the Panama Canal," the national government has decreed an official silence pending the completion of the ratification process. This silence, if it were really observed, would perhaps be justified by virtue of the wide-ranging and serious consequences that will necessarily result from whatever decision the government reaches with regard to the acceptance or rejection of the amended treaties. However, a source of concern lies in the fact that while decreeing, the above mentioned silence the government, in the voice of Dr. Romulo Escobar Bethancourt, announced that the senatorial reforms are "potable" ["potables"], which is equivalent to saying that they are acceptable. Apart from the fact that this statement is a prejudgment regarding the basis of the problem which allegedly is to be studied, it could undoubtedly also induce many foreign governments which have supported our cause to hasten unwittingly to the support of the amended treaty, when in the final analysis the position of the Panamanian government must be precisely that of rejecting the new contractual texts as the historic meaning of the Panamanian people's struggle demands. The situation that would result from such actions by foreign governments would in no way be favorable to our national interests.

In view of the Senate changes and the approval accorded them initially by the Panamanian Government, the MAI believes that the reasons for maintaining silence no longer exists, and it believes that the time has come to explain its position with regard to the ramifications of these changes.

As far as is known on the date of this communique, the senatorial changes consist of: A) incorporation of the Torrijos-Carter statement of understanding into the neutrality treaty; B) provision for the possibility that the Republic of Panama may grant to the United States of America, after the year 2000, the right to maintain military bases on Panamanian territory; and C) concession to the United States, independent of the other provisions of the treatry, of the unrestricted, unconditional and unilateral right to take whatever measures it considers convenient—including the right to use its armed forces on Panamanian territory without the consent of the territorial sovereign—in the event that the canal is closed or its operations are interfered with for any reason, including purely domestic matters.

The Torrijos-Carter statement of understanding of 14 October 1977, as the MAI slated from the beginning, reiterated by way of clarification certain rights injurious to Panama which are granted to the United States in the neutrality treaty—rights which also constitute a most emphatic denial of neutrality in the true sense of the word. From this viewpoint, the Torrijos-Carter statement of understanding, despite its faulty wording, does not grant to the United States rights other than those contained in the treaty to which the statment of understanding refers. Consequently, the incorporation of said agreement into the text of the neutrality treaty, although formally an amendment of the treaty, in the main merely restates the harmful concessions granted in the treaty. Therefore, the amendment follows the literal sense of said understanding which repeatedly refers to the treaty and is based specifically on Articles 4 and 5.

The other two senatorial changes mentioned in previous paragraphs, on the contrary, if accepted by the Republic of Panama, would undoubtedly constitute substantial changes in form and content of the neutrality treaty, to the extent that the United States, through these changes, has proposed to the Republic of Panama the conclusion of a treaty that differs from the original.

One such change, ignoring the literal sense of Article V of the neutrality treaty, according to which after the year 2000 "only the Republic of Panama shall maintain military forces, defense sites and military installations within its territory," considers the possibility that the Republic of Panama will grant the United States the right to have military bases on Panamanian territory after that date. It is said that this change is without substance since it is always within the power of any state, in the exercise of its sovereign rights, to amend at its own discretion through bilateral agreements the treaties it has concluded with another state. This argument is not valid. In effect, it happens that one of the aspects of the neutrality treaty highlighted by the national government was the very fact that it called for the dismantling of existing U.S. military bases in Panama by the year 2000, a fact which might have induced some states interested in this dismantling to take part in the neutrality treaty by becoming signatories to it. With this adherence completed, repeatedly government spokesmen [as published] would no longer be a bilateral agreement but would become a multilateral agreement with the consequence that any change which anyone desired to make in it would have to be agreed on by all the states signing the treaty. In contrast, the senatorial amendment under discussion would permit the Republic of Panama and the United States without the consent of the other states taking part in the treaty, to conclude bilateral military agreements to permit the United States to maintain bases in Panama after the year 2000. Such agreements would ruin the neutrality treaty even more. This being the case, no state which is not within the sphere of U.S. influence would be party to this treaty. Nobody who studies the ramifications of the senatorial reservations in the light of the aforementioned can say that the reservation is harmless.

The other change which has been mentioned, that of Senator Dennis DeConcini, would give the United States the right to take any measures it deems necessary, including the use of its armed forces in Panamanian territory, if the canal is closed or its operations are interfered with for any reason, even when such reasons pertain exclusively to the internal affairs of the Republic of Panama.

Viewed from any angle, the DeConcini reservation is a reprehensible and outrageous U.S. attempt to get the Republic of Panama to give the United States the right to intervene in affairs within our exclusive jurisdiction. If anyone doubts that it extends this far, let him read the words Senator DeConcini used to support his reservations in the U.S. Senate.

The MAI has no choice but to express its most profound indignation at the lack of respect the DeConcini reservation shows for the Republic of Panama. Fundamentally, its approval is a challenge to the Panamanian people's nationalist calling, a calling which has apparently been underestimated by the U.S. Senate.

If the DeConcini amendment had been proposed by U.S. Government representatives at the treaty negotiation stage, it would undoubtedly have been rejected. There is no valid reason to accept it now or to employ legal or diplomatic sophistry to minimize its repercussions and to ignore the irreparable harm which its approval by the Panamanian Government would do to the Panamanian state and nation.

On the other hand, it should be noted that in connection with the aforementioned senatorial changes it is clear that the U.S. Senate has not approved the Torrijos-Carter treaty. To pretend otherwise is to fail to see the truth and the legal facts. As treaty writers Moore, Kelsen, Hackworth, Verdross, Rousseau, Accioly, Podesta Costa, Oppenheim, Shwarzenberg and Anzilotti point out, in bilateral treaties reservations are equivalent to a rejection of the signed treaty and should be viewed as an offer to obtain a new treaty. This, no more and no less, is what the U.S. Govern-

ment will be proposing to the Republic of Panama when it asks Panama to accept the reservations approved by the U.S. Senate.

The unequivocal rejection of said reservation is the only way in which the Republic of Panama can safeguard its sovereignty and demonstrate that it is on the side of the struggle of its people and with the tide of history that will sweep away all the colonialist structures that remain in the world. To accept these reservations is to condemn the present and future generations to having to hear once again the phrase which U.S. Secretary of State Hay uttered in 1903 when he said that the treaty is rife with clauses that every Panamanian patriot should object to.

Panama, 23 March 1978.

For the MAI (the executive and consultative board).

(Signed) Carlos Ivan Zuniga, Mario Galindo H., Bolivar Davalos Moncayo, Tomas Herrera, Carlo Enrique Adames, Rodrigo Sanchez, Jose. M. Faundez, Joaquin Ortega V., Natividad E. Pinango, Juan Felipe de la Iglesia, Elsa M. De Garcia, M. B. Barcia Almengor, Diogenes A. Arosemena G.

Revolutionary Students Issue Antitreaty Communique

(Communique Issued by Revolutionary Students Front; Read by Member Guilermo Calvo—Date not given)

In view of the situation presently prevailing the country, in which the canal issue is the main concern, the FER-29 [Revolutionary Students Front] finds it necessary to explain its position to the citizenry.

The treaty is a manifestation at our level of the efforts being carried out worldwide by the Yankee imperialists to improve their image and that of the capitalist system at a time when the system is experiencing one of its worst economic crises.

At present, the national liberation movements in Asia and Africa have weakened the political and economic domination of the United States of America. Therefore, on this continent, the Torrijos-Carter treaty has been signed as a mechanism to maintain the domination of the Yankees in Latin America—their strategic rearguard in the face of the defeats they have suffered at the hands of popular forces on other continents.

Role of the Government in the Negotiations:

The Torrijos government maintained throughout the negotiating process a position of defeatism and surrender as a result of its economic bankruptcy and its $2 billion debt to the Yankees. The outcome of these negotiations behind the people's backs—after a discussion in which the freedom of expression of those of us who opposed the treaty was curtailed—was a treaty which from the legal point of view is a monstrous aberration and which politically and economically favors the Yankee imperialists and the dominant Panamanian classes and leaves untouched the causes of conflict between the United States and Panama.

Ratification of the Neutrality Pact and its Amendments and Reservations:

After a series of insults was hurled at Panama by the U.S. Senate, the neutrality treaty was ratified with its respective amendments and reservations. These amendments and reservations are designed to clarify the ambiguities contained in the neutrality pact and clearly establish the framework for U.S. action in Panama.

The reservation of Senator Dennis DeConcini established . . . right to interfere whenever the United States for any reason unilaterally considers free transit through the waterway to be threatened. We know that for the Yankees a student strike, a situation of economic crisis or a request by workers for a wage increase would be sufficient motive for the U.S. President to order a military invasion.

The government is therefore at a crossroads. It must either reject the amendment or allow intervention. The military men who are in power cannot act freely since they respond to the interests of the rich classes, interests which are the same as those of the imperialists, and the amendments serve as a guarantee by which the United States can protect its economic and political interests throughout Latin America. If the government accepts these amendments. If will be legalizing a permanent intervention in our fatherland and it will be stripping itself of its revolutionary mask to revealing what it has always been—servile, defeatist and traitorous.

We know that the government will not reject the amendments or the treaty because the treaty is its last means of emerging from the economic asphyxiation in which it finds itself as a result of its irrational policy of promoting models of development which favor nonproductive capital sectors such as commerce services.

Now that the true imperialist nature of the Torrijos-Carter treaties has been revealed, the popular movement, which from the beginning strongly rejected the

treaties, has stepped up its repudiation of them. Panamanian revolutionaries and patriots have established as their immediate goal the rejection, not only of the amendments, but also of both treaties, since they are injurious to national sovereignty and dignity. We must shake off once and for all the mirage of an easy victory and realize that the struggle will be long and hard and full of sacrifice if we are to perform the tasks that the situation demands. Now more than ever, we must defend our right to make decisions regarding a problem that is so important to our people—the problem of the canal. An attempt to usurp this right is being made by those who seek only a more viable formula for continuing the exploitation of our people. Sovereignty or death, we shall triumph.

Treaty Amendments Seen as Changing Neutrality Concept

("Conciencia Publica" Column by Miguel Angel Moreno Gongora: "The Declaration of Understanding")

In the 23 October 1977 plebiscite we approved the Panama Canal treaties together with their annexes and protocols, which several weeks earlier, on 7 September, had been signed by Carter and Torrijos in a pompous and spectacular ceremony in Washington. This plebiscite was preceded by a worrisome and hasty public debate in which the opponents of the United States had only 45 days to express ideas and establish positions.

The chief of government of Panama arrived in Washington, and after his meeting with Carter on 14 October a declaration of understanding was issued referring to Article IV of the neutrality treaty which interpolates the criteria that "each of the two counties, according to their respective constitutional procedures, will defend the canal against any threat to its neutrality and consequently will have the right to act in case of aggression or threat directed against the canal or the peaceful transit of ships through the canal," and that "the neutrality treaty provides that the warships and auxiliary ships of the United States and Panama will have the right to transit the canal in an expeditious manner." This has the intention, and it will be so interpreted, of insuring the transit of those ships through the canal as quickly as possible, without obstacles, with simplified documentation and, in case of necessity or emergency, to go to the head of the line to transit the canal quickly.

The North Americans, who have now assumed the power to determine what the Panamanians aspire to, feel, reject or want, said that the declaration does not require another plebiscite and that the senators could therefore approve it as an amendment. But they were wrong again because from this moment on, in my opinion and in the opinion of many Panamanians, it is not necessary to expect further amendments, reservations, conditions or understandings to consider the neutrality treaty changed.

The inclusion of the declaration of understanding as an amendment to the neutrality treaty constitutes a substantial change to the sense and objective of the treaty because granting special concessions and privileges to U.S. ships changes the neutrality concept, which means no participation in any state of belligerency and complete impartiality. It also represents a negation of the will of the people. If the declaration was not included in the treaties passed in the plebiscite, it is clear that it does not have our consent.

The senators, not content with the declaration of understanding and demonstrating a great lack of confidence, even with President Carter, and with irrepressible colonialist voracity, went even further and introduced, through an "understanding," the concept that the interpretation of the state of "necessity or emergency" for any U.S. ship to go to the head of the line to transmit the canal in an expeditious manner will be made unilaterally by the United States. This means that every time that the United States "feels like it," it can allege "necessity or emergency," and we cannot even express our opinion. We have no right to dispute it.

If the introduction of the declaration of understanding as an amendment substantially altered the will of the Panamanian people, the understanding which confers the right of unilateral interpretation to the United States of the meaning of "necessity or emergency" constitutes the greatest disregard for our dignity as a free and sovereign nation.

Matutino Columnist Urges Rejection of Senate Amendments

(Article by Carlos Bolivar Pedreschi)

At the beginning of the very brief and unique national debate over the Torrijos-Carter treaties in October 1977, some Panamanians concerned about the country's fate pointed out the possible interpretation that could be made of some of the treaties' clauses. One of these clauses was precisely Clause IV of the "Treaty Regarding the Permanent Neutrality and Operation of the Panama Canal," which virtually made the United States the only guarantor of the canal's so-called neutrality and its operation.

With regard to this clause, we said that the way in which it was improvidently drafted was laying the foundation for the interpretation that the neutrality treaty was giving the United States the right to intervene militarily in Panamanian territory by way of a supposed defense of the canal's neutrality and operation. During the negotiations, when the government had not yet departed from some positions which we at the time thought were positive, the government itself was aware of the risk in officially granting the U.S. Government the status of being the only guarantor of neutrality. As a matter of fact, government spokesmen said, with sufficient foundation in our opinion, that "in providing that the United States is the only guarantor, we are granting it the right to intervene unilaterally in Panama in the 21st century."

This obvious risk of U.S. military meddling in Panama in the 21st century, which is implied by recognizing the United States as the only guarantor of neutrality, was explicitly corroborated by the negotiators and U.S. officials. In fact, this time the Panamanian Government could not say, regarding U.S. military intervention in Panama, that it was deceived by the negotiators and other U.S. Government officials. Colonialism has spoken clearly on this occasion. As a matter of fact no other conclusion can be deduced from the statements made by spokesmen of that colonialism which we proceed to transcribe:

". . . The treaty does not place limitations on our ability to take the necessary measures in case the canal's neutrality is threatened or violated" (statement by negotiator Linowitz published in the Miami Herald on 9 September 1977).

"The United States not only can decide unilaterally to intervene in Panama after the year 2000, but in the next 23 years it will be exclusively the decision of the United States to determine how many soldiers should stay in the Canal Zone to defend the canal" (statement by U.S. Defense Secretary Harold Brown, published in La Estrella De Panama on 28 September 1977).

And finally, here is what the letter and spirit of the neutrality treaty means to the U.S. Government:

". . . The treaties give U.S. forces the right to defend the canal even against Panama" (statement by George S. Brown, chief of staff of the U.S. Armed Forces, published by the Miami Herald on 27 September 1977).

But even if some might have understood that the U.S. right to intervene militarily in Panama after the year 2000 was limited to military intervention in the Panamanian territory known as the Canal Zone—an action still sufficiently harmful to the national sovereignty and dignity—it now seems that according to one of the conditions presented by the Senate for the ratification and validation of the Treaty. Regarding the Permanent Neutrality and Operation of the Panama Canal, this right of perpetual U.S. military intervention in Panama is extended to all of the national territory. This is a right which not even the infamous 1903 treaty granted the U.S. Government. Provision No. 1 approved by the U.S. Senate as a condition for ratification and validation of the neutrality treaty literally and clearly states:

"(1) Notwithstanding the provisions of Article V or any other provision of the treaty, if the canal is closed or its operations are interfered with. The Republic of Panama and the United States of America shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, as the case may be." [as published]

The quoted provision leaves no doubt that the government and the Panamanians who accept the amendments, reservations and conditions are accepting in 1978 the perpetual right of a foreign power to intervene militarily in the sacred territory of the fatherland. And this time those who do so will be unable to denounce colonialism and its spokesmen for having deceived us and for not speaking clearly. And if these amendments, conditions and reservations signify decolonization and national liberation, then obviously political language has lost all ability to communicate.

The quoted provision by which the U.S. Senate expressly understands that the neutrality treaty gives the United States the right to use military force in Panama

very clearly means that the government and the Panamanians who accept this provision are accepting that at some time, U.S. troops can be in any part of Panamanian territory, not excluding the cities of David, Penonome, Colon, La Palma, Porras Park, Santiago Square, Avenue A or the University of Panama, to cite just a few examples. And this would evidently mean the return in 1978 to stages in our history that have already been overcome by the efforts of even the traditional parties, stages when, as in 1925, the U.S. military troops installed themselves in our Santa Ana Square under the pretext of maintaining order and at the same time crushed a tenant movement. If this humiliating condition proposed by the U.S. Senate is considered acceptable then one would have to reach the absurd conclusion that there is no colonialist contamination in Panama.

In view of the seriousness of the situation arising from the amendments, reservations and conditions, we patriotically urge the national government to reject them and ask the Panamanian people to express their totally justifiable repudiation of them. We firmly believe that the obligatory rejection of the amendments, reservations and conditions by the national government will be backed by a united country and will result in a real national consensus which is necessary to analyze the risks and alternatives of a truly national canal policy. As we expressed previously, because of the disproportion of the forces involved, the nationalist cause extends beyond one man and one government and for some time even all of us together will not be enough.

THE PANAMA CANAL TREATY

The PRESIDING OFFICER (Mr. Ford). Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, Calendar No. 2, which the clerk will state.

The clerk will suspend and the Senate will come to order. The balconies will help the Senate.

The clerk will proceed.

The assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st session, the Panama Canal Treaty.

The Senate resumed the consideration of the treaty.

The PRESIDING OFFICER. The Senate will now consider amendment No. 38 by the Senator from Utah (Mr. Hatch).

The Senator from Utah.

Mr. HATCH. Mr. President, the Panama Canal Treaty contains a number of provisions which provide for substantial payments to the Republic of Panama. Article III, section 5 of the treaty provides that the newly formed Panama Canal Commission shall pay the Republic of Panama $10 million per year to reimburse it for providing certain public services in the canal operating area, such as police and fire protection, garbage collection, and street maintenance. Likewise, article XIII, section 4 of the treaty provides that the Republic of Panama shall receive from the Commission certain additional payments "to be paid out of Canal operating revenues."

Mr. ALLEN. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. There is noise in the galleries.

Will the Senator suspend until the galleries have been cleared? The interruption is by the spectators, if the Senator will just bear with me until we have order.

The Senator may proceed.

Mr. HATCH. I thank the Chair.

Three separate payments are contemplated under this provision: First, and unspecified annual payment computed at a rate of thirty hundredths of a U.S. dollar ($0.30) per Panama Canal net ton, or

its equivalency, for each vessel trainsiting the canal for which tolls are charged, such payment to be adjusted upwards to reflect changes in the U.S. wholesale price index; second, a fixed annuity of $10 million; and third, a supplemental annual payment up to $10 million, the exact amount to be determined by the amount of surplus revenues of the commission. It is estimated that these payments to Panama will total more than $60 million in the first year of operation, excluding the supplemental payment drawn from surplus revenues.

The language of the treaty does not indicate whether these payments to Panama shall be made in accordance with the legislative processes of Congress. Indeed, representatives of the State Department testifying before Congress have emphasized that the canal will be self-supporting under the treaty, and that all payments to Panama will be derived from operating revenues. In other words, the impression we have been given is that legislative appropriations will not be necessary, because these payments will be made directly to Panama by the Commission.

This impression has been confirmed by the language of the proposed implementing legislation that has been submitted by the State Department. The implementing legislation would amend section 2 of title 2 of the Panama Canal Code by adding a new subsection (H) reading as follows:

(H) Payments by the Commission to the Republic of Panama for providing public services in accordance with paragraph (5) of article III of the Panama Canal Treaty of 1977 shall be treated for all purposes as an operating cost of the Commission.

In other words, Mr. President, these payments are not going to be treated as separate payments requiring an appropriation by Congress, but as part of the operating costs of the Commission, thereby bypassing the legislative process. The implementing legislation drafted by the State Department further provides that subsection (g) of section 62 of title 2 of the Panama Canal Code shall be amended to provide that—

The Panama Canal Commission shall pay directly from Canal operating revenues to the Republic of Panama those payments required under paragraph 4 of Article XIII of the Panama Canal Treaty of 1977.

The obvious objective here is to bypass the appropriations process of the Congress in connection with payments to Panama under the treaty.

Mr. President, this scheme, on its face, is constitutionally and financially defective. In the first place, it violates the Constitution. In the second place, it seems certain that there will not be sufficient revenue to cover all of these payments, and that Congress will have to make up the difference through appropriations anyway.

Article I, section 9 of the Constitution provides that—

No money shall be drawn from the Treasury but in Consequence of Appropriations made by law.

Moreover, article I, section 7 provides that all bills for raising revenue shall originate in the House of Representatives. It is a well-established principle of our Constitution that the treatymaking power of the Chief Executive is limited by Congress' power over

the purse. Simply stated—and even State Department representatives acknowledge this rule—a treaty cannot appropriate funds.

TREATIES AND EXPENDITURE OF FUNDS

The Panama Canal Commission, according to article III, section 3 of the treaty, will "carry out its responsibilities" as "a U.S. Government agency," and it "shall be constituted by and in conformity with the laws of the United States of America." Thus the treaty contemplates that a U.S. Government agency will be making payments to a foreign government for the remainder of this century without the consent of the House of Representatives and in derogation of the appropriations processes of the House and Senate. This clearly raises an important constitutional issue. The administration's view is that many provisions of this treaty are self-executing, meaning that they take effect as domestic law without further action by Congress. But are these provisions of the treaty providing for payments by a U.S. Government agency self-executing in the light of article I, section 9, clause 7 of the Constitution, which gives Congress the exclusive power to make appropriations? The answer, I believe, is that they are not self-executing.

It is not disputed that the President's treatymaking power extends to bilateral agreements by which the United States undertakes to make payments of money. One of the first treaties made by the United States after the adoption of the Constitution, the Jay Treaty of 1794 with Great Britain, provided for payments of debts owed by American citizens to British creditors. The treaties with France for the acquisition of Louisiana provided for a payment of 60 million francs. Countless other examples could be cited to illustrate the princple that the Chief Executive has the authority to make treaties which obligate the United States to make payments to a foreign government. But I am not aware that any President has ever made a self-executing treaty providing for such payments.

EARLIER PRECEDENTS

Debate over the provisions of the Jay Treaty requiring the expenditure of funds is instructive in this regard. The Members of the House of Representatives did not question the right of the President to enter into such a treaty. Instead, they debated the issue of whether the House was entitled to obtain copies of the instructions given by the President to the negotiators, and whether the Congress was required to appropriate the funds necessary to carry the treaty into effect. President Washington rejected the demand of the House for copies of the instructions, but the House adopted a resolution, vigorously supported by James Madison, which provided that—

> When a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of the Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such a treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good.

Congress subsequently enacted a law making the necessary appropriations. The same principles were recognized and the same

procedure was followed regarding subsequent treaties where payments were required.

In the case of Turner against Baptist Missionary Union, a Federal Circuit Court considered the effect of an 1863 treaty with an Indian tribe, which provided for payment of the net proceeds of the sale of 160 acres of land to the owner of the buildings situated on the land.

Said the Court:

> A treaty under the Federal Constitution is declared to be the supreme law of the land. This, unquestionably, applies to all treaties, where the treaty-making power, without the aid of Congress, can carry it into effect. It is not, however, and cannot be the Supreme Law of the Land, where the concurrence of Congress is necessary to give it effect. Until this power is exercised, as where the appropriations of money is required, the treaty is not perfect. It is not operative, in the sense of the Constitution, as money cannot be appropriated by the treaty-making power. This results from the limitations of our government. . . . As well might it be contended that an ordinary act of Congress, without the signature of the President, was a law, as that a treaty which engages to pay money, is in itself a law. . . . It [the treaty-making power] cannot bind or control the legislative action in this respect, and every foreign government may be presumed to know that as far as the treaty stipulates to pay money, the legislative action is required. (Fed. Cas. No. 14251 (1852), 24 Fed. Cas. 345, 346.).

In brief, the precedents, both political and constitutional, are well established that a treaty provision for the payment of money is not self-executing but requires an appropriation by Congress.

PAYMENT PROVISIONS OF THE NEW TREATY

This principle has been confirmed and duly respected in all previous treaties between the United States and the Republic of Panama. The treaty of 1903 provided under article XIV for an initial payment of $10 million and an annual payment of $250,000. Article VII of the 1936 treaty increased the amount of the annuity to 430,000 balboas. A third treaty between the United States and the Republic of Panama in 1955 increased the annuity once again to 1,930,000 balboas. In each case, the payments were made under appropriations enacted by Congress; and it was never suggested that any of these treaties was self-executing. The current annual payment ($2,238,000) is shown as one of three permanent appropriations in the Department of State budget for fiscal year 1978.

The present treaty, of course, calls for payments by the Commission and it would thus appear that appropriations will not be necessary because no funds will be drawn from the U.S. Treasury. This understanding of the method of payment, however, ignores a number of important considerations. As I have previously noted, article III of the proposed treaty specifies that the Panama Canal Commission, a U.S. Government agency, "shall be constituted by and in conformity with the laws of the United States." The laws of the United States governing the fiscal management of Government agencies in general are contained in title 31 of the United States Code. Executive departments and noncorporate Federal agencies are subject generally to the provisions of title 31, except the provisions of the Government Corporation Control Act. Wholly owned Government corporations are subject to the provisions of the Government Corporation Control Act and to many of the other provisions of title 31 as well.

Turning to title 31, we observe that it clearly delineates the fiscal responsibilities of Government agencies generally and their dependence on appropriations to authorize the expenditure of funds. The Budget and Accounting Act of 1921, which has been incorporated into title 31, defines "department or establishment" to include "any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government," and the term "appropriations" to include funds and authorizations to create obligations by contract in advance of appropriations or "any other authority making funds available for obligation or expenditure." All moneys received from whatever source for the use of the United States are required to be paid into the Treasury (31 U.S.C. 484). Detailed provisions are made for submission of estimates for appropriations for expenditure by government agencies (31 U.S.C. 581–752Z). Expenditures in excess of appropriations are prohibited, and all appropriations or funds made available for obligation are required to be apportioned to avoid the necessity for deficiency or supplemental appropriation (31 U.S.C. 665).

In light of these requirements, the provision of the new treaty that the payments to Panama are to be made by the Panama Canal Commission is wholly contrary to article I of the Constitution and Federal law, unless it is assumed—and the language of the treaties does not seem to support such an assumption—that such funds must first be appropriated by Congress. Presumably no one would seriously contend that the effect of the constitutional provision limiting to Congress the power to make appropriations can be circumvented by the device of providing in the treaty that a payment without appropriations is to be made by a named government agency instead of the United States.

With respect to article III of the proposed treaty, then, it is abundantly clear, that the Panama Canal Commission cannot pay the Republic of Panama $10 million per annum in advance of legislative appropriations authorizing such expenditures. This is also true of the additional payments made by the Commission "out of canal operating revenues" under article XIII of the treaty. Why article III provides simply for payments and article XIII provides for payments "out of canal operating revenues" is a distinction that apparently has no significance regarding constitutional and statutory requirements. The "canal operating revenues" referred to in article XIII are presumably the "tolls for the use of the Panama Canal, and other charges" which the United States—not the Panama Canal Commission—is authoried to "Establish, modify, collect, and retain" by article III, section 2(c) of the treaty. These revenues, of course, are the same in kind as those that have been derived by the United States from the Panama Canal since it was first opened to commerce and which have been expended under appropriations by Congress since that time.

It may be that the purpose of making the payments "out of canal operating revenues" was to identify such payments as part of the cost of operation, in order to establish rates of tolls. Such a construction necessarily assumes, however, that revenues will be sufficient to cover both the payments to Panama and operating expenses over and above such payments. But this leaves unanswered the obvious question: what if there is a disparity between the

amount of revenues and the total of such expenses? Is this deficiency to be absorbed by the U.S. Government by appropriations to cover losses, or by Panama through acceptance of less than the amount of payment stipulated by the treaty? In either case, the provision for payment out of revenues does not appear to affect the constitutional requirement for appropriations to carry these provisions into effect.

Section 4(c) of article XIII which provides for payment of $10 million "out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission" not only runs headlong into present law requiring the agency operating the canal to pay surplus funds into the Treasury, but also substitutes Panama for the United States as the beneficiary of surplus funds. This would effectively preclude further reduction of the U.S. Government's investment in the canal. Like the provision of article XIII for annual payments based on the aggregate measurement tonnage of ships using the canal during the year, the qualifications introduced by section 4(c) relate solely to the determination of the amount of the payment. Neither provision recognizes nor makes mention of the need for congressional appropriations to authorize payment. To be sure, the payment provisions of the treaty seemingly attempt to provide permanent appropriations for the treaty payments, an objective prohibited by the constitutional rule that only Congress has the power to make appropriations.

In sum, the provisions of the proposed treaty for payment of money can not become effective as domestic law unless Congress has, in accordance with article I, section 9 of the Constitution, appropriated the necessary funds. Under the treaties with Panama now in effect, which also provide for annual payments to Panama, revenues derived from operation of the canal are treated as public moneys and expenditures of those funds are limited to those authorized by appropriation acts of Congress.

Neither the language of the treaties nor the testimony of State Department representatives, however, offers us any concrete, specific assurances that all of the payment provisions of the treaty will be implemented by appropriations of Congress. Although administration witnesses appearing before congressional committees have freely acknowledged that a treaty cannot appropriate funds, they have continued to insist that this is a self-executing treaty. Herbert Hansell, legal adviser to the State Department, has stated that there is "no ground" for the concern expressed by House Members that the treaty "could be regarded as a means of circumventing that constitutional provision with respect to the payments to be made to Panama under the treaty." Why? Because, he says:

> It is intended that the payments to be made to Panama be financed wholly from projected revenues, so as to avoid any need to resort to general revenues.

Mr. President, in all of the testimony that I have examined in connection with this treaty, I have nowhere seen a flat assertion by any representative of the State Department or the Department of Justice that this is a non-self-executing treaty that will require congressional appropriations in order to implement the payment

provisions of the treaty; and the treaty itself is silent on this subject.

For these reasons, I offer this amendment to the treaty which would obviate this difficulty and eliminate all uncertainty and ambiguity about the method of payment to Panama. This amendment provides simply that under article III, section 5 of the treaty, all revenues of the Panama Canal Commission shall be deposited in the U.S. Treasury, and that all payments to Panama shall be based on legislative appropriations. It is necessary because of established constitutional precedents and laws governing Federal agencies.

PROJECTED DEFICIENCIES IN THE CANAL OPERATING COSTS UNDER THE NEW TREATY

Mr. President, it should further be noted, as I have previously indicated, that the future of the Panama Canal under this treaty, in so far as its financial structure is concerned, is rather bleak. In a recent study by Mr. W. M. Whitman, special consultant to the House Committee on Merchant Marine and Fisheries it is estimated that the cost of operating the canal during the first year of operation under the treaty will exceed revenues by approximately $99 million, not counting additional costs to the U.S. Treasury of $7.7 million. Mr. Whitman's analysis is based on a tabulation provided by the Panama Canal Company, and is adjusted to reflect the same elements of costs as those shown in the 1978 budget. It also includes additional treaty costs that are not part of the company's tabulation.

This study shows, Mr. President, it is illusory to think that the Panama Canal will be operating on a self-supporting basis, as the representatives of the State Department have insisted. Additional appropriations have to be made to make up the deficit, and cover the hidden costs of this treaty. This not to mention the added economic burden, after the tolls increase, that the American people will have to bear under this treaty as a result of higher prices for materials, including Alaskan crude oil, that will be transiting the canal.

The American consumer is going to rue the day that our Senators ratify these treaties, because they are going to pay through the nose from that day forward as a result of the escalation in costs to every consumer in America as a result of these treaties and their ratification.

"If financial viability of the canal is equated to operation as a self-sustaining enterprise," Whitman concludes, "the venture appears to be doomed from the first year after the treaty goes into effect. This was the thrust of the testimony of all the witnesses who urged or suggested the necessity for absorption of elements of the cost of operation by the Treasury through elimination of interest and depreciation or abandonment of the concept of recovery of the investment of the Government in the canal. There may be reasons to support adoption of such expedients, but the policy of operating the canal on a self-sustaining basis is not one of them."

Mr. President, I urge all Senators to read this perceptive study with care, and ask unanimous consent that it be printed in the

Record, together with my amendment, at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

AMENDMENT No. 38

In paragraph 3 of article III, at the end of the text immediately above subparagraph (a), add the following: "The operating revenues of the Panama Canal Commission shall be deposited in the Treasury of the United States of America.".

In the first sentence of paragraph 5 of article III, strike out "Panama Canal Commission shall reimburse" and insert in lieu thereof "United States of America shall reimburse, only after the amount of such reimbursement has been appropriated,".

PANAMA CANAL TREATY PROBLEMS

The written statements and testimony presented by the various witnesses appearing at the hearing of the Panama Canal Subcommittee on November 30 and December 1, 1977, disclose several clearly identifiable problems of some concern to the Committee and the Congress in the consideration of the Panama Canal treaties and legislation to carry them into effect, assuming they are ratified. Those problems fall into five general categories, namely:

1. The projected deficiency in canal revenues to cover operating costs;
2. The sources of funds to cover the deficiency in canal revenues;
3. The form of the Government agency to be established to operate the canal;
4. Ambiguities in treaty provisions; and
5. Constitutional issues.

1. Canal revenue deficiency:

The negotiators and other proponents of the treaty repeatedly have stressed the proposition that under the treaty the operations of the canal are to be self-supporting and that canal revenues are to be used exclusively for payment of costs of the operation without cost to the U.S. taxpayer.

The treaty provides for annual payments to Panama totalling some $62 million in the first year of operation, exclusive of a contingent payment of an additional $10 million to be paid to the extent canal revenues exceed expenditures. Other provisions of the treaty transferring income-producing property to Panama will reduce the revenues of the Panama Canal by some $130 million, partially offset by a reduction of about $50 million in canal operating costs.

An analysis of Panama Canal revenues and costs in the first year of operation under the treaty in comparison to the estimate provided in the 1978 budget program, which does not include provision for the effect of the treaty, is attached. This anlaysis is based on a tabulation provided by the Panama Canal Company, adjusted to reflect the same elements of cost as those shown in the 1978 budget and to include additional treaty costs, so far identified, not included in the Company's tabulation. The analysis shows that in the first year of operation under the treaty, Panama Canal revenues will fail to cover costs of operation of the canal and related treaty costs by about $99 million exclusive of additional cost to the U.S. Treasury of $7.7 million. The recovery from canal revenues of operating expenses and all other treaty related costs would require an increase in rates of tolls of more than 60 percent. If the additional costs to the Treasury of $7.7 million, referred to above, are excluded from the calculation, the increase in rates of tolls required would be reduced to 56 percent.

Although the calculations of the insufficiency in Panama Canal revenues to cover expenses summarized above relate to the first year of operation, there is no basis for optimum that the financial results of operation will improve with the passage of time. No detailed analysis of costs and expenses for future years similar to that provided for the first year of operation under the treaty is presently available, but the conclusion to be drawn from the data so far available is that costs will rise at a rate higher than any foreseeable increase in revenues over the period of operation of the canal by the United States under the treaty.

If financial viability of the canal is equated to operation as a self-sustaining enterprise, the venture appears to be doomed from the first year after the treaty goes into effect. This was the thrust of the testimony of all the witnesses who urged or suggested the necessity for absorption of elements of the cost of operation by the Treasury through elimination of interest and depreciation or abandonment of the

concept of recovery of the investment of the Government in the canal. There may be reasons to support adoption of such expedients, but the policy of operating the canal on a self-sustaining basis is not one of them.

2. Sources of funds to cover expenses of operation:

The ability of the canal to generate additional revenues required to cover canal operating expenses under the treaty lies in (1) possible increases in traffic, and (2) increases in rates of tolls.

a. Traffic increases. The factor cited most frequently as a partial solution to the financial problems of the Panama Canal under the treaty, is the anticipated increase in canal revenues from shipment through the canal of North Slope crude oil enroute from Alaska to the East Coast of the United States. The increase in Panama Canal revenue from this source has been estimated as high as $30 million a year, but for 1978 the estimate by the Panama Canal Company is $4 million. On the basis of the latter estimate, the deficiency of revenue in relation to costs would be reduced to $95 million or $103 million depending on whether the additional costs to the Treasury, noted above, are considered.

There is general agreement that the increase in revenues resulting from the movement of North Slope oil through the canal will be temporary because of the probability of use of less expensive alternatives such as pipelines. In the near time, the movement of this commodity through the canal will unquestionably improve the financial results of operation of the canal for two or three years, but it will neither eliminate the revenue deficiency in those years nor affect the long-term outlook.

The only other suggestion that canal revenues may increase to offset costs increases, even in part, is based on a presumption that historical growth of the canal will continue at the same rate or at a modified rate in the future. This logic has been rejected by most economists who insist that analysis of future individual commodity movements on established trade routes is the only sound basis for projections of future canal traffic.

b. Tolls increases. As previously indicated, on the basis of the Panama Canal revenue figure projected in the 1978 budget, the increased operating costs resulting from the treaty would require a toll increase of from 56% to 60% to put the canal on a self-sustaining basis.

Assuming an increase in revenue of $4 million from the movement through the canal of North Slope oil in the first year of operation under the treaty, the tolls increase would be reduced to the range of 52% to 57%.

Representatives of the shipping industry have indicated that increases in rates of tolls in the amount necessary to make the Panama Canal completely self-sustaining under the treaty are unrealistic and will price the canal out of the market because of the availability of less expensive alternatives.

Apparently, during the negotiation of the treaty there was no attempt at a systematic analysis of the potential canal revenues available for funding the cost of the various provisions eventually agreed to. The draft environmental impact statement, published by the Department of State in August 1977 (42 F.R. 43466) suggested that the assessment of the economic impact of the treaty was then impossible because of lack of data as to the costs of operation of the Panama Canal after the treaty became effective. The final EIS dated December 1977, states that "An initial toll increase in the neighborhood of 30 percent will be necessary to cover the operating costs . . . of the Canal during the new Treaty period. The exact level of toll increases will depend on such factors as:

The structure of the canal operation under the new Treaty, especially its operating cost requirements, and

The short-term impact on Canal traffic of Alaskan oil shipments." (pages 33, 34)

c. Appropriations or absorption of costs by U.S. If tolls revenues cannot be increased in an amount sufficient to make the canal self-supporting, it appears to be obvious that the deficiency in revenues will have to be made up from the U.S. Treasury, either through absorption of part of the costs or by direct appropriations. While the proponents of the treaty have consistently adhered to the position that one of the objectives of the treaty is that the canal continue to be self-supporting, they have also simultaneously proposed that substantial costs of operation of the canal be absorbed by the U.S. Treasury through discontinuance of payment of interest on the investment of the United States in the canal, writing off the investment entirely, and treatment of various costs arising from the treaty as obligations of the Treasury rather than of the Panama Canal. Representatives of the shipping industry and others go further and also propose elimination of depreciation as a cost of operation recoverable from tolls, and payment of interest by the United States on Government funds derived from operation of the canal and deposited in the Treasury.

Interest on U.S. investment. At the Panama Canal Subcommittee hearings on November 30, 1977, the testimony of Administration witnesses indicated general unfamiliarity with the history and purpose of payment from canal revenues of interests on the investment of the United States Government in the canal. Interest was described by those witnesses as "profit" and it was suggested that elimination of the interest payment is necessary to keep the Panama Canal Commission "self-sustaining." The Deputy Assistant Secretary of the Treasury described the background of the requirement of interest payment as follows:

"One reason that payment was required in 1951 when the Canal Company was established as a self-sustaining business enterprise was to avoid allowing the users to have a subsidized toll or exclusively subsidized toll be requiring that the cost of capital be included in the toll base. That requirement will no longer be necessary because under the new arrangements, the toll will increase in order to meet the costs and requirements under the new treaty arrangements.

"Tolls will approach a more economic level and a need for interest payment as a device in effect to avoid subsidy will no longer be necessary."

The requirement that the Panama Canal Company pay interest to the Treasury on the net direct investment of the U.S. Government in the Company is found in section 62 of title 2 of the Canal Zone Code. (76A Stat. 8). This provision was originally enacted in 1948 in the legislation incorporating the Panama Railroad Company (62 Stat. 1076) pursuant to the Government Corporation Control Act (31 U.S.C. 841 et seq.), and of course applied to that corporation which had been operated as an adjunct of the Panama Canal since the time of construction of the canal. See *State ex rel Rogers* v. *Graves,* 299 U.S. 401 (1937).

In 1950, when responsibility for the operation of the Panama Canal was transfered to the Panama Railroad Company, which was renamed the Panama Canal Company, the requirement for payment of interest on the Government's investment in the corporation was continued. (Act, Sept. 26, 1950 (64 Stat. 1041)). The 1950 legislation was based on recommendations of the then Bureau of the Budget, approved and forwarded to the Congress by President Truman. In reference to the requirement that the corporation pay interest to the Treasury, the report of the Bureau of the Budget stated:

"The principle that Federal business enterprises should pay a rate of return on the Government's investment equal to the cost of the money to the Treasury is now well settled. The President recommended in his 1948 budget message that corporations should be required to reimburse the Treasury for the full cost of money advanced to the corporation. There is no reason why the Panama Canal and its adjuncts should be exempted from payment of interest since they are essentially Federal business enterprises." H. Doc. 460, 81st Cong., 2d Sess., p. 8.

At the Panama Canal Subcommittee hearing on December 1, 1977, Leonard Kujawa, a partner in Arthur Andersen & Co., testifying as an expert on Panama Canal finances, confirmed that interest, as the cost of capital invested in a business, is part of the cost of operation of that business. As such, if a business operation such as the Panama Canal is to be self-sustaining, the revenues derived from the operation must be sufficient to cover interest payments on invested capital.

Conversely, as pointed out in the testimony of Comptroller General Staats, if annual interest payments are not made into the Treasury, the cast position of the Panama Canal Commission would be improved "but it would also reduce Treasury receipts and impact on the overall U.S. budget."

The amount of the interest payment to the Treasury in fiscal year 1978, shown in the 1978 budget program, is $19.7 million.

Depreciation. The statutory formula for establishing rates of tolls for use of the canal now includes depreciation as one of the elements of costs to be recovered from tolls.

The discontinuance of depreciation on part of the assets of the canal was another expedient suggested at the hearings for reducing the upward pressure on rates of tolls brought about by the treaty. On the other hand, the Comptroller General pointed out that the property transfers provided by the treaty would necessitate increased depreciation to make possible recovery of the U.S. investment in the canal over the life of the treaty and that "For the proposed Commission to be financially self-sufficient, toll rates would have to be raised to cover these increases in depreciation costs." The Comptroller General also noted that these actions "may not be economically sound, because of the impact on toll rates and possible adverse effect on traffic and revenues." In other words, under the treaty it may no longer be possible for the Panama Canal to be self-sustaining.

The property of the United States in the Canal Zone, to be transferred to Panama under the terms of the treaty, was acquired at an original cost of about $1 billion.

The book value of property associated with the Panama Canal, exclusive of military property, is currently $752 million.

Other treaty costs. Costs to the U.S. Treasury resulting from the treaty that are not directly and immediately associated with operation of the canal probably could not be included in the tolls formula for payment out of revenues of the canal. These costs have not been completely identified but they appear to include appropriations required to fund part of the economic assistance program under the separate agreement accompanying the treaty, the cost of the joint study for the need for and feasibility of a sea level canal for which the treaty provides, the loss to the Treasury of the payment now being made in reimbursement of capital appropriations to the Canal Zone Government, and possibly the cost to the Civil Service Commission and military departments of employee assistance programs contemplated by the treaty.

3. Form of Government agency to be established to operate the Panama Canal: Legislation to be enacted by the Congress must establish the Government agency to operate the canal and provide the ground rules for its operation.

Article III of the Panama Canal treaty provides that the United States will carry out its responsibilities by means of a U.S. Government agency called the Panama Canal Commission "which shall be constituted by and in conformity with the laws of the United States of America." The treaty also provides that the Panama Canal Commission "shall be supervised" by a Board composed of nine members, five of whom are to be U.S. nationals and four nationals of Panama.

From the time of completion of the canal in 1914 until 1951, the canal was operated by an independent agency called The Panama Canal. The Panama Canal was established and functioned in accordance with the laws of the United States generally applicable to all Government agencies, including the various laws governing the financial management of such agencies now largely incorporated in title 31 of the U.S. Code. Under those laws revenues derived from operation of the canal were paid into the Treasury, and costs of operations were paid from direct appropriations for that purpose.

In 1950, Congress transferred responsibility for operation of the canal to the Panama Railroad Company, a government agency in corporate form that had been used by the United States Government as an adjunct to the operation of the canal from the time of construction of the canal. The corporation was renamed the *Panama Canal Company* and its operations were subject to the provisions of the Government Corporation Control Act as well as other applicable provisions of title 31 of the U.S. Code. Revenues from the operation of the canal and related activities are deposited in the Treasury or depository banks approved by the Secretary of the Treasury, and expenditures are authorized by the Congress in appropriation acts authorizing the use of such revenues for the purposes set out in the corporation's budget program, as modified by the Congress in the appropriation act.

The 1950 legislation transferring operation of the canal to the Panama Canal Company changed the name of the agency known as The Panama Canal to *Canal Zone Government* with the responsibility of providing the various services incident to the civil government of the Canal Zone. No basic change was made in the form of organization of that agency. A brief summary of the history and laws applicable to the operation of the two agencies now responsible for operation of the canal and the government of the Canal Zone is included in the separate study of the relationship of the treaty provisions to the Constitutional power of Congress to make appropriations.

In establishing the government agency for operation of the canal under the new treaty, the Congress could select either the corporate form along the lines of the Panama Canal Company, the non-corporate form, following the prototype of the original Panama Canal agency, or some combination of the two. Some of the advantageous features of the corporate form, such as business-type budgeting and audit by the General Accounting Office, have been referred to by the Comptroller General. On the other hand, the corporate form is particularly useful for business operations that are truly self-sustaining, and if a substantial amount of direct or indirect subsidy is involved, the conventional unincorporated government agency offers the advantages of closer control by the Congress. Of course, if the unincorporated form of agency is selected, the legislation could incorporate provision for business-type budgets and audit by the General Accounting Office.

A related matter of concern is that of providing for the qualifications and method of appointment of members of the Board to be appointed to supervise the Panama Canal Commission. This feature of the legislation will be especially important in view of the provisions of the treaty for division of the membership between nationals of the United States and Panama.

4. Ambiguity of treaty provisions:

a. General considerations. Ambiguities in the language of the two treaties pose serious problems of interpretation that are virtually certain to become the subject of future controversy. Although the U.S. treaty negotiators have offered their explanations of the ambiguous language, those interpretations have often been at direct variance with those published by the Panamanian negotiators. In considering the significance of these diverse interpretations, the United States Government should keep in mind the enumeration of the causes of conflict between the United States and Panama, published by the Government of Panama on the occasion of the rejection by Panama of the new treaties negotiated in 1967. The concluding paragraph of Part I of the document read as follows:

"7. Last, so as not to make the list of causes of conflict interminable, we mention the greatest cause, the constant cause, the cause that has daily contributed to keep alive the resentment of Panamanians and feeds as sentiment of rebellion against the offensive presence in part of the national territory of a foreign Government which acts in an arbitrary, totalitarian and absolute manner, contemptuous toward the presence of the territorial sovereign. We refer to the invariable conduct of the Government of the United States of America of interpreting the clauses of the existing treaties in the manner most convenient to their interests and contrary to Panama's rights and imposing their arbitrary and unfair interpretations with the power in their hands, and that Panama has not been able to counteract to date, of excluding and throwing out of the Canal Zone the official presence of Panama and the enforcement of our laws." Reprinted in *Report on the Problems Concerning the Panama Canal,* Committee on Merchant Marine & Fisheries, 91st Cong., 2d Sess., p. 87.

As the quoted statement implies, the diplomatic relations of the United States and Panama have been characterized by almost continuous controversy over the construction of the language of treaties and agreements that the United States usually has regarded as plain and unambiguous. To cite only one example, Article V of the 1942 Agreement for the Lease of Defense Sites in the Republic of Panama (57 Stat. 1232) provided that the defense sites would be vacated "within one year after the date on which the definitive treaty of peace which brings about the cessation of the present war, shall have entered into effect." In 1947, Panama asserted that the surrender of Japan constituted a "definitive treaty of peace" ending the war. The United States did not accept that interpretation, but eventually yielded to pressure and vacated the sites before the peace treaty was signed. The history of this particular disagreement is set out at length in the Department of State's publication *Foreign Relations of the United States* for the years 1946 (pp. 1095, et seq.) and 1947 (pp. 881, et seq.).

b. Payments to Panama. Paragraph 4(a) of Article XIII of the treaty provides for payment to Panama of an annual amount of 30 cents "per Panama Canal net ton, *or its equivalent,* for each vessel transiting the Canal for which tolls are charged." (Emphasis supplied.) A Panama Canal net ton is clearly defined in existing laws and regulations as the basis for establishing rates of tolls for use of the canal. However, not all vessels are susceptible of measurement in Panama Canal net tons; some ships and other craft, such as warships, floating drydocks, etc., pay tolls on a displacement basis. Whether or not the phrase "or its equivalent" relates to the payment to Panama for ships that pay tolls on displacement rather than "Panama Canal" tonnage is not clear from the treaty provisions. If that is the intent of the provision, there is no criterion provided for determing what is the equivalent of a Panama Canal net ton in computing the payment to Panama. This could obviously become a matter of controversy and should be clarified before the treaty is ratified.

Paragraph 4(c) of Article XIII provides for a payment to Panama, in addition to other payments, of $10 million per year "to be paid out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to the treaty."

This provision apparently contemplates determination of whether or not the payment is due on a cash basis. If so, and if "expenditures" are limited to payments actually made, excluding unpaid obligations, it could create a serious problem for the financial administration of the canal. The theory of the treaty provisions seems to have derived from the statutory provision that now requires the Panama Canal Company to pay into the Treasury annually the amount of funds in excess of the Company's requirements for working capital and for authorized plant replacement and expansion. (2 C.Z. Code 70). However, there are obvious differences between the language of the two provisions, and it is questionable whether the treaty provision would permit retention by the Panama Canal Commission of funds for working capital or plant replacement and expansion.

The precise meaning of this paragraph of the treaty would become a matter of considerable importance to the financial management of the canal under the new treaty, and its meaning should be clarified before legislation is enacted to carry it into effect.

A third ambiguity appears in paragraph 5 of Article III of the treaty which, after providing for payment to Panama of $10 million in reimbursement for certain services, goes on to provide that at three year intervals "the costs involved in furnishing said services shall be reexamined to determine whether an adjustment of the annual payment should be made because of inflation *and other relevant factors affecting the cost of such services.*" (Emphasis supplied.) There is nothing in the treaty or other documents accompanying the treaty that defines what other relevant factors are for consideration in the adjustment of the amount of this payment. It was suggested at the hearing that the actual cost of services provided might be one such factor, but it would appear to be desirable to reach a firm understanding, with appropriate documentation, defining the meaning of the phrase in question.

Implicit in all the provisions for payments to Panama is an ambiguity arising from the absence of any language referring to the indebtedness of the Government of Panama to the Panama Canal Company and Canal Zone Government, now aggregating some $8.5 million. In normal business transactions provision would be made either for set-off of this amount against the payments to Panama or for outright cancellation of the debt. Whichever result is intended, it should be clearly understood by both parties and incorporated in the legislation to carry the treaty into effect.

c. Property transfers. Paragraph 1 of Article XIII of the treaty provides that on termination of the treaty, Panama will assume total responsibility for operation of the Panama Canal which shall be turned over in operating condition and "free of liens and debts, except as the two parties may otherwise agree."

At the end of any year of operation of the canal as a continuing business enterprise, there remain and are carried forward obligations incurred in completed periods of operation, such as unpaid employee compensation, liability for unused leave, and other accounts payable, which aggregated $80 million in 1976, and are estimated at $87 million in 1978.

Whether or not the quoted provision of Article XIII requires the liquidation of these liabilities before the canal is turned over to Panama is not clear, but the ambiguity should be resolved to permit orderly financial planning and management in the period intervening between the effective date and termination of the treaty.

d. Use of the canal by U.S. Government vessels. Paragraph I of Article VI of the neutrality treaty provides that vessels of war and auxiliary vessels of the United States and of Panama "will be entitled to transit the canal expeditiously." At the hearings on the treaties this provision has been referred to as providing that warships of the United States are entitled to priority in transit in case of emergency, but other statements in Panama by the treaty negotiators have indicated that no priority of passage is involved.

The statement issued by the White House after the meeting between President Carter and General Torrijos on October 14, 1977, discussed below, confirms that the provision in question "is intended, and shall be interpreted to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the canal rapidly."

e. Defense of the canal. Article IV of the Panama Canal treaty provides that "Each party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack, or other action which threatens the security of the Panama Canal or of ships transiting it." Article V provides specifically against intervention in the internal affairs of Panama by U.S. nationals employed by the Commission. Article II of the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal provides that Panama declares the "neutrality" of the canal in order that it shall remain open to peaceful transit of vessels of all nations on terms of entire equality, and Article IV provides that the United States and Panama agree to maintain the "regime of neutrality" established by the treaty "in order that the canal shall remain permanently neutral."

In the light of all these provisions the question has been raised as to whether the United States would be authorized to take appropriate action to keep the canal open if the threat to the operation of the canal originates in Panama. The statement issued by the White House after the meeting between President Carter and General Torrijos on October 14, 1977, states that under the neutrality treaty Panama and the United States have the responsibility to assure that the Panama Canal shall be open and secure to ships of all nations and that each country "shall, in accordance

with its constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal." The statement goes on to say, however, that this does not mean nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal "will remain open, secure, and accessible, and it shall never be directed against the territorial integrity of political independence of Panama." Administration witnesses at the subcommittee hearing expressed the view that the treaty gives the United States the right to take whatever steps the United States deems necessary to maintain the neutrality of the canal, no matter what the threat may be.

f. Joint statement of October 1977. The statements issued by President Carter on October 14, and General Torrijos on October 18, for the purpose of eliminating the ambiguities in the neutrality treaty are intrinsically ambiguous in themselves.

Apparently the statements were entirely informal. On his return to Panama following his meeting with President Carter, the press reported that General Torrijos emphasized that he had not signed anything on his visit to Washington. Granting that the statement represents the personal interpretation of the treaty provisions discussed on the part of President Carter and General Torrijos, the effect of the informal unsigned statements as amplifications of the language of the treaty is at least open to question.

5. Constitutional issues:

In addition to the financial problems in operation of the Panama Canal under the new treaties, the treaty language poses two fundamental constitutional problems that are of even greater significance to the United States Government, namely, the requirement for action by the Congress to dispose of property of the United States and to make appropriations of public funds. The treaty language purports to convey property of the United States to Panama and to provide for payments to Panama without action by the Congress as the Constitution requires. These issues are addressed at length in a memorandum on the necessity for appropriations to authorize the payments to Panama presented at the subcommittee hearings on December 1, 1977, and in extensive hearings and briefings conducted by the Committee on Merchant Marine and Fisheries in the first session of the 95th Congress. A further hearing by the Committee on the constitutional issues is scheduled in January, 1978.

PANAMA CANAL COSTS—1ST-YEAR OPERATION UNDER 1977 TREATY COMPARED TO 1978 BUDGET

[In thousands of dollars]

	Budget 1978	1st year treaty costs
Operating costs:		
Revenues:		
Tolls:		
Commercial vessels	176,083	176,083
Government tolls credits	1,554	1,554
Total tolls revenues	177,637	177,637
Revenues other than tolls:		
Navigation service and control	29,962	26,247
General repair, storehouse, engineering and maintenance service	6,062	3,155
Marine terminals	24,151	1,645
Transportation and utilities	23,950	26,521
Retail and housing	47,169	5,866
Government activities	63,132	115
Other	2,351	3,068
Total revenues other than tolls	196,777	66,617
Total revenues	374,414	244,254

PANAMA CANAL COSTS—1ST-YEAR OPERATION UNDER 1977 TREATY COMPARED TO 1978 BUDGET—Continued

[In thousands of dollars]

	Budget 1978	1st year treaty costs
Costs:		
Maintenance of channels and harbors	22,563	22,603
Navigation service and control	40,732	38,316
Locks	24,759	24,759
General repair, storehouse, engineering and maintenance services	8,966	9,108
Marine terminals	19,801	1,659
Transportation and utilities	22,137	25,353
Retail and housing	51,504	6,303
Other	44,367	41,383
General and administrative	26,231	25,662
Governmental activities	85,968	22,097
Repayment of prior year's interest costs	5,273	5,273
Interest	19,706	19,706
Fixed annuity to Panama	519	10,000
Annuity based on Panama Canal net tonnage		42,471
Public service payments to Panama		10,000
Severance pay		6,093
Repatriation		1,350
Plant relocation		2,236
Early retirement of employees		8,400
Training programs		320
Elimination of tax factor in employee pay		463
Rotation of employees		509
Total operating costs	372,526	323,555
Net operating revenue (loss)	1,888	(79,301)
Capital costs:	22,000	19,992
Total operating revenue (loss) and capital cost	(20,631)	(99,293)
Additional costs to Treasury:		
Depreciation on Canal Zone Government assets		2,681
Military assistance loans to Panama		5,000
Total additional costs to Treasury		7,681
1st-year costs of treaty in excess of Panama Canal revenues:		
Panama Canal Commission		99,293
Treasury		7,681
Total		106,974

Mr. HATCH. Mr. President, I am concerned about the constitutional aspect of these treaties, and I fought very hard last week to try to have the Constitution upheld. I think we should fight very hard to have it upheld this week, and that is the purpose of my amendment.

I think time will vindicate our position. On the other hand, vindication or not, we happen to be right on these issues.

I do not believe the Panamanian Government should be uspet if this amendment happens to succeed because of our constitutional processes. They must be abided by, and I do not think this a particularly difficult problem for them, and it might well avoid the future economic difficulties which could arise which could cause a shutdown of the canal if we are not perceptive and farsighted enough now to abide by the terms of the Constitution.

Mr. President, I yield the floor.

Mr. Allen addressed the Chair.

The. PRESIDING OFFICER (Mr. Pell). The Senator from Alabama.

Mr. ALLEN. I thank the Chair.

Mr. President, when the first protests by certain elements in Panama to the provisions of the Neutrality Treaty, approved earlier by the Senate, came to light, I felt that possibly this was a ploy by the Panamanian dictator to assure that no further amendments or reservations would be attached to the Panama Canal Treaty. I thought the dictator was relying upon the exchange of letters between the President and the dictator on March 15, in which the dictator expressed concern about the reservations that he understood were in line for approval in the United States Senate. The President wrote him a letter giving him assurance that whatever was done there would be no departure from the spirit of the agreement into which the President and the dictator entered, which has been called the Memorandum of Agreement.

Since that time, however, the Ambassador, the permanent representative of Panama, to the United Nations General Assembly, Jorge E. Illueca—with whom, I might say, I debated this issue at the University of Alabama some months ago—has written to the Secretary General of the United Nations in which he sets out the Resolution of Ratification. He gives a statement made on the floor by Senator Dennis DeConcini and also a statement by Senator Edward Kennedy, ending up with a communique from the Minister of Foreign Affairs of Panama issued on the 27th of March, 1978, in which the closing paragraph reads as follows:

> We recommend to our fellow citizens to study objectively the documents published today in spanish and English, so that they might assist the government in taking the most patriotic decision which, as stated by General Omar Torrijos Herrera, Head of the Government of Panama, will be taken within the framework of a great national consensus.

So it is obvious, Mr. President, that the Panamanians are seeking to undercut the provisions of this treaty even before notes of ratification are exchanged between the heads of government as provided by law for the approval of treaties.

So, Mr. President, there does seem to be general concern and general opposition in Panama to the approval of these treaties, and the question I would like to pose is: Why should we approve a treaty that gives away the Panama Canal under the terms under which it is to be given away, both as to the defense of the canal and as to the protection of the American taxpayer, why should we give the canal away when the people of Panama are not satisfied with the terms of the treaty as agreed to here in the United States Senate?

We have been told, Mr. President, as one of the chief arguments for these treaties that they were necessary in order to avoid violence, in order to avoid riots, in order to avoid sabotage of the canal.

But, Mr. President, it looks like just the reverse of that is true. It looks like if we approve these treaties and send them to Panama for ratification, it is going to cause a great national upheaval in Panama. Far from being a good neighbor gesture it apparently is regarded as another effort at colonialism, as another effort of domination of Panama by the United States Government, and as another attack upon the sovereignty of Panama.

So why, Mr. President, should we force this treaty on the Panamanians?

I have prepared an amendment, that I will introduce at the proper time saying that this treaty shall not go into force—and, of course, until it goes into force the Neutrality Treaty cannot go into force, but this treaty, the Panama Canal Treaty, cannot go into force—until it has been approved in a national plebiscite held in Panama.

Mr. President, why should we send to Panama and have approved by the dictator, acting for the Government of Panama, it, of course, being a one-man government, why should we send that treaty down for approval when quite obviously it is opposed by, if not a majority of the people of Panama—and it looks like various business, professional and labor groups there are organizing behind the opposition to the treaty—but why should we enter into a compact with Panama that is not approved by the people of Panama?

So my amendment—and I hope the Members of the Senate will look with favor on this amendment, and I hope the leadership will agree to this amendment—why should we ask the Panamanian Government to agree to a treaty unless we are sure that the people of Panama want such treaty?

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator, since he has mentioned the leadership, yield?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. I will say quickly I do not favor the Senator's amendment. I respect his right to call it up. I certainly respect his right to speak in support of it, and I certainly respect his dedication to the cause of defeating the treaties and, of course, this would be one more amendment by which that rejection could ultimately be brought about.

So I would not want to support the Senator's amendment, I will just say that in advance. Moreover, I think I should state that we have been hearing all along in this debate that the Senate is just acting in the interests of the people of Panama, in the interest of the Government of Panama, acting at the behest of Mr. Torrijos and that the interests of the United States are being subordinated to the interests of the Panamanian Government.

Now, I think it is obvious that there is opposition to these treaties in Panama. There was when the plebiscite occurred down there. But there has been an attempt to obfuscate that opposition.

Of course, there is opposition to the treaties down there. There is opposition to them in this country. But I would urge Senators to keep their eye on the ball and keep a steady hand on the helm, and would urge people at both ends, not only in the United States but also in Panama, to keep cool heads. This is a time to remain cool, in my judgment.

Let us vote on the treaties on the basis of the merits of the treaties, on the basis of what is in the best interests of the United States. I have not seen any indication, at this point at least, that the Panamanian Government intends to refuse to exchange instruments of ratification if and when that time comes.

I think we should go right ahead and do what we think ought to be done in the interests of this country, of our country, and its good relations not only with Panama but with other Latin American countries.

Finally, as to the Senator's suggestion that the amendment which he intends to offer would require a new plebiscite in Panama, it seems to me that the Senate, if it were to adopt that amendment, would be attempting to amend the Constititution of the Republic of Panama. That Constitution requires a plebiscite on a treaty, but I do not know of any requirement of that Constitution that there be a second plebiscite dealing with the reservations, understandings, et cetera, that might be attached to a treaty. So the Senator's amendment, it would seem to me, would be looked upon by the people of Panama as a rather presumptuous incursion upon their constitutional rights.

I want to say finally—and I thank the Senator from Alabama for being so courteous and patient in yielding to me. He has the floor, and I will try to not to be overly long.

Finally, I think we have to recognize that the people of Panama have been patient and long suffering. For 75 years they have lived with a bone in their throats, as they have viewed the 1903 treaty. It has been a continuing source of frustration to them, and a continuing sore spot in our relations with Panama. I think they have been very patient. They have not attempted at any time to abrogate that treaty. They have lived up to their responsibilities and duties under it.

I must say that I think they have also been very patient and forbearing as they have listened to the debate in the Senate on the treaties. This debate goes out on the National Public Radio. It is translated into Spanish, and the Panamanian people have listened to every word of it. I commend them on the equanimity that they have shown as I know from time to time, without any such intention on the part of Senators, the Panamanian people, in my judgment, have probably thought that they were being insulted by some things that have been said, again I could hasten to say through inadvertence and probably misunderstanding on the part of the Panamanian people themselves in the interpretations they have placed on things that are said.

I wish to commend the Panamanian people on keeping their cool and maintaining their equanimity in this situation, in the light of some of the things that they may have interpreted as demeaning on the part of those of us who have spoken here in the Senate. I commend and compliment them.

I thank the Senator from Alabama for his extraordinary courtesy in yielding to me to take the floor at this time, and being so kind as not to interrupt my statement. I have finished, and I express by gratitude to him.

Mr. ALLEN. I thank the distinguished majority leader for his very fine remarks. I am always glad to yield to the majority leader when he has questions to ask, when he has arguments to make, or when he has information that he thinks would be helpful to the Senate.

Now I would hope that I would be permitted to conclude my remarks, inasmuch as the position of the leadership has been so fully stated. I might say, though, Mr. President, that it comes as no surprise to me that the distinguished majority leader should take the position that he is opposed to this amendment, because he has not been for a single amendment that has been offered during the

2 months that these treaties have been before the U.S. Senate, other than two so-called leadership amendments. So it did not come as much of a surprise to the Senator from Alabama. I did express the hope that the leadership would agree to this amendment, but it did not surprise me when my hope was not fulfilled by a statement from the leadership that it would support this amendment.

The distinguished Senator said, as to our putting into the treaty a provision that before the treaty goes into effect it should be approved by national plebiscite in Panama, that whereas there is a provision, he states, in the Panamanian Constitution, requiring a plebiscite for the approval of a treaty, he knows of no provision for a second plebiscite.

I call the attention of the Senate to the fact that apparently the Panamanians feel that this is a different document from the document that was approved in the plebiscite, thus getting back to a familiar argument of mine that Mr. Torrijos jumped the gun in calling for this plebiscite, because he knew the Senate of the United States has the constitutional right and duty of advising the President with respect to this treaty, and that that advice is in the form of amendments to the treaty, shaping the treaty to the views of the Senate in the advice that it gives to the President.

But, Mr. President, it is apparent even from the words of the dictator that there are tremendous grounds for opposition to this treaty in Panama. So why, Mr. President, should we give away a valuable asset of this country, valuable from the standpoint of our economic well-being and valuable from the standpoint of our military security? Why should we force this treaty on Panama when it is so obvious that a large portion of the people there—it was one-third in the plebiscite, and obviously the opposition is growing.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. ALLEN. I understood the Senator to say he was not going to interrupt me any more.

Mr. ROBERT C. BYRD. I did not say that, but I really did not mean to interrupt.

Mr. ALLEN. Very well; I will yield to the distinguished Senator, then, if he wishes to comment on what I have said. I hate to have my remarks broken up with opposition to each statement that I make, but I will be glad to yield to the Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, may I say to the distinguished Senator from Alabama that I did not intend to interrupt him again, but this rhetorical question is very intriguing.

Mr. ALLEN. A rhetorical question is not supposed to be answered.

Mr. ROBERT C. BYRD. Well, in this instance I want to respond. The Senator asks, "Why should we force this treaty on the Panamanian people?"

We are not forcing it on them.

Mr. ALLEN. How are they going to state their opposition, if the dictator does not call another plebiscite?

Mr. ROBERT C. BYRD. They do not have to enter into the exchange of the instruments of ratification. We are not forcing them.

Mr. ALLEN. I did not understand how the Senator says we do not force the treaty on Panama.

Mr. ROBERT C. BYRD. Because the other party to this treaty, as with any other treaty, may decline to enter into the exchange of the instruments of ratification.

Mr. ALLEN. They will not have any opportunity of expressing themselves unless we write it into the treaty.

Mr. ROBERT C. BYRD. The Senator was arguing a minute ago that there was a lot of opposition to these treaties.

Mr. ALLEN. There is not opposition by Mr. Torrijos. He is willing to accept them. But he fears the Panamanian people. He will not submit it to them.

Mr. ROBERT C. BYRD. The Senator is attempting to read the mind or second-guess what someone else might do. But the Panamanian Government is under no obligation to enter into the exchange of the instruments of ratification, if it does not want to. It can exercise the same right that any other party can.

Mr. ALLEN. But Torrijos will keep them from doing it. He will not submit the question to a plebiscite.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. ALLEN. I thank the Senator. We all know, of course, that another chief argument made by the proponents of this treaty is the argument that the treaty is needed to eliminate the danger of sabotage, riots, and violence.

The argument has been made here on the floor that any amendments to the treaty would kill the treaty. Apparently, they are fearful that if a new plebiscite was called in Panama, the Panamanian people would reject it. But if one of the purposes of the treaty was to do a good neighborly act in giving the canal to Panama, paying them, in effect, to take it—we owe $319 million on it now which is to be wiped out under the treaties, and there are other items of expense—if this treaty is going to cause riots in Panama, possible sabotage, does it not indicate that even if the treaty is agreed to, if dictator Torrijos approves it, that that is just going to start the riots, that is just going to start the danger of sabotage, that is just going to start demands for more and more, demands to turn the canal over to Panama prior to the year 2000?

Already they are trying to undercut the provisions of the treaty in the U.N. I do not know what the U.N. has to do with it, but apparently Panama thinks it has something to do with it. I thought this was a treaty between Panama and the United States.

I know on the Neutrality Treaty other nations of the world have a right to endorse the neutrality aspect of it. But by and large and exclusively, for that matter, it is a treaty between the United States and Panama. Why should they be notifying the U.N. of their disapproval of the DeConcini amendment? There is already talk, as announced on national TV, that the leadership or the proponents—the proponents of the treaty, as I do not know about the leadership—the proponents are trying to get up an amendment that will water or soften down the proposals of the DeConcini amendment.

I believe they would be treading on dangerous grounds if they seek to water down the DeConcini amendment in the second treaty. We all know that the DeConcini amendment was the vehicle by which at least two votes here in the Senate were gained for the treaty. Would it be keeping faith with the Senators who voted for the treaty in return for the administration's agreement to the

DeConcini amendment, would it be keeping faith with the Senate and with those Senators who voted for the treaty because the DeConcini amendment was agreed to, if we water down the DeConcini amendment in this treaty and say that the DeConcini amendment does mean what it says, that is, the right of the United States to intervene at any time after the year 2000 to keep the canal open?

We were told that the leadership amendment was going to do that, but apparently it is not. The leadership amendment was supposed to give us the unilateral right to intervene in Panama, so why should the DeConcini amendment cause so much trouble in Panama, trouble to the point where it is stated that efforts will be made by the proponents of the treaties to water down the DeConcini amendment?

Mr. President, it is quite obvious to me that if these are to be treaties between the U.S. Government and the people of Panama, that the people of Panama should have a right to express their opinion on the treaties, as modified here in the U.S. Senate.

I think this is the best way to guarantee that we will know if the people of Panama approve of this treaty, by letting them say so. Just having an agreement with Dictator Torrijos is not enough. He has never been elected by the people. Even if he was, that would not give him a right to act for the people of Panama in the face of this strong opposition that is manifesting itself in Panama.

Also, Mr. President, I do not approve of the attitude of the Panamanians. I think it ill becomes the Panamanians to have the Panama Canal given to them, giving them money to take the canal, and merely because the U.S. Senate says we should have the right to intervene in Panama to protect and defend the canal for them to say, "Well, we do not want it on that basis. We want it on some other basis," and for us not to have the right to protect the canal is something that I feel is not well taken, to insist that we merely rubber-stamp these treaties.

Mr. President, the leadership has sought to defeat all amendments to the treaties, and they apparently thought it would not be too bad to let in some reservations.

I am rather of the opinion, Mr. President, that managers of the treaty and the leadership thought that reservations would not have too much force, that they would be innocuous, and they let in the DeConcini amendment as an amendment establishing a reservation to the resolution of ratification, even though they had turned down the language of the DeConcini amendment when it was offered as an amendment to the treaty. Apparently, they misjudged the effect of a reservation, because the DeConcini amendment, so-called, is not an amendment to the resolution of ratification. But they let in a tiger when they allowed the DeConcini amendment to the resolution of ratification to be agreed to with leadership support.

Just the other evening, I heard the distinguished majority leader tell the distinguished Senator from Louisiana that he would support a reservation to this treaty giving us the right, which we do not have in the treaty, to negotiate with any other nation as we see fit for the purpose of building a canal in such a nation. So, apparently, that is going to be a reservation that will be added.

I feel reasonably sure that a reservation will be added saying that the Panama Canal, after we do sign these treaties, will not cause any expense to the American taxpayer. I rather believe that, while that will not be accepted as an amendment to the treaty, it will be passed as a reservation to the treaty.

So, Mr. President, whereas I thought orginally that Dictator Torrijos was using these disturbances in Panama to assure that we did not add any further amendments to this treaty, I believe now that he is in serious trouble in being able to get the backing of public opinion for this treaty in Panama. I feel that it is only right that we ascertain the Panamanian will by calling for a plebiscite in Panama before this treaty goes into effect. Mr. President, it would be unwise for us to ram this treaty down the throats of the people of Panama with there being substantial reason for believing that the people of Panama do not approve of this. If they do not approve of it, they are going to show that disapproval in the years to come.

The managers of the bill have sought to kill and have killed all of the amendments offered to this treaty. They say that it would kill the treaty. That being true, Mr. President, it seems to me that the managers of the bill have cast their lot with Dictator Torrijos and his wishes—that is, no amendments to the treaty. It seems to me, and I resent it on the part of the managers of the bill and the leadership and the administration, that these protests are being made in Panama to such an extent that Panama is trying to undo the work of the U.S. Senate on this treaty providing for the evacuation of all of our troops by the year 2000 and allowing Panama to go it alone. It seems to me that it ill becomes the Panamanians, to burn the President in effigy in Panama, a man who has staked his political future and the success of this administration on the approval of the Panama Canal treaties. These treaties provide for giving the canal to Panama, reserving some rights of defense.

Why should they object to defending the canal? It takes the burden off Panama. For this great gift to be made to the Panamanian people, the leadership on both sides of the aisle having stuck their necks out to accommodate the Panamanian people, to beat down all amendments to these treaties, and then riot down there to show their disapproval of the treaties, burn the President in effigy, hardly seems to be something that would leave a good taste in the collective mouths of the Members of the U.S. Senate.

I understand Mr. DeConcini is going to offer the same amendment and, failing in that, a reservation to this treaty, providing for the same right of the United States to keep the canal open. I am hopeful that he will. Certainly, I shall support it, as I supported his other reservation.

These treaties fall far short of their supposed goal of eliminating riots, eliminating violence, eliminating the possibility of sabotage. Did they do it? I submit, Mr. President, that they do not, that the situation is an anomalous situation: to promote riots, approve the treaties; to stop riots, kill the treaties. So it looks like the situation has completely reversed itself. If we want to end the riots, let us kill the treaties.

I might say, Mr. President, that the defeat of the treaties does not mean that negotiations have ended. Negotiations can start again the very next day, just as they are negotiating now, Mr.

President, to try to find out how they can blunt or water down the DeConcini amendment, which has been approved by the Senate and which was accepted in order to gain votes for the treaty in the Senate. What sort of action would it be, after having agreed to the DeConcini amendment and obtained its passage and obtained the passage of the neutrality treaty itself, how could we then back up and water it down with a provision in this treaty saying it does not mean anything? I suggest that if the proponents of the treaties come forward with any such amendment, these two or three doubtful Senators—and there are such—I dare say they are not going to see the DeConcini amendment weakened when its approval was what got them to vote for the first treaty itself. So that would be a hazardous course to pursue.

Mr. President, with the Panamanians up in arms about this treaty, why should we force it upon them? This treaty needs more negotiating. With the situation on the parliamentary status of the treaty, we must vote on the 18th unless, by unanimous consent, the treaty is sent back to the Committee on Foreign Relations for further study.

They might come up with some perfecting amendments. They had the treaty before the Foreign Relations Committee for several weeks, or several months, I believe. They did not come up with any committee amendments, however.

I believe they might study the treaties a little bit more and come out with some constructive amendments, some amendments that would cure this impasse that exists now between the American people and the Panamanian people.

I think it is passing strange, Mr. President, that with the people of the United States, as I see it, strongly opposed to these treaties and, apparently, a large percentage of Panamanians opposed to the treaties, why should the U.S. Senate ram it down the throats of the people of Panama and the people of the United States, as well?

I do not believe it makes too much sense. I hope that some Senators who voted for the treaty before, thinking that it met with the approval of the people of Panama as a result of a 2-to-1 vote in favor of the treaties prior to action by the Senate, thinking that the people of Panama approved it by a 2-to-1 vote, will now see that the various elements in Panama that make up the power structure there and the people themselves are rioting against the approval of the treaty.

So should we defy the public opinion of our country and what seems to be the public opinion of Panama by approving this treaty and sending it down to Panama and saying, "Take it or leave it"?

I do not believe we are acting in any good neighborly fashion. I do not believe we are acting, as I see it, responsibly or responsively to the will of the American people.

So this great U.S. Senate, having this treaty in our hand, a treaty that we thought Panama wanted, now finds in all probability that the people of Panama do not want it. I feel that we would be going counter to the public opinion in both countries if we should insist on passing or agreeing to this treaty.

Mr. President, the leadership and the managers of the treaty have adopted the position of no amendments for fear of upsetting the Panamanians. Having adopted that policy, and been highly

successful in preventing amendments, why should the Panamanians indicate such displeasure with what has been done in the U.S. Senate at the behest of the administration?

The administration has accepted every single change that has been made in these treaties. Not a one has gone contrary to the wishes of the leadership, the managers of the bill, and the administration. Not a single one.

They have managed the strategy of the treaties. They have used reservations to gain votes—the administration did, acquiesced in by the leadership on the DeConcini amendment.

So who do we have to blame for this impasse that we have come to? It is not the ones here in the Senate who have tried to strengthen these treaties to provide for greater defense rights for the American people, to provide for protection of the American taxpayer. We are not the ones who have brought this sorry state of affairs to culmination, a culmination in riots in Panama in opposition to the treaties, when we were assured that the agreement to the treaties was necessary to stop riots. That certainly is an anomalous situation.

It does look, Mr. President, as if in order to stop the riots, stop the danger of sabotage, let us defeat this treaty, which will have the result of defeating the other treaty, as well, and then go back to the negotiating table.

I see the distinguised Senator from Maryland wishes to speak, so I will yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I know that the Senator from Kansas is to be recognized under a unanimous-consent order, by 1 o'clock to offer an amendment and to speak thereon.

Mr. President, in his great tragedy "Othello," Shakespeare sets out and develops fully one of the more interesting characters in literature—Iago. Iago, of course, would show great solicitude for Cassio, his ambitions to become a captain, and urge Cassio to have Desdemona plead his cause. Then Iago would pass around the other side of the palace and talk to Othello and raise in Othello's mind certain doubts about Desdemona. Back and forth Iago would play this game.

Of course, the result of the game was to enrage Othello, to enrage him, to goad him on, to lead him down a path where Othello in the end committed acts that not only caused him to be seized with remorse, but led him to take his own life.

What Iago did, and very successfully in that play, was to lead Othello to smother his loyal wife and then, as a consequence of that, to stab himself to death.

He was driven to it. He was driven to it by Iago, who so skillfully played first to one emotion and then to another, and he was led to self-destruction.

Now, words, Mr. President, can have a tremendous impact. Words, after all, are one of the hallmarks of civilized people. But words can also be used, Mr. President, to arouse emotions, to create misunderstandings, to heighten antagonism, to fan anger and passion, to create divisions, to generate hostility. Through history, words, Mr. President, have frequently been used in public issues as they were used by Iago in private matters, to cause people, in

effect, to destroy themselves. The treaties before us are not a play. The treaties before us are extremely serious business for this Nation and for Panama and, indeed, are extremely serious business for the peace of the world and for questions as to how the world will develop in the remainder of this century and into the next century. The treaties involve very fundamental questions of our national purposes and our national objectives.

The debate on the treaties has, of course, taken many turns. It should be noted that the debate is being carried in Panama, simultaneously translated into Spanish, so that the words uttered in the Senate of the United States are carried immediately in Spanish in the Republic of Panama. This debate also is being carried on public radio in this country; and as others have observed earlier on the floor, it is being carried very well and skillfully indeed. The debate also is carried in Panama. So the words that are spoken register in both places at the same time.

Those words can appeal to reason or they can appeal to emotion. Words can also appear to show solicitude for the sensitivities of others at the same time they are really exciting emotions of resentment and anger as to what is perceived to be the attitude of one people toward another.

One hopes that the lessons of Shakespeare's great play "Othello" remain in people's minds. One hopes that the impact which words can have is fully appreciated. One hopes that there will be no driving of a people toward a public end comparable to the end of this play, where, as a consequence of Iago's poisonous words and actions, Othello killed his wife and then killed himself.

Mr. President, we have a Panama Canal Treaty before us, and the Senate, as the majority leader has said, has its work to do. It is serious work. It is important work. It involves important questions of our country's national interests, and it needs to be considered with an attitude of reason.

We have our judgments to make here. The Republic of Panama is a sovereign and independent country, and has its judgments to make. They do not make our judgments, and we do not make theirs. We try to work together in such a way that an agreement that protects the interests of both countries can be reached, and there are many who are trying to achieve that. There are many who feel that an agreement between our two countries that fully protects the interests of both countries is achievable. In fact, the proponents of these treaties feel that the treaties have achieved such an agreement.

Mr. GRAVEL. Mr. President, will the Senator yield?

Mr. SARBANES. I yield to the Senator, briefly.

Mr. GRAVEL. I should like to explore something that essentially the Senator from Maryland is doing and saying, and that is the new phenomenon of a Senate debate taking place——

The PRESIDING OFFICER (Mr. Allen). Under the previous order, the distinguished Senator from Kansas (Mr. Dole) is to be recognized at 1 o'clock. The Chair has accorded the distinguished Senator from Maryland 5 additional minutes at this time.

Mr. SARBANES. Mr. President, I ask unanimous consent that the debate be allowed to continue until Mr. Dole arrives in the Chamber, and we will immediately then bring it to a close.

Mr. GRAVEL. Without the time being charged.

The PRESIDING OFFICER. Will the Senator include the request that it not extend beyond 1:15?

Mr. SARBANES. Yes; not to extend beyond 10 additional minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none and it is so ordered.

Mr. GRAVEL. My colleague made reference to the fact that these broadcasts are being beamed to Panama and have simultaneous translation. I think we can easily recognize that not all that many Americans are listening to public radio. I believe a number of concerned Americans are. But I think we can justifiably say that most Americans are not all that knowledgeable about the workings of the Senate. In fact, I have had an American occasionally ask me, "How many Senators are from a State?" or, "How many Senators do you have from Alaska?" So it comes down to some pretty fundamental ignorance.

Therefore, I do not think it would be unreasonable to assume that the average person in Panama may not understand all the niceties that exist in this body.

So, when we have a debate such as we have had during the last month, in which we see, day after day, one side taking what it thinks is tactical advantage by repeatedly calling the head of state a dictator, with the vilest connotations, the average Panamanian down there, who knows that Mr. Torrijos has doubled the amount of schools that were in existence and knows that he just completed a road to his farm cooperatives, that he helped set up the cooperatives, does not take too kindly to that.

How does a Panamanian, listening to a lot of the inferences as to their inferiority as human beings, or their capacities, or their motivations with respect to justice and how they would operate the canal—how does a Panamanian citizen who has been listening to the radio and hearing this diatribe react emotionally? I think it will mean very little to him what happens to the treaties, whether they are approved or not. He is going to feel resentment, just as if an Alaskan were to listen, day in and day out, to some official from France or Russia insult him.

So we go ahead and do our work, but the residue that is in the minds of the people will be most damaging.

What I suggest to my colleague from Maryland is that we have an unusual rule in this body, and I think it is one that has great worth, and that is that I cannot stand up and insult the citizens of North Carolina, the citizens of Utah, or the citizens of Alabama. We have had Senators called down for that. Why do we have that rule? We have that rule because we do not want to pit our citizens against each other.

We could stand here and throw gasoline on misunderstandings, inflame things, and do great damage.

For the first time in the history of the Nation we are debating international affairs on radio where foreigners may listen to it. And so what do we do? We wind up insulting them.

I do not think they can appreciate the niceties of tactical advantage. But the end result is going to be the same, and that is that we will stir unusual acrimony in this area.

I suggest that maybe we should have a rule in this Senate that when we debate foreign affairs we cannot insult the citizens of another nation and that we cannot speak disrespectfully against the head of state of another nation, like we cannot speak disrespectfully against each other.

I think that that rule might be a very, very important rule for this Nation and for this Senate to conduct foreign policy.

Mr. SARBANES. Mr. President, I appreciate the Senator's observations.

I, also, underscore that with free speech in the Senate of the United States each of the 100 Members of the Senate is free to make his presentation, to make his case, to make his appeal to reason or his appeal to emotion.

Mr. GRAVEL. But he cannot insult another Senator.

Mr. SARBANES. In any event, I think it is important to understand the free-speech principle that works in the Senate of the United States that each Senator has been elected by his people and is free to make his statements as he chooses to make them.

But I simply wanted to make that earlier reference to Shakespeare's play Othello because Iago by his words drove Othello to such extremes of emotion and jealously that in the end Othello murdered Desdemona and then stabbed himself.

Mr. President, I see that the able distinguished Senator from Kansas is on the floor, and I know that he wants to be recognized to offer his amendment. Therefore, I yield the floor.

AMENDMENT NO. 10

The PRESIDING OFFICER (Mr. Leahy). Under the previous order, the Senator from Kansas (Mr. Dole) is recognized to call up amendment No. 10 to article XII, which the clerk will state.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. Dole) for himself and Mr. Cannon proposes an amendment numbered 10.

In article XII, strike out paragraph 2. Renumber subsequent paragraphs accordingly.

The PRESIDING OFFICER. The time for debate on this amendment is limited to 2 hours to be equally divided and controlled by the Senator from Idaho (Mr. Church) and the Senator from Kansas (Mr. Dole).

The Senator from Kansas (Mr. Dole) is recognized.

Mr. DOLE. Mr. President, before commencing the debate on amendment No. 10, I yield 5 minutes to the distinguished Senator from Utah (Mr. Hatch).

The PRESIDING OFFICER. The Senator from Utah (Mr. Hatch).

Mr. HATCH. Mr. President, I thank the distinguished Senator from Kansas.

I just had to rise to my feet to chat a little bit concerning some of the comments that have been made over the last few minutes by the distinguished Senators from Maryland and Alaska.

I certainly have not heard the demeaning language pertaining in the people in Panama. There has been some language pertaining to the leader of Panama at this particular time, and frankly I think it

depends on one's particular point of view whether than language is accurate or not.

I did enjoy the analogy of Othello-Desdemona, et al., in Othello. The important thing to take out of this is precisely what we have been talking about for actually better than a month now that is starting to come to fruition, and that is we said at the beginning of this debate that these treaties are an abomination, that they are not clear, that the Spanish translation means something to those in Panama that the English translation does not mean to us here, and vice versa. And now all of a sudden, after we have been told time and time again by the President, the ambassadors, the State Department, and others, the proponents of these treaties, that everything is going to be wonderful if we just ratify these treaties, that the Panamanians believe exactly the way we do and we believe exactly the way they do, and all we have to do is ratify these wonderful treaties and everything is just going to be a beautiful state here in this hemisphere as a result of it, here we find over the weekend that they do not seem to understand these treaties the same way we do. They have raised the hue and cry not over the language which has been used in the Senate, because I do not know anyone who has demeaned the people of Panama—in fact, I said on the floor of the Senate that I loved the people from Panama and of Panama—but the fact of the matter is that what has been said is that we are not going to have a wonderful state of nirvana because these treaties which were ambiguous, filled with ambiguity, fraught with translation difficulties, and filled with other difficulties are going to create more problems than they are going to solve if they are ratified.

As a matter of fact——

Mr. GRAVEL. Mr. President, will the Senator yield for a question?

Mr. HATCH. I just have to say that——

Mr. GRAVEL. Mr. President, will the Senator yield for a brief question?

Mr. HATCH. I will finish in a second, and then I will be glad to yield.

I just want to say that I think the events of this past weekend are very interesting ones because the President, the ambassadors and others have told us we would have the unilateral right to intervene, we did not even need the leadership language; so Senator DeConcini, who I found to be a very studious, hard-working, decent U.S. Senator from Arizona, has been vilified by the press back here because he sincerely brings forth a reservation, not an amendment, because the amendments were shot down and stonewalled, he brings forth a reservation to clarify the matter to make sure no one has any difficulties with that basic concept that we have the unilateral right to intervene to assure the neutrality of the canal, but what do we have but all kinds of disruption and discord because they did not understand it that way.

Mr. GRAVEL. Mr. President, will the Senator not yield for a question?

Mr. HATCH. I am delighted to yield to the distinguished Senator from Alaska.

Mr. GRAVEL. If after we complete our work on the treaties——

Mr. HATCH. I cannot hear the Senator.

Mr. GRAVEL. If after we complete our work on the treaties the Panamanians choose to add reservations, as the Senate has added, to the treaties that were initialed by the head of state in Panama and the President of the United States, that is one step they may take. Now we, the Senate, have added to the Neutrality Treaty something new that the Panamanians were not aware of. Now, they may agree; they may not agree. But certainly it is their prerogative to do that.

Mr. HATCH. If they were not aware of it and were misled by the administration.

Mr. GRAVEL. Not misled. We are adding something new.

Mr. HATCH. We have.

Mr. GRAVEL. Why does my colleague say we have been misled?

Mr. HATCH. Because the President——

The PRESIDING OFFICER. The 5 minutes that were yielded to the Senator from Utah have expired.

Mr. HATCH. Mr. President, will the Senator yield me 2 additional minutes?

Mr. DOLE. I yield the Senator 2 additional minutes.

The PRESIDING OFFICER. The Senator from Utah has 2 additional minutes.

Mr. GRAVEL. We added something new. The DeConcini amendment is something new to the treaty, so certainly the Panamanians are within their rights to voice an objection if they have one to that.

Mr. HATCH. And I agree with that.

Mr. GRAVEL. That is nothing new. No one has been misled or hoodwinked. We put new language on the table of negotiation, the Senate did, and they may well turn it down. Maybe they will not turn it down. Maybe they will add something new and it will come back to us. Certainly if they did that the Senator would not think that they would be duplicitous or hoodwinking us. This is the process.

If the Senate, in its wisdom, decided to add the DeConcini language, with which I disagree and which I think is horrible, but since we did it, now the Panamanians have every right to stand up and say, "Hey, we think that is bad language. We don't want it."

If I were a citizen of Panama and had to vote on this treaty, the Neutrality Treaty, with the DeConcini language as a citizen of Panama I would vote "No." I would not take that kind of stuff.

Mr. HATCH. If I might reply, I think the distinguished Senator from Alaska has made my point for me, and I want to compliment him for it.

The basic point is they have not known what our President has been telling us is assured, and what the Ambassador said, and told us time and time again, that we would have the unilateral right to intervene to assure the neutrality of the canal after the year 2000.

Mr. GRAVEL. Our President did not assure them that we in the Senate would violate the U.N. charter, that we in the Senate would not——

Mr. HATCH. Wait a minute.

Mr. GRAVEL [continuing]. Violate the U.N. pact.

Mr. HATCH. There is no violation of the U.N. charter here. If you will recall, just 3 weeks ago I stood on this floor and said they

would hide behind the U.N. charter, exactly what they are doing now, only they have waited——

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. HATCH. May I have 2 more additional minutes?

Mr. DOLE. Two more minutes.

Mr. HATCH. That is exactly what they are doing. I think many of the things we have talked about on this floor—it is amazing to me—are coming to pass before we even get through with the debate.

I suppose the only citizens, since we are not going to insult citizens of other States, and I appreciate the Senator's saying this, and I do not expect really that any Senator intends to insult any citizen of any other nation, and certainly not the Panamanians who have been our friends for years, I suppose the only people, the only citizens we can insult are the citizens from our own States when we ignore the overwhelming weight of their belief that we should not ratify these treaties, and even that is a question in my mind.

All we can say is what we have been talking about that these treaties are not clear not only to us but to the Panamanians, I think, is coming to fruition over this weekend, and I think we ought to all wake up and realize that to shoot down valid and decent amendments which could make this treaty worthwhile and stand up and not be the future cause of all kinds of difficulties is certainly the better approach, and the approach of the distinguished Senator from Arizona who brought forth a decent amendment and fought for it and got it enacted, one of the few which has been accepted not only by the President but by the State Department, the ambassadors and, of course, a majority of our colleagues in the Senate, and I compliment him for it.

I thank the Senator from Kansas. I thank him very much for the time he has given me.

Mr. Dole addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. DOLE. Amendment No. 10 is offered on behalf of the Senator from Kansas, the Senator from Nevada (Mr. Cannon), the Senator from North Dakota (Mr. Burdick), the Senator from Arizona (Mr. Goldwater), the Senator from Wyoming (Mr. Hansen), the Senator from Texas (Mr. Tower), and the Senator from Utah (Mr. Garn).

Now, the amendment is very simple. The amendment would simply strike paragraph 2 of article XII from the Panama Canal Treaty. I might say to the distinguished Senator from Alaska I think he has a rather deep interest in this amendment, as I will point out in just a few moments.

In effect, it would remove the restriction that prevents the United States from negotiating with any country other than Panama for the right to construct a new interoceanic canal in the Western Hemisphere.

At the same time, this amendment would eliminate the corresponding provision which purports to prevent Panama from allowing any country other than the United States to build a new canal through her territory.

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In just a few minutes I shall explain why the elimination of these two provisions would, in my opinion, be particularly advantageous to the United States.

At the same time, there is reason to believe that the Government of Panama would not object to removing these provisions from the treaty.

At the outset, the Senator from Kansas should say that he personally perceives little prospect for the construction of a new interoceanic canal in the Western Hemisphere during the remainder of this century. I have been among those who believe the present canal is still adequate and vital to our naval defense system. Only 14 U.S. aircraft carriers, a very small percentage of our Navy, cannot transit the present canal. So the need for a new canal during the remainder of this century is not evident to this Senator.

It should be remembered that it was President Carter, not the leader of the Panamanian Government, and not anyone else, who got this controversy underway last August when he suggested during an appearance in Yazoo City that a new sea-level interoceanic canal was under consideration.

So apparently the prospect, at least, exists.

General Torrijos has said, and the Carter administration has admitted, that it was our negotiators who first initiated the proposal found in paragraph 2, article XII. As a matter of fact, General Torrijos gives my colleague from Alaska, Senator Gravel, credit for promoting the plan. In a speech on nationwide Panamanian television last October 20, General Torrijos made the following statement with respect to article XII of the Panama Canal Treaty:

. . . there is a great deal of interest in the United States . . .

The Senator from Alaska is the one most interested in this sea-level canal because Alaska has become a great source of petroleum with possibilities that go far beyond the petroleum produced in the continental U.S. territory. The Alaska Senator said: Omar, if you sign this letter I can get from the Senate 7 million balboas—

I think he meant 7 billion balboas—

so that jointly with you—when I say I am thinking about who I am going to appoint, I am thinking of the Polytechnical Institute, I am thinking of the best trained Panamanian minds in ecology, in engineering, in canal problems—let us begin to make this study now. This study should cost $7 million: $3 million for ecology, $3 million for engineering and another for something else.

Now, the Senator from Kansas does not agree with the Carter administration that the purported quid pro quo found in article XII, paragraph 2, is advantageous to the United States. This is why I and many of my colleagues believe the provision should be removed to protect our options and flexibility on this score.

After studying the ratifications of this portion of the treaty I have identified three major flaws in paragraph 2. I think, first of all, we ought to understand what paragraph 2 says, and I quote paragraph 2:

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two parties may otherwise agree.

Now, Mr. President, I believe these commitments are far more advantageous to Panama than the United States, and I must suggest to those who may have an interest that certainly we understand the interest of the Panamanians and this Senator understands the concern of the Panamanian people. But I suggest that our first responsibility is to the people of the United States of America. Certainly we have no right or, as far as I know, any willingness or any desire to insult anyone. But sometimes I think we insult the American people by what we do in this body and what we fail to do in this body, even though we may gloss over it with some high-sounding theory or something about colonialism. But as far as this Senator is concerned, we are still grappling with a very basic issue.

This treaty represents the last chance the American people have on the Panama Canal. This is the giveaway.

Now, some will say that we have never owned it; it is pretty difficult to understand how we can give it away. But this treaty says, "Give the Canal to Panama." It says, "Give them the control, the maintenance, and the operation"—though I assume for the next several years, at least, the American taxpayers will be called upon to spend millions and millions of dollars of their tax money to maintain and operate it.

When I focus on this one provision, I cannot for the life of me understand why it is in the treaty. It certainly is not advantageous to American interests. I hear all the talk about all the effort that has been made in the Senate to somehow denigrate the Panamanian Government or the leader of Panama, or the Panamanian people themselves. Well, I just suggest that as far as this provision is concerned, it is certainly advantageous to the Panamanian Government. It is certainly advantageous to General Torrijos, who is a dictator, there is no question about that. I do not think you insult a man by calling him what he is.

But how are these provisions advantageous to the Panamanian Government?

First, the American commitment is unequivocal: we may not negotiate with any country other than Panama for a new canal site, unless Panama specifically authorizes us to do so. The Panamanian commitment, on the other hand, is imprecise and certainly open to different interpretations. The popular interpretation, promoted by the Carter administration, is that subparagraph 2(a) protects us by preventing any other nation from building a new canal through Panama without our consent. But, strictly speaking, that is not precisely what this section says. I will read it again:

> No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this treaty, except in accordance with the provisions of this treaty, or as the two parties may otherwise agree. . . .

The provisions of this treaty, if anything, exphasize repeatedly that Panama shall exercise complete sovereignty and jurisdiction over her own territory. Would Panama, then, feel obligated to get consent from the United States if she were made a tempting offer for a new canal by a third nation? It seems very doubtful.

In fact, there is concrete evidence that the Panamanian Government considers this provision to only give the United States a "first option" for construction of a new canal in Panama. During the

same television address on October 20, 1977, General Torrijos proclaimed:

> In the treaty we give priority, not exclusiveness—

These are Torrijos' words, not mine, not those of the Senator from Alaska, but those of General Torrijos. He says:

> In the treaty we give priority, not exclusiveness, for the building of a sea-level canal.

I continue to quote. He says:

> The United States is given the first option.

Not a right, but an option.

Based on this statement by General Torrijos, the Panamanian interpretation in this: If, during the next 22 years, the Soviet Union or Saudi Arabia should offer to build a new canal through Panama, and if Panama agrees that it is a good idea, they will notify the United States that we have a "first option" to undertake the construction. If we for any reason do not take that option at the time it is offered, we forfeit our right, and Panama may let any other nation construct a new canal.

It should be emphasized—I think this is the key—that we do not have this same "first option" right the other way around. That is, the treaty does not permit us to negotiate with a third country for a new canal if Panama rejects our first offer. So they have the best of both worlds, as they have nearly all the way in this treaty, as far as the Senator from Kansas is concerned.

Mr. President, the second major flaw is this: Even if the United States does decide it wants to build a new canal in Panama during the next 22 years, Panama is under no obligation to permit it. My colleagues should note that article XII does not guarantee the United States a unilateral right to decide to build a new canal in Panama. In such a situation, we are stuck with the fact that we cannot build a new interoceanic canal anywhere other than Panama, and yet we cannot build the canal in Panama because Panama objects.

So we are really boxed in. That is certainly a great feat of negotiation. I do not know how we were able to do it. But of course if you look at the other provisions in the treaty it is understandable.

This very real concern is not without foundation. Panamanian chief negotiator Escobar Bethancourt told the Panamanian National Assembly last August that article XII,

> As you can see, is not even an option to build a sea-level canal. It is an option to promise to study the viability of it. That is the true option. The true commitment is to sit down with the United States to study whether or not it is viable to build a sea-level canal. If the two countries feel it is viable, then they will sit down to negotiate the terms agreed on by the two countries.

Would Panama likely agree to such a U.S. proposal? General Torrijos told a Time magazine correspondent last August:

> The treaty will say that we will discuss the possibility of a new sea-level canal if it is the joint interest of the world community to build it. But my personal opinion is that a sea-level canal is not necessary. Such a canal would be excessively costly, and you can't built it in two weeks either. We do not want it—even wrapped in plastic.

This is General Torrijos speaking.

To sum it up, the United States is out of luck, if we decide to build a new sea-level canal, and Panama refuses to cooperate.

The third major flaw is that no other country in the world is bound, as the United States will be, from constructing a new interoceanic canal anywhere it wants in the Western Hemisphere. For example, if a canal route through Nicaragua should look useful for any reason in, say 1990, the Soviet Union or the Arabs could build it—the United States could not because of this commitment in article XII. We would not even have the ability to compete for the construction rights.

Why should we voluntarily bind ourselves in this regard, as no other nation in the world is bound?

I hope that we will have some light shed on this matter, because we search in vain for an explanation; but there is none.

For all of these reasons, the commitment in article XII, paragraph 2—which was promoted by the Carter administration, based on an off-the-cuff statement made by the President at a town meeting in Yazoo City, Miss.—should be eliminated. The committee was made and promoted by the Carter administration, not by the Panamanians. It is detrimental to the interest of the United States, and it should be removed from the treaty.

I think in addition, Mr. President, two other points should be discussed which are relevant to this argument. First, I think most Americans would agree it is ludicrous to even think of building a new canal in Panama, after all the grief we have been given over the present one. We paid for it, we constructed it, we have maintained it, we have operated it, we have paid all the costs, and I think many Americans have had about enough of this kind of diplomacy. We are about to give away property, the replacement value of which is estimated at between $5 billion and $8 billion.

It seems strange that we were debating a bill this morning trying to help the American farmer, and the administration said, "No, no, we won't do anything for the American farmer."

We were met by one objection after another from the Budget Committee. Where is the Budget Committee on the Panama Canal? What inflationary impact will giving away an $8 billion property have on the United States? What about the American consumer? Where are all these arguments that were made against the poor helpless American farmer this morning?

Oh, we went through arm twisting, inaccurate statements, inaccurate charges, heavy lobbying all over the country, everyone in the administration trying to shoot down the American farmer. But where are those people now?

All the American farmer has—it is not a giveaway program as we have in this proposal, but a chance to make a profit in the marketplace.

I will say to the credit of the distinguished floor leader on this measure, the Senator from Idaho (Mr. Church), that he was there with the American farmer. He was supporting the American farmer. He did not listen to the administration. His arm was not twisted. And many other Democrats voted for the farm bill this morning.

You sometime wonder, as you sit in the galleries and listen to isolated debates, what may be happening in America. If you were

here this morning and listened to all the arguments against the farm bill, and all the great alleged costs it was going to put on the American consumer and the American taxpayer, and still there are no voices raised against this giveaway, you wonder which side we are on in this Chamber.

Are we concerned about the American taxpayers, the American consumer, the American farmer? I think it is all very relevant, because we sort of get carried away. We are debating the Panama Canal Treaty now, not the farm bill. Well, we are debating a principle. We are debating a principle of who comes first. In this case it was not the American taxpayer, it was not the American farmer. I assume that everything that could be done was done to defeat the farm bill this morning in the Senate. For what reason? So the President would not have to veto the bill, to protect the President of the United States, who apparently does not want to help the American farmer.

I just suggest, as we get into the final phase of debate on this giveaway program, we ought to take a look at what we are doing for the American people. This provision does not do anything for the American taxpayer, the American voter, the American citizen. I just cannot understand the reason this provision was ever put into the treaty in the first place. We are going to find out quickly, because the Senator from Alaska, apparently, was the initiator of this provision. He should have firsthand knowledge on why President Carter made the statement at Yazoo City, why President Carter made the commitment and why it is in writing, why it is in the treaty. We ought to have the answers to those questions.

It is really difficult to explain why we give Panama the advantage time after time after time. They are a small country and we are a large country. We understand that. We are friends of the Panamanian people and have been for a long, long time. That does not mean we have to embrace Torrijos, the dictator. That does not mean we cannot disagree with Torrijos, the dictator. That should not insult Torrijos.

He is the ruler of Panama, but I do not know of any free elections which have been held there recently. Maybe somebody can enlighten the American people on this matter.

Mr. GRAVEL. They had a plebiscite.

Mr. DOLE. They had a plebiscite, but not on Torrijos.

I will give the Senator ample opportunity to respond, because I am waiting with baited breath to hear him tell us how he got this into the treaty.

We have had an experience in the past few days where it is very obvious that the Panamanian people are upset about the DeConcini reservation. Maybe they should be. It is a tough reservation. The Senator from Kansas offered an amendment which would have done the same thing. I did not offer it in a hostile way. I offered it as a friend, as another step in trying to preserve the neutrality of the canal. I cannot understand this very delayed reaction from Panama, why it took a couple of weeks for any reaction from Panama. Apparently there is not the understanding we have been told there is; there is not the understanding we have been led to believe there is.

I would guess that if the votes had been there, the administration may have fought the DeConcini reservation tooth and toenail, but they needed his vote. They needed a couple of other votes which may have hinged on the DeConcini reservation.

We understand that there may be two high-ranking Panamanian officials in town right now trying to straighten out the controversy, the misunderstanding. I hope the floor leaders will enlighten us on that. If those officials are here, maybe some of the rest of us would have a chance to visit with them.

I would just suggest that somehow we seem to have our priorities mixed up. I think the American people would share the view that it is rather ridiculous to talk about spending $7 billion for another canal. I do not think many American taxpayers would understand the reason to build another canal, after we have agreed under pressure to give away the old one. I am certain some in this Chamber might think if we are to build a new one we ought to give it away, too. It does not make any sense. Most of us agree it does not make any sense.

Former Secretary of State Henry Kissinger, during testimony before the Senate Foreign Relations Committee on October 14 of last year, commented:

> I, myself, have raised the question whether it is wise to place two canals in the same country—we have enough problems with one of them there—and whether it might not be better to have a sea level canal, if we build it, in some other country.

Suppose even for a moment we did decide to build a new canal through Panama. The simple laws of diplomacy and good business sense tell us our leverage in determining costs and conditions would be severely diminished. Since we have no place else to go to build the canal, we have no bargaining leverage, and Panama has no real incentive to try to accommodate us. On the other hand if the United States were free to join with a third nation—but we are not as that right has been given up in this treaty. Why has it been given up? I do not know, but we hope to find out.

But if we were free to join with a third nation for a competitive enterprise it would be much easier to obtain an agreement from Panama. This is not taking advantage of Panama. It just makes good, common sense. If you want to make some business arrangement, you try to apply the proper leverage. I guess it demonstrates again how foolish it would be to voluntarily bind ourselves in advance, but that is what we have done.

We are going to be hearing the old, tired arguments that we cannot amend the treaty, we cannot change anything, we cannot add one word, because that might mean a new plebiscite. I think many Americans wonder why they have not yet had their first plebiscite. Panama had one and the American people have not had one. We are on the giving end. Panama barely has enough votes to take the $7 billion gift. The American people were not even asked if they wanted to vote to give it away. Panama has a little different form of government, I understand.

I would say, Mr. President, all of the elements of good sense suggest that we should eliminate this provision from the treaty. We ought to do it in a straightforward way so there is no misunderstanding, as we have had in the past.

I know somebody will offer a reservation later on and we will be told how they will take the reservation. That will satisfy someone who objects to this provision. That will keep them in line, maybe, for the final vote. But we have seen what can happen on reservations, how much confusion can spread across the land and into Panama.

Why not, just by simple amendment, delete this offensive provision from article XII? It would be very simple. Just cut it out. Torrijos would understand it, the Senate would understand it, the Panamanian people would understand it, President Carter would understand it, and the American people might understand it. The American people have not been given much opportunity to understand much of this treaty, because they have been hearing, if they listened to the radio:

> We cannot take your amendment. That would do violence to the treaty. It is not necessary. We understand what is best.

One amendment after another has been voted down or tabled, killed, except for the leadership amendment.

Then we got into the crunch of how many votes were needed to actually pass that Neutrality Treaty. Then they made a few arrangements, or a few arrangements were made, to pick up this vote and that vote. Then they had the magic number, with one to spare.

We were told that everything was fine, except for the unexpected assist from General Torrijos who is getting a lot of pressure, I understand, in Panama and finally had to speak out.

It would seem to me that if there is that much confusion, if it is causing General Torrijos that much of a domestic political problem, the best thing we can do to this second treaty is to recommit it to the Foreign Relations Committee, and either clarify the language or let it rest there until there is a meeting of the minds between Panama, the Government of Panama, and the leaders of America on just what we have here.

I am certain that is going to be rejected, too, because we do not want to do anything to clarify the problem; we want to keep it fuzzed up until after we vote next Tuesday. Then we shall try to figure out some way to take care of it.

We have spent a lot of time on this debate. Many of us have learned a great deal. I think we have had adequate debate. The point is now that we have a great misunderstanding.

I say with reference to this simple amendment, it is straightforward, it is effective, it is pretty hard to construe it any other way if we just knock it out. We do not have the problem we had with the DeConcini reservation: the way I interpret it, the way you interpret it. We just take it out. It is out. That seems very simple and straightforward, not trying to deceive anyone.

I, frankly, do not think the Panamanian Government would object. They did not bring it up. It was brought up by this administration. It was not being considered in the previous administration, in the Ford administration. In fact, one way to rehabilitate Torrijos now maybe to drop this amendment, because he said, as the Senator from Alaska knows, if we drop this out, he will be a "national hero."

He needs our help and you are one of the leaders in efforts to help General Torrijos. This is your opportunity to cosponsor this amendment, and act of political grace and courage, because General Torrijos has suggested he would be a "national hero" among the Panamanian people if this provision were dropped from the treaty.

Panama cannot accept the DeConcini reservation, because of all it means, all the implications to Panama. Many Panamanians do not like this quid pro quo argument, either. So we are going to get that old, wornout excuse. They are going to say that the amendment is not relevant. We are going to be told this would upset the Panamanian Government. It would not. This is one thing that would probably make the Panamanian Government happy.

I understand the great strength and power and influence General Torrijos has over this treaty, either directly or indirectly. Here is one chance for those who have been voting against every amendment except the leadership amendment, one chance to really do something that the American people understand and the Panamanian people understand. And I hope that we will do it openly, above board, clearly, concisely, and effectively.

It has already been suggested that the Senate leadership may support a treaty reservation to the same effect. I do not know, perhaps we are going to see all those people who are going to stand up later and vote for the reservation trying to beat off this amendment. That is just how absurd the situation has become.

There could be only one possible rationale for doing that. They will argue that a treaty amendment might require a new plebiscite in Panama while a reservation would not. But since when has it been our responsibilty, the responsibility of the U.S. Senate, to fret and worry about whether General Torrijos must hold another plebiscite? I do not see that in my oath of office. I do not see that in any instructions I have had as a Senator. I think our first obligation is with reference to the American interest, which does not do violence in this case to the Panamanian interest.

I think the problem is that we are getting down now to where the truth is starting to pinch a little. There is a great feeling, I think, in the Carter administration and the Torrijos administration that they cannot have another plebiscite. The Panamanian people might reject the treaties. So they are going to suggest that we just take this amendment, kill it, table it or do it outright, and do the same thing by reservation. I suggest, based on the experience with the DeConcini reservation, that maybe we are better off with an amendment.

We do not try to fool anybody with this amendment, but you are going to try to fool somebody with a reservation. We are not trying to have it both ways with this amendment, but you are going to suggest that we can have it both ways with this reservation. This is clean, concise minor surgery. It just takes it out.

I would think the distinguished Senator from Alaska, who has been supporting General Torrijos with great vigor, would support my amendment—as Torrijos says, this would make him a national hero if this is stricken out. It is a chance for any of us who may have said anything to offend General Torrijos on the floor to try to rehabilitate him, if that is necessary, because we shall all vote for it. That would, in effect, if it is necessary, absolve anyone in this

body who might have, in the heat of passion or debate, made any reference to anyone that might be offensive. I do not recall any such comments being made.

I say, finally, Mr. President, that I hope that on an amendment of this significance, which the Panamanians do not want, which Torrijos does not want, which is put in the treaty on the basis of an off-the-cuff remark in Yazoo City in a town meeting, we can get an up or down vote. This is certainly one the American people understand.

I hope that we shall have at least five or six up or down votes in the course of this debate. To date, we have only had three up or down votes on this treaty. Out of all the amendments that have been offered, we have only been permitted to have three up or down votes. I think the American people want to see their Senators take a direct, yes or no stance on the issues. I hope we will be permitted a simple yes or no vote on this amendment.

Let me repeat in closing, Mr. President, that this is an amendment that, as I have indicated previously, is easily understood. It strikes out the section the Senator from Kansas referred to. It would do away with some of the flaws that I have referred to. It is clean, it is concise, it does the job, and I think it would take care of what I consider to be a mistake in the negotiations.

I would hope—I do not think—that maybe, with some reflection, the administration might be in a position to accept the amendment. It seems to me that if we are in trouble with Torrijos because of DeConcini, we could trade this one off. If he does not like this one, he would like to get rid of this out of article XII, and it would make him a "national hero." Maybe it would offset the damage that DeConcini has done to Torrijos. The proponents of the treaty could have the best of both worlds by accepting this simple amendment of the Senator from Kansas.

Mr. President, I reserve the remainder of my time.

Mr. GRAVEL. Mr. President, I want to say that I really relish this opportunity to stand up here and engage in a colloquy, in a debate, with my good friend from Kansas. I have not had that opportunity—we both got elected to the Senate about the same time, and I have not had that opportunity since the early seventies. I have missed it, because he is a very, very gifted and articulate person, who can really express himself. We have not done it in a long time.

In fact, I can recall our last encounter together when he was defending President Thieu, of South Vietnam, and defending our presence and our staying in South Vietnam and how we had to keep fighting there. I can recall the two of us standing toe to toe, when he was defending the Richard Nixon administration over and over again. I have sort of missed those days. Now we have an opportunity to stand up again and relive our past encounters, and I am going to try to do a little bit of that this afternoon.

I do not want to say that he is accurate in his quotes. There is no question that there was no great enthusiasm on the part of the Panamanians for this section of the treaty. I may have been misquoted; I do not think I have ever claimed the power to appoint anybody. The only people I can appoint are people to my staff and I can "unappoint" them. That is the only power I have.

Mr. DOLE. I was just reading a quote by Torrijos.

Mr. GRAVEL. I appreciate that, and my colleague is a very accurate reader. There is no question about that.

I want to say that if there is really an initiator of this section, it is probably me. When I came upon certain relevant pieces of information, I felt it incumbent upon me to protect the U.S. interest, as I saw it, and pressed upon Ambassadors Bunker and Linowitz that they should get something in the treaty to safeguard what I thought was a very important interest to us, particularly so in my State, but not one ounce less to the rest of the Nation or, for that matter, the rest of the world.

So I pressed very hard and we succeeded on our side in making presentations. The Panamanians said, "if you people want something, we want something too, we want a quid pro quo," and that was agreed to.

I might add that my dear friend can read the language any way he wants, but that language is very well balanced.

The Senator is quite right on one point—that what we really agreed to do was study. That is what it is all about.

To talk about doing anything before we have the result from the study is quite ridiculous, because we do not know what we want to do or, if we want to do anything. What is important is to undertake this study.

Several Members of this body have cosponsored an amendment, or a bill, that would put up $7 million or $8 million to go further with this study. I think a lot of people see the wisdom of that. I think Senator Goldwater joined as a cosponsor, and Senator Allen was a cosponsor on that amendment. It was led by Senator Magnuson. That is, to go ahead and spend some money to update the earlier report.

We have already spent $22 million to find the best route—and this is what my colleagues really has not focused on when he talks about Nicaragua, and these other options. I have that report in front of me. It is the interoceanic canal study of 1970, a study started in 1964 and completed in 1970, and this was a study that cost the American taxpayer $22 million.

The main accomplishment of the study was to look at all the possible sites for building a sea-level canal. They studied 30 of them, from Mexico to Colombia, and they narrowed down to four, two of which are in Panama, and then they narrowed to one, which is the viable, economic alternative if we are to build a sea-level canal, and it is in Panama. It is 10 miles due west of the present Panama Canal.

So we can say, academically, we need our freedom to be able to negotiate with somebody else. It is preposterous and it is ridiculous. We have already spent the money to study that.

We can say that we do not believe the people that work for us that make these studies. We can be Luddites, and not accept the fact that the choice was made of this location. That is the best economic choice.

We could go and do something uneconomic. That is quite possible. We have made that kind of mistake in the past. That, of course, is really the alternative that my colleague is talking about.

But why would we want to go do something uneconomic, or to another country—my colleague mentions Nicaragua.

It is very interesting that he should mention Nicaragua when he, along with several of our colleagues here, on February 17, 1971, voted to give back the unilateral option of building a canal in Nicaragua. He, along with 65 other Senators, voted for a treaty that gave back to Nicaraguans what they had given us on a silver platter, which was the right unilaterally to build a canal in Nicaragua, for perpetuity, I might add—forever.

We did not have to give that back except that the language of the treaty was so embarrassing that, after we had our economic study, we chose to give it back.

Mr. President, I would like to have printed in the Record at this point the convention with Nicaragua terminating the Bryan-Chamorro Treaty of 1914.

There being no objection, the material was ordered to be printed in the Record, as follows:

CONVENTION WITH NICARAGUA TERMINATING THE BRYAN-CHAMORRO TREATY OF 1914

The PRESIDING OFFICER (Mr. Weicker). The hour of 3 o'clock having arrived, the Senate will now proceed to vote on the resolution of ratification of the Convention with Nicaragua terminating the Bryan-Chamorro Treaty of 1914, Executive L—91st Congress, second session, to be immediately followed by a vote on the Extradition Treaty with Spain, Executive N—91st Congress, second session.

The yeas and nays having been ordered the clerk will call the roll on the first treaty.

The assistant legislative clerk called the roll.

Mr. BYRD of West Virginia. I announce that the Senator from Indiana (Mr. Bayh), the Senator from California (Mr. Cranston), the Senator from Mississippi (Mr. Eastland), the Senator from South Carolina (Mr. Hollings), the Senator from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey), the Senator from Hawaii (Mr. Inouye), the Senator from Louisiana (Mr. Long), the Senator from Washington (Mr. Magnuson), the Senator from New Mexico (Mr. Montoya), the Senator from Maine (Mr. Muskie), the Senator from Rhode Island (Mr. Pell), and the Senator from California (Mr. Tunney) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. McGee), the Senator from Utah (Mr. Moss), and the Senator from New Hampshire (Mr. McIntyre) are absent on official business.

I also announce that the Senator from North Carolina (Mr. Jordan), is absent because of illness.

I further announce that, if present and voting, the Senator from Iowa (Mr. Hughes), the Senator from Minnesota (Mr. Humphrey), the Senator from Washington (Mr. Magnuson), the Senator from Wyoming (Mr. McGee), the Senator from Maine (Mr. Muskie), and the Senator from California (Mr. Tunney), would each vote "yea."

Mr. SCOTT. I announce that the Senator from Colorado (Mr. Allott), the Senators from Arizona (Mr. Fannin and Mr. Goldwater), the Senator from Wyoming (Mr. Hansen), the Senator from Michigan (Mr. Griffin), the Senators from Oregon (Mr. Hatfield and Mr. Packwood), the Senator from Illinois (Mr. Percy), and the Senator from North Dakota (Mr. Young), are necessarily absent.

The Senator from Hawaii (Mr. Fong) is absent on official business.

The Senator from South Dakota (Mr. Mundt) is absent because of illness.

If present and voting, the Senator from Colorado (Mr. Allott), the Senator from Oregon (Mr. Hatfield), the Senator from Wyoming (Mr. Hansen), and the Senator from South Dakota (Mr. Mundt) would each vote "yea."

The yeas and nays resulted—yeas 66, nays 5, as follows:

[No. 3 Ex.]

YEAS—66

Aiken, Allen, Anderson, Baker, Beall, Bellmon, Bennett, Bentsen, Bible, Boggs, Brock, Brooke, Buckley, Burdick, Byrd, W. Va., Cannon, Case, Chiles, Church, Cook, Cooper, Curtis.

Dole, Dominick, Eagleton, Ellender, Ervin, Fulbright, Gambrell, Gravel, Harris, Hart, Hartke, Hruska, Jackson, Javits, Jordan, Idaho, Kennedy, Mansfield, Mathias, McClellan, McGovern, Miller, Mondale.

Nelson, Pastore, Pearson, Prouty, Proxmire, Randolph, Ribicoff, Roth, Saxbe, Schweiker, Scott, Smith, Sparkman, Spong, Stennis, Stevens, Stevenson, Symington, Taft, Talmadge, Weicker, Williams.

NAYS—5

Byrd, Va., Cotton, Gurney, Thurmond, Tower.

NOT VOTING—29

Allott, Bayh, Cranston, Eastland, Fannin, Fong, Goldwater, Griffin, Hansen, Hatfield.

Hollings, Hughes, Humphrey, Inouye, Jordan, N.C., Long, Magnuson, McGee, McIntyre, Metcalf.

Montoya, Moss, Mundt, Muskie, Packwood, Pell, Percy, Tunney, Young.

The PRESIDING OFFICER. On this vote, there are 66 years and 5 nays. Two-thirds of the Senators present and voting have voted in the affirmative, the resolution of ratification is agreed to.

Mr. GRAVEL. Mr. President, this Senate has already gone on record—66 votes, I might say—that if our technicians tell us it makes no economic sense in Nicaragua, then we should not keep a treaty in existence which gives us the right in perpetuity to build a canal in Nicaragua. We have already made that decision.

But as happens so often in this body, some people want to go back and reinvent the wheel.

Let me say, we have spent money to look for a possible location of where to build a sea-level canal. That location has been chosen. It is 10 miles to the West of the present canal. The question is, should we or should we not.

My colleagues here is very interesting in saying somewhat resentfully that we should have the right to go into Panama and build a canal anywhere we darn well please. That would be like saying France, Germany, or the Soviet Union should have the right to go through the United States, or to Kansas, and dig a ditch if they want to. We cannot even do that ourselves as a government. We, at least, have to have an environmental impact statement.

But that is a right some want to reserve for ourselves in Panama.

I think that is most unfortunate because, certainly he cannot mean that. He cannot mean that we would take unto ourselves prerogatives that as human beings we would not allow the Panamanians.

He cannot mean that because, certainly, we want to treat them as equally as we would treat ourselves.

The language in this treaty is balanced. It says that we will study the issue. Part says we cannot go and negotiate with somebody else in our hemisphere for a canal, which really means nothing because our technicians have already told us there is nobody to negotiate with to build a canal, no other location of economic value to build a canal.

So what are we giving up?

The charge was made that this is a giveaway. What have we given up? We have given up the right not to negotiate with somebody else we would never negotiate with, because we could never build anything in their country if we did negotiate with them.

We have not given up a thing.

What have the Panamanians given up? They said in this treaty, "we will study it with you."

I think that is very important. I do not think we should be studying anybody's country without their involvement.

So, they would study it with us and then we would begin to negotiate.

Here is what I would think is an intelligent context of these negotiations. It is very simple. That is, it is their land. We do not have any Bunau-Varilla running around to negotiate a new treaty.

So it is a new premise we start with. It is their land. It is just as if it was American soil and somebody said, "We're very interested in seeing you undertake some type of venture."

We would need their permission as equals.

As far as owning it, I do not think they would let anybody own it but ourselves. They would be foolish. They do not have to.

So they would own it. So it would be for their own interest, and that is very simple. It is a commercial interest.

We presently generate one-third of the present traffic through the canal. So, if the new canal were to be built we could assume we would generate one-third or more of the traffic in that canal. So it would be in our economic interest.

We would go to them, as a result of this study, if the study were affirmative. We would simply say to them, "Well, we are prepared to help you finance this in exchange for a proper toll rate."

We would have what would be essentially a commercial undertaking with the government and with the people of Panama. That is all. It is not terribly complex. We do that now with other countries. With Canada we will have a gas line. It will come down from Alaska into the United States, go through a foreign country. They have not ceded their sovereignty over that land. We just worked out a commerical arrangement that was sanctified by a resolution in this body that will permit shipment of gas from one part of the United States to the other part of the United States.

It is a very simple undertaking when we strip away all of this false emotion that has beset this unusual situation.

Let me touch briefly again on these other countries involved, because we get so upset, some people do, at least, that we would be building a new canal through a country that would have a general at the head of it.

I might suggest that Nicaragua, where Mr. Somoza is in charge, has had a few difficulties of late. Maybe they are advocating, as some do, that Nicaragua is a possibility.

I could go down the list of countries involved. All these countries were party to the agreement between President Carter and Mr. Torrijos. So they all were party to the understanding that probably the best location and the only location for a canal is in Panama. That is what all the heads of state agreed to when they signed along with the treaty on the declaration of Washington, last September.

Let us now go to certain premises of my colleague. He does not foresee the need for a canal in this century.

Mr. DOLE. Mr. President, will the Senator yield for a clarification? I do not want to interrupt his statement.

Mr. GRAVEL. I am happy to yield for a clarification. I tried to clarify the statement of the Senator from Kansas a couple of times, but I would be happy to have him clarify, also.

Mr. DOLE. I did not see the Senator from Alaska standing, to clarify it. It probably needed clarifying.

The Senator from Alaska mentioned that these other countries signed on. It is my understanding that they only signed on so far as the Neutrality Treaty was concerned, not the treaty we are debating now.

Mr. GRAVEL. I believe the declaration of Washington was with reference to the whole package, which consisted of two treaties. They did not actually sign these documents. They had another declaration saying they were essentially in favor of what we were doing with Panama.

Mr. DOLE. They were in favor of it.

Mr. GRAVEL. Yes.

Mr. DOLE. I do not quarrel with that.

Mr. GRAVEL. When my colleague was talking about the defense argument, that 14 carriers cannot go through the canal and that is not a big part of Navy, so far as I am concerned, that is all our Navy. I think the Second World War demonstrated that. The Second World War, at sea, was won with carriers, with aircraft carriers. That was it. If you have no aircraft carriers, you literally have no Navy. So to say that our 14 carriers cannot go through the Panama Canal is saying that the American maritime defense capability cannot go through the Panama Canal. That is what you are saying. Do not kid yourself.

These carriers are the most vital things we have. We are not going to let a carrier run around the ocean without a few destroyers—like 10 of them. That means that whenever you move a carrier around the Cape of South America, you are going to move 10 destroyers to protect that carrier, which is still vulnerable because it will not have its entire task group with it.

So I hope my colleague will be a little more accurate and a little less cavalierish about our defense posture, because I know he has a distinguished record in this regard, with respect to a very strong defense posture for this country.

Be that as it may, I think any judgment about the new canal is primarily an economic decision. Economics is the discipline to which we subject all our decisions with respect to the distribution of resources and the determination of productivity.

Let us look at the situation today. Today, 57 percent of the world maritime tonnage cannot go through the present Panama Canal. To be more accurate, 57.8 percent of the vessels in the world maritime fleet are of 60,000 dead weight tons or more, and the limitation of the present canal is between 60,000 and 70,000 dead weight tons. From an economic point of view that means the canal is more than 50 percent obsolete.

You can bury your head in the sand and only worry about the emotion—who has sovereignty and who does not have sovereignty; this is a giveaway and that is a giveaway. All that is quite irrelevant to the simple fact that the canal is more than 50 percent obsolete today. I do not think that figure, prior to the research that I presented here, was generally known or appreciated.

That is the reason why a person, whether it be a Panamanian or an American in high office, who is not acquainted with these facts cannot develop a very acute—in my opinion—understanding of the present relevance of the present canal or what the needs will be 10 and 20 years from now. But I think we can take the experience of the last 12 years and compute what those figures are and what they show.

What we see is that in 1966, 89.59 percent of the world maritime fleet, in terms of tonnage, could go through the Panama Canal. Ten years later, in 1976, it was 42.2 percent. Of course, today it is 57.8 percent.

If we projected that to the year 2000 and only used a third of the last 12 years experience—not the full experience, only a third of it—we see that by the year 2000, about 7.64 percent of the world maritime fleet would be able to use the canal.

If that is not an indication that the barrier of Panama, the Isthmus of Panama, is increasing for world maritime interests, I do not know what is. If you come to the conclusion that this barrier is rising and increasing every year, then you must come to the conclusion that we should make a decision that was made back in 1903, which was made back in 1880 in Europe, in 1850 in the United States—that we have to try to find a way to breach that Isthmus for the benefit of the world commercial trade. That is the simple conclusion you come to.

We can be rational people and take statistics such as these and say that something is wrong and we should do something about it, or we can wait until the year 2000, when less than 10 percent of the world maritime fleet can use the canal, and say, "We have to do something about it now. We have to build a new sea level canal."

We can wait until that time, but I submit that we are rational and intelligent human beings, and I think we can get together with the Panamanians and perform the necessary studies and in those studies make an economic decision as to whether or not we should go forward. If it is not justifiable on economics alone, we may choose to add defense considerations. That would be up to the Senate, at a certain point in time, if it chooses.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. GRAVEL. I yield.

Mr. LEAHY. Mr. President, the Senator from Vermont has a couple of questions that come to mind in looking at this amendment.

As I understand the provision in the treaty, a treaty that was negotiated by, among others, a distinguished fellow Vermonter, Ellsworth Bunker, the country of Panama is precluded from negotiating with anybody other than the United States on the question of a sea level canal in Panama during the remainder of the century. Is that correct?

Mr. GRAVEL. I am sorry. Will the Senator repeat that?

Mr. LEAHY. As I understand the treaty, as it was signed, Panama is not allowed to negotiate for a sea level canal through Panama with any other country except the United States.

Mr. GRAVEL. That is right.

Mr. LEAHY. It is also a fair understanding that Panama, from an engineering point of view, is ideally the place for a sea level canal, if one were to be built.

Mr. GRAVEL. The most ideal.

I should like to quote a gentleman I know and respect, Mr. John Sheffey, a retired colonel of the U.S. Army. He was the Executive Director of the Inter-Oceanic Canal Study Commission, which completed its report in 1970. I read from his testimony before the Foreign Relations Committee:

> First, as the former executive director of the $22 million Sea-Level Canal Study of 1965–1970, I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new isthmian canal outside Panama. The only feasible routes are in Panama.

So I think the case is very clear.

When my colleague from Kansas talks about that we have to have our options or we are giving away something, it is absolutely preposterous that we would be giving away something. We are not giving away something. There is the only place to put a canal.

Mr. LEAHY. If we remove this section in the treaty, then that means that Panama is free to negotiate immediately with any other country for a sea level canal, that is, with Japan, the Common Market, the Soviet Union, or anyone; is that correct?

Mr. GRAVEL. Yes, they could, if this treaty were to pass. If the treaties do not pass, then I think that some of my colleagues will probably stand up here and say their rights under the 1903 treaty would preclude that.

Mr. LEAHY. Assuming we ratify the treaties as they are before us but follow the Dole amendment as it is before the Senate, if we ratify the treaties but also accepted the Dole amendment, then Panama would be free to negotiate with any other country in the world?

Mr. GRAVEL. The answer to the Senator's question, I think, is yes.

Mr. LEAHY. I tell my friend from Alaska that I have concern when I hear people talk about this section, and I will tell the Senator, if I could impose on his time for a couple of minutes, that in comments I have heard in Vermont and in other parts of the country, people ask us why we would have this in here, why we would allow ourselves to be restricted to negotiate only with Panama, or vice versa. I find when people ask this there is almost a huge blind spot that takes us back perhaps to the days of Teddy Roosevelt, or before, a feeling on the part of some that we could just go ahead and if we decide we want to build a sea level canal in Panama just go down and build one. I wonder if people have listened to any part of the debate that we have had here for the last several months, that we are dealing with a sovereign, proud, responsible, respectable country, Panama.

Mr. GRAVEL. Yes.

Mr. LEAHY. And Panama's main assets, of course, are its geographical location and its land.

Mr. GRAVEL. If my colleague will permit, I know why he runs into this misunderstanding throughout the country: We have a Senator of the United States standing on this floor saying, respectfully, he does not know why we do not have that right, just as if it

is normal for us whenever we so feel to go dig a ditch in somebody's backyard.

Mr. LEAHY. I think one of the things that I would hope would finally come out of this debate is that the United States does not feel and should not feel that it owns Panama, certain actions in the past to the contrary notwithstanding, that we are indeed dealing with a proud country, with a country that has diligently maintained and lived up to a treaty that they themselves resent and have resented almost from the day it was signed but yet have shown honesty and integrity in living up to it. I really hope that the debate on this particular item, whether it is in this amendment or is an understanding later, does not break down into the kind of argument that we heard throughout the land in differing parts that would seem to have shown an assumption on the part of some people of the United States that if we decide we want to build a sea-level canal simply because we might have the technical expertise to do so in Panama then we just go right down and build it irrespective of how Panama might feel.

We should realize that even in the present Panama Canal if Panama decided to bleed off the major part of the watershed of Lake Gatun, and they could do that as part of that is outside of the Canal Zone, we could not operate it anyway. We would lose the 52 million gallons it takes for transit of the canal, every single transit.

Mr. GRAVEL. For each vessel.

Mr. LEAHY. And by the same token, on the building of a sea level canal, assuming that it would become a matter of economic viability or necessity, it is Panama that possesses the primary ingredient, it is Panama whose country will be utilized, and it is Panama that has the most at stake there.

I think that it would be the height of arrogance on the part of the United States to assume that we and we alone would decide whether there would be another canal through Panama. Panama and Panama alone can make that ultimate decision.

But I personally prefer the situation where if they are going to make such a decision they would make it jointly with the United States and not make it with the Common Market, Japan, the Soviet Union, or anyone else. Yet I worry that there seems to be pressure built up on the country that rushes us pellmell into a situation where they are free to make that kind of arrangement with anyone else they want.

Mr. GRAVEL. I wish to thank my colleague because he underscored one important thing which is at total variance with my colleague from Kansas, and that is that a sea level canal will be the ultimate decision of Panama, not the United States. It will involve us but the ultimate decision will be that of Panama.

The language we have in this treaty, in my view, is no more than a mutual expression of enlightened self-interest. How horrible it would be, or how really ridiculous it would be, for the United States unilaterally to withdraw its expression from what is in its actual interests. All we are saying here is that the United States will not negotiate with anyone else, which would not make any sense even if it wanted to negotiate with someone else. And the Panamanians say that they will not negotiate with anyone else because, in point of fact, just like it makes no sense for us to turn

elsewhere, it really makes no sense for the Panamanians in the final decision to turn elsewhere.

For my colleague to stand up here and say the Soviet Union would go negotiate with Panama to build a sea level canal—can one imagine the ridiculous scenario of the Soviet Union which in 1969—those are the figures I readily have available—had going through the Panama Canal only .2 percent of the traffic, as opposed to the United States, which had 15.8 percent of the traffic?

It is preposterous to think that the Soviet Union will be so ignorant as to want to waste $10 billion or more building a canal that we could unilaterally make a decision not to use. That means that they would sit there with an investment that would be ridiculous.

So obviously any financing of a new sea level canal is not going to be hidebound by the nationalism and the jingoism of past decades. It is going to be a calculated economic venture. So since the United States is the most important user of the Panama Canal, or the would-be sea level canal, I do not envision as possible that a sea level canal could be built without our involvement. The nature of that involvement would be in terms of helping with the financing of the canal. I would hope that a new sea level canal, if it is warranted economically, would be financed by every nation that used it. That is how it should be financed. It would be international in charter. It would be owned by the Panamanian people, and the Panamanian people, hopefully, would make a handsome profit from this productive instrument that would lie within their country.

Why a Member of this body would want to stand up and say first, this is a give away and second, we ought to just plain take out this language altogether and make out this does not exist, I do not understand. It can only be, regardless of the statements he was quoting from the head of state of Panama, Mr. Torrijos, it could only mean that the tactic is still today what it was yesterday, and that is to load these treaties up with so much that they will just fall over of their own weight and they will not be acceptable. That is the tactic. That is what it has been from the very beginning, and that is what it is now, regardless of the protestations that are made.

But let me submit I think the people of this country and the people of Panama are a little more intelligent than what this amendment would suggest they are, and they are intelligent enough to recognize their enlightened self-interest. I think that in order to make that enlightened self-interest known they are prepared to go forward with a study, and when the self-interest is determined as a result of that study, they are prepared to go into what would be commercial negotiations to bring this about.

All of what this section of the treaty does is to frame that future activity, to put it into a frame, so that when the study is in, the United States knows it is not looking over its shoulder to alternatives, and Panama knows it is not looking over its shoulder to alternatives. The two major beneficiaries of a possible sea-level canal would obviously sit down and work out the situation at that point in time.

Again I do not understand why anybody would want to stand on this floor and say, "let us take out all this language about a sea-level canal. Let us just pretend it does not exist," and try to go back and look at Nicaragua, maybe spend another $22 million looking all over.

I would hope my colleague would join me in spending $8 million to update the study we have to get the present economics, update the engineering, and do an environmental study. After that we would know whether or not we should build a sea-level canal. I do not know whether we should or not. All I know is that I brought forward evidence to indicate that it would be economically viable and that it is needed.

It is particularly needed for my State. We are the treasurehouse of the United States of America. We have one-third of the known oil reserves of the United States, and we cannot get that energy to market efficiently today.

In fact, we are paying more than a dollar a barrel over what it would cost if a sea level canal were in existence today. Imagine that. I have heard exclamation upon exclamation on the floor of the Senate as to the high price of energy. If we had a sea level canal today, what is selling for $14 a barrel would be $13 a barrel, and it would be American oil at that, and would not have to import it from other countries causing a balance of payments deficit. That is just our oil.

Then we get our gas. There is not a liquefied gas tanker in the world today that can go through the Panama Canal. Not one. Obviously, if we are to use the gas potential of Alaska, which is enormous, the only way we are going to do it is with a sea level canal.

We talk about coal. Coal is the second most important commodity going through the present canal, and that is coal that goes from the East coast of the United States out of Hampton Roads, Va., and goes over to Japan. We could get a better price for our coal and more jobs for our people—my colleague is very concerned about that—and a better price for our coal if we could ship it more efficiently, meaning the larger vessels. We cannot do that. We are restricted in the size of the vessels because of the size of the present canal.

I could go on and make case after case, but if it is not clear let me restate it one more time: Fifty-seven percent of the world's tonnage cannot go through the Panama Canal today. That is a change from what it was 12 years ago. Twelve years ago almost 90 percent could go through the Panama Canal. We cannot be oblivious to that simple fact, that in 12 short years there has been an unbelievable obsolescence taking place. What will happen in the next 20 years? That is the simple question that I ask, and in order to try to find out I have pressed to have some language put in this treaty that will accommodate a study by the United States and Panama, and when that study is in it will speed the negotiations between Panama and ourselves.

To me that sounds very reasonable. It sounds very logical, and if somebody would stand on the floor of the Senate and say, "Take all that language out and let us just concentrate on the present Panama Canal because it is going to last forever," well, I say the

facts do not substantiate that. And the facts, I think, have to either be refuted—or people just have to stand in the dock and be judged by the American people for the ridiculousness of their proposals.

I reserve the remainder of my time.

The PRESIDING OFFICER. (Mr. Riegle). The Senator from Kansas (Mr. Dole.)

Mr. DOLE. Mr. President, I thank my distinguished colleague. I might join him in supporting additional money for updating the study, assuming we could satisfy the environmentalists and, perhaps, we will need an environmental impact statement. But the Senator from Kansas, of course, is aware——

Mr. GRAVEL. Mr. President, will the Senator yield for clarification? There was no environmental impact statement done in the original study. That is why a large part of the money in our suggestion for the study would go for an environmental impact study, because if the United States were involved in any guarantees we could obviously not do anything without having an EPA statement made. That is the purpose of that.

Mr. DOLE. All right.

The Senator from Kansas, as pointed out by the distinguished Senator from Alaska, is aware, we are all aware, of the sea level canal study commissioned by Congress in 1964.

The Commission's study focused, as I understand, on five feasible sites. Three were within Panama, one ran through Nicaragua and Costa Rica, and one lay within Colombia. The final report, as properly noted by the Senator from Alaska, recommended site No. 10 within Panama as being cheaper and easier to build. But the Commission's recommendation was conditional in nature, and its report clearly stated that route 10 was "subject to the priority of more important national requirements at the time" construction would be contemplated. It specifically recommended that the ultimate decision should also "take into account economic, political, and military factors."

Now, the Senator from Kansas does not quarrel with those findings that, based on the study of the new sea level route through Panama, it might be less expensive and less difficult than alternate routes. But it is suggested that other factors ought to be considered: Economic, political, and military, and this could make, of course, alternate routes more attractive in the future. I am pleased that the distinguished Senator from Vermont is on the floor because while he was propounding questions, as I understand the provision, it prohibits us from talking to any other country about a new canal. But the Soviet Union or Cuba or anyone else, Saudi Arabia, could negotiate with anyone else to build a competitive enterprise right now.

I would also suggest——

Mr. LEAHY. In Panama?

Mr. DOLE. Anywhere.

Mr. LEAHY. In Panama?

Mr. DOLE. Any other country.

Mr. LEAHY. No, no. I want to be sure I fully understand the distinguished Senator from Kansas. Is he saying they would have the right to negotiate to build one in Panama?

Mr. DOLE. I think so. All we have is a priority. We do not have, again quoting Torrijos, "an exclusive right." The United States is only given the "first option."

Mr. LEAHY. My understanding is that we have a monopoly in the 1903 treaty, and certainly, as I read it, the treaty up for ratification.

Mr. DOLE. We are talking about adopting this treaty which abolishes that monopoly.

Mr. LEAHY. Looking at this treaty, I see it as a complete monopoly. It is betwixt the two of us.

Mr. DOLE. If it is not a complete monopoly, would the Senator support an amendment to strike it out? You would be back to 1903.

Mr. LEAHY. Then if we ratify the rest of the treaty, as I expect we would, are we not then in a situation where Panama can go and negotiate with anybody they want? Quite frankly, while I wonder whether Panama would go along with this section in the proposed treaty, I rather like the fact that if all the major engineering studies say that Panama is the only economically feasible place to build a sea level canal, I rather like the idea that if one is going to build it, it is going to be with the agreement of both Panama and the United States——

Mr. DOLE. Right.

Mr. LEAHY [continuing]. Knowing that if anybody is going to build one, Panama is going to have to agree, No. 1; I mean, no matter who else can be involved in the picture, Panama has to agree, No. 1, to build it, and no one would have a chance that someone could walk in and steal the canal, as many feel was done back in 1903.

Mr. DOLE. We do not have to steal it; we are going to give it to them.

Mr. LEAHY. It is called a quid pro quo 75 years later.

Mr. DOLE. If the Senator will yield, I might give him some time, if I have time remaining. I want to make a couple of points.

Mr. LEAHY. If I could just take 10 seconds more to say it——

Mr. DOLE. Right.

Mr. LEAHY [continuing]. I just see it as blocking Panama from dealing with anybody else in making a sea level canal, and I rather like that.

Mr. DOLE. Well, I hope I understand it, but let me say——

Mr. GRAVEL. Mr. President, could I propound a question to the Senator on my time? It applies to what the Senator just said.

Mr. DOLE. Let me make three points, and then I will yield; and if I am wrong, the Senator from Alaska can correct me.

As I understand, it is a fact that Panama can allow any other country to build a sea level canal through Panama, including the Soviet Union, so long as they simply notify us first and give us "a first option."

If there is something there the Senator from Kansas has missed, if there is some monopoly power, I hope I will be corrected. I am just going by General Torrijos' interpretation. If we cannot agree on what this means, we have another misunderstanding; we have another DeConcini misunderstanding coming down the pike, or should I say, down the canal.

Second, as I understand, Panama would be entirely within her rights to refuse to allow us to construct a new sea level canal through her territory, even if we felt it absolutely necessary for our defense and our economic interests.

Maybe that is all right. Maybe I agree with the Senator from Vermont there. But the problem is, we cannot go anywhere else if they turn us down.

Finally, I think it is a fact that while we are prohibited from negotiating with any other country about a new canal, the Soviet Union can negotiate with anyone else to build a competitive enterprise.

It seems to me we ought to understand what we are about to do here. As the Senator from Kansas pointed out, I do not know why this provision is in here at all. I can understand that we should not have a right just to go down and say, "We're going to build a canal in Panama" and then build it, if we are talking about intervention in sovereign rights. But I cannot understand why we would make some agreement where we get only a first option, and we preclude ourselves from the right to even negotiate with anyone else.

I would agree that, based on the study referred to by the distinguished Senator from Alaska, the 1964 study, as of now the best route seems to be through Panama. But let us just look at some of the possible scenarios that could occur which would make the Panamanian route less desirable.

First of all, they could flatly refuse our proposal to build a new sea level canal, for reasons ranging from environmental to popular animosity—and I think there may be some of that.

Panama itself could come under the control of a new regime, making us less inclined to risk such a venture.

We could have a natural disaster, an earth slide closing the present canal, thereby necessitating a new canal, maybe even a new site.

Other nations, such as Colombia or Nicaragua, could propose a cost-sharing arrangement that would make our national commitment even less than what as referred to in the study as route No. 10.

And there is always a chance—you know, we live in an era of new technology on a day-to-day basis— that we will have some new technology that will make it easier and less costly to use other routes. In fact, in the Atlantic-Pacific Interoceanic Canal Commission's final report, it is said:

A sea-level canal excavated partially by nuclear methods on Route 25 in Colombia might someday be politically acceptable if proved technically feasible.

So, the point the Senator from Kansas wants to make is that there are a number of reasons why the recommended route through Panama might not be the best route, when it comes time to construct.

What is going to happen after the year 2000? I think it is more likely that we might build a canal after the year 2000 than between now and then.

I do not quarrel with any of the figures cited by the Senator from Alaska as far as tonnage is concerned. He is an expert in the field, far more than the Senator from Kansas, and I can understand his

desire to look ahead. I commend it. I think he said that for 57 percent of the shipping on a tonnage basis, the canal is obsolete now.

The point I do not understand is how this provision solves or even addresses that very real, sticky problem the Senator from Alaska has pointed out, not just because of his interest in Alaskan oil, but because of his interest in the future, the future of this country and the interests of this country and other countries as far as traffic is concerned.

I do not really understand what happens if we knock this out. I assume we can negotiate with Panama, or we can negotiate with Colombia, or we can negotiate with Nicaragua, instead of being bound not to negotiate with those countries?

Mr. GRAVEL. Well, on my time, if we can engage in a colloquy. I think you are using more time than I am, and I would like to share it with you. I detect a note of reasonableness, and I might ask if I could hold my colleague's attention, because I have slight hope that I might be able to persuade him in this regard.

Really, all we are doing in this section of the treaty is setting up a framework for our future course of action. We set up a framework to go forward with the study. After the study is in, then obviously we will have to sit down and make arrangements with the Panamanians, and in my opinion those would be commercial arrangements. I do not think we can say just what those arrangements will be before we have the facts of the study.

There is nothing given away on our side, or on the Panamanians' side, in point of fact. On our side I think it is very simple to see that we have already spent $22 million, and have picked one site, which is Panama.

On the Panamanians' side what are they giving up? They are giving up nothing, either, because, they cannot build—this is a judgment on my part—they cannot build a sea-level canal without us.

We are the biggest users. I think my colleague was out of the room when I gave this figure. If I give him the figure again, I do not think he will use the Soviet Union again as an example.

Mr. DOLE. Actually, I think the Senator from Vermont used it.

Mr. GRAVEL. The Soviet Union presently uses the canal 0.2 percent. The United States uses it 15.8 percent. These are 1969 figures, and the situation today is comparable.

So why on earth would the Soviet Union want to take $10 billion or more and help the Panamanians build a sea-level canal, when the economic viability of that is going to be in our use, the United States use?

To be extreme in this argument, if we were assured that the tolls would be fair, I would encourage the Soviet Union to go do it. Let us use their capital rather than our capital to go build a sea-level canal. Because all we are interested in is that when the canal is finished, everybody can use it at a fair toll. That is all we care about. If the Soviet Union wants to put up its money to furnish a more efficient maritime fleet for ourselves and the rest of the world, bless the Soviet Union; let them do it.

I do not see anything wrong with that. And particularly if we have the interest we have now, then what we will do is have the

responsiblity to keep it open for them—meaning keep it open for our third of the use. If the Soviet Union wants to use its rubles to invest in the Western world, to make our Western world more efficient, when they only use it 0.2 percent, let them have it.

I do not think that logic sells. And the figures for the Arab world are considerably less. The only reason why the Arab world would invest in it is that it is a good investment. Their interest is very simple: They would be making a good return on their money.

I think they would invest in it. I would think that when we get around, after the study is done, to building a sea-level canal, that probably the Arab world would put up as much money as the United States for the financing of the canal, because it is the best real estate investment they could find in the whole wide world. If the economics are there, it is the best investment possible. They are not going to get nationalized by anybody, and they will get a fair rate of return. They would want to do that. I think the United States of America, as policy, would encourage the Arabs to make that kind of investment so that we do not rob our own capital markets, which are going to be in desperate shape, because of the balance of payments which will exist as a result of our purchases of oil from the Arab world.

So when raising these specters of, "Well, the Arabs are going to build and negotiate with the Panamanians," or "the Soviets will negotiate with the Panamanians," these are meaningless specters. They do not mean anything. For somebody to dig the canal, whether it is the Panamanians or anybody else, the canal must be economically viable. People do not make uneconomic decisions if they know differently.

The other suggestion is the Panamanians will turn us down cold. I do not know why we would make the inference that the Panamanians are less enlightened than we are. We Americans pride ourselves on our ability that if we see a dollar we will pick it up. If we see an opportunity to make some money, we are not going to sit in the shade. We are going to step out there smartly and get a little of that money.

The Panamanians are just like us. They have a piece of real estate. If we can show them with an economic study that the present canal "we are going to be giving them back" is obsolete and worthless, and what they ought to do is build a new canal, that we will help them finance it and they will make a lot of money off of it, why would they turn down something like that?

We even make deals with our enemies, if we are going to make money off of it. You do not have to love somebody to make money with them. The Panamanians do not have to love us. We may have used up our inventory of good will in Panama in these unfortunate debates. If we have used up that good will, do not worry, it will not make any difference. When the Panamanian people see they can make some money off a sea-level canal, it will not make any difference whether they like us or not. What will be important is can they utilize their geographic location to their economic benefit? That is the issue in question.

That is why I started out by saying that the question with this amendment deals with our enlightened self-interest. So if we take it out, what are we taking out? We are taking out the fact that

there is recognition of a sea-level canal possibility. We are taking out the realistic fact that we have to deal with the Panamanians on that subject and that they have to deal with us. Those are the facts that this amendment wants to remove and make out like there is nothing there.

It is all there, and all this section of the treaty does is spell out what is obvious to the world. It is a frame, as I stated, within which we will now move forward with the study. That study will indicate what we should do as separate nations.

Mr. DOLE. Mr. President, the Senator from Kansas does not quarrel with the 1970 study. I do not think my amendment would affect the study. We do commit ourselves to a new study, jointly, on the feasibility of sea-level canal in the Republic of Panama, and in the event they determine such a waterway is necessary, they shall negotiate terms agreeable to both parties for its construction.

The point the Senator from Kansas is making is, before we have the study, that we ought to make some arrangement for what happens after we have had the study. I think the Senator from Alaska, who says we may need a new sea-level canal before the year 2000, argues against himself, because if Panama turns us down, we are shut out. We cannot go anywhere else. We do not have any leverage. We cannot talk to Colombian leaders or Nicaraguan leaders, because this contains the veto by Panama. We agree not to do that.

All we have is an option. That option, as I understand it—I hope I understand it correctly—is that we cannot negotiate with any other country than Panama for a canal site unless we are authorized to do so by Panama. On the other hand, the Panamanian commitment is imprecise and it is subject to different interpretations.

As far as the Russians are concerned, the Soviet Union sent 217 ships through the canal in 1976; Cuba sent 48 ships through the canal in 1976. I have not noted any word that the Russians are backing away from involvement. It might be that, judging from their maneuvers in recent weeks and months, and judging from rumors about Cuba and submarine bases and all that, they may want to expand their influence in this hemisphere. They may have more of a design on the canal or on a new canal. They may want to compete with America or with Panama. I do not know that they are any respector of the rights of Panama, the United States, or any other country.

I do not want to quarrel with the desire of the Senator from Alaska to protect the United States, because I share that, but it seems to me that we do just the opposite unless we strike out this particular portion of article XII.

Mr. GRIFFIN. Will the Senator yield for a moment?

Mr. DOLE. I yield.

Mr. GRIFFIN. As the Senator knows, I have taken the position that we should not rewrite the treaties here on the Senate floor, but I do want to say that I think the Senator's amendment goes to one of the most objectionable features in this treaty, one that was thrown in at the last minute, as I understand it, by the negotiators for the United States.

There have been a number of studies. In my minority views, which I would like to refer to, I would like to call attention to some studies that are not inconsistent with the view taken by the Senator from Kansas.

For example, a study at the Georgetown University Center for Strategic Studies in 1967, focusing on canal options, reached this conclusion: "Though the Republic of Panama seems technically"——

The PRESIDING OFFICER. The Chair is sorry to interrupt but must advise that all time of the Senator from Kansas has expired. The Chair understands that the Senator from Alaska yields 2 minutes to the Senator from Michigan.

Mr. GRIFFIN. I thank the Chair.

To be the best place for a future canal facility, the United States should not abandon the right to approach other countries for possible canal locations in the event that future political conditions exclude the project from Panama.

In 1967, the Council on Foreign Relations in a study authored by Immanuel J. Klette, surveyed various canal options and concluded the preferable route for a new canal would be the Nicaragua-Costa Rica route. He observed:

> Although the cost of construction bears on the final choices, it should not be the prime factor in making decisions on a new canal. A waterway which is less expensive in dollars may be the most expensive in political consequences.

It seems to me that this provision, in and of itself, is grounds for not approving this treaty and sending it back for renegotiation.

There are other reasons to do that. It seems to me, as I have gone around in my State and talked about these treaties, I find that my constituents are shocked when I read out of the canal treaty from article XII this language:

> During the duration of this treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route (other than in Panama) in the Western Hemisphere, except as the two parties may otherwise agree.

I find that my constituents are shocked that such language is in there and that we have agreed to that. To me it is certainly one of the most objectionable parts of this canal treaty. I think, of course, these treaties should be sent back for renegotiation.

Mr. GRAVEL. I might say to my colleague from Michigan that I have not reviewed that study. But the taxpayers of Michigan paid $22 million along with the rest of the American taxpayers for a study that did choose a route in Panama. Maybe there is somebody there who knows more than what was decided by this Commission.

I would like to read this language from the treaty to the American people, to anybody who is listening, and let them be the judge as to how fair or unfair this treaty language is. It does no more for Panama than it does for us, and no less for us than it does for Panama.

The first paragraph deals with the study:

> Consequently, during the duration of this treaty both parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

As the Senator from Vermont pointed out earlier, the one who is going to be the final deciding factor is going to be Panama. Right now, we have in the treaty that we are both going to decide it mutually.

Is that such a loss? Are your people still so shocked? If they think it is legitimate to go build elsewhere, fine, but there is no evidence that it would be economically feasible to build elsewhere.

Then, what this amendment does, the Dole amendment—here is the language that it wants to strike out. In section 2, the United States of America and the Republic of Panama agree on the following. Here is this terrible agreement that my colleague would like to cut out. This is the Panamanian side of the quid pro quo:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, or as the two Parties may otherwise agree;

The two parties agree. That is the quid pro quo that binds the Panamanians. I do not see any loopholes there.

Here is the quid pro quo that binds the United States:

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

Now, if treating the Panamanians as equals is offensive, then this language is offensive. That is the only charge you can make of this language, that it does not give us a big edge. It does not give us the hammer that we have had for the last 70 years. If that is what is offensive, then it is offensive.

I submit that anybody that can understand the English language can appreciate that this is fair to the Panamanians and it is fair to the Americans. That is really all a treaty should be, fair. That is all this is.

Now, moving to the other points that are made, and I have been over this ground, but I shall go over it again, hopefully to try to win a few votes—just as an aside to my good colleague, the best time to make an impassioned speech is when you do have enough votes, because then it does not take any persuasion to get them.

I only say that on our side, we have already spent the money looking at the various sites. I can appreciate that there may be, at some time, military considerations; there may be, at a point in time, a situation where maybe they are right. Maybe the Panamanians would be so illogical that they would not want to build a sea-level canal. When would that be? I am having trouble right now getting enthusiasm for the canal and I hope you are all going to join me in voting for the study. If we got the study done, in 3 years, we would know whether we need a canal or not.

My colleague started out by saying, we are not going to need a sea-level canal. Just offhandedly, he said we do not need it.

Again, in your closing remarks, you stated, well, if we ever do, it is going to ge after the year 2000. I am the only one around who thinks we can use it by 1985. In fact, I think we could use it today. We would be saving $1 a barrel on U.S. oil found in Alaska and shipped to Houston. That is what we would be saving if that canal were in existence today.

Mr. DOLE. Will the Senator yield on that point?

Mr. GRAVEL. I yield.

Mr. DOLE. You argue against your own position, because you cannot build it anywhere but Panama until after the year 2000. If the study the Senator from Michigan pointed out is accurate, in effect, you are shooting down a theory or proposal which has some merit, which I might support.

Mr. GRAVEL. I am not shooting down any proposal that has any merit. I do not know about the Senator from Michigan. Maybe he will give us the name of the study again that said it should go where? Nicaragua?

Mr. GRIFFIN. That was a study conducted for the Council on Foreign Relations. The reference is on page 191 of the committee report.

Mr. GRAVEL. What is the study, though?

Mr. GRIFFIN. The Senator from Alaska keeps saying that the most economically feasible place to build a new canal is in Panama. No one is arguing with him about that. I will concede that it is cheaper to build it in Panama than anywhere else. The question is whether that is the only factor or consideration that we should take into account. I very loudly and very emphatically say, no. It may be important to us to spend an extra $1 billion to build it somewhere else.

I can tell you, it will not cost us nearly as much as it is costing us to build this subway under the city of Washington.

Mr. GRAVEL. If we get to that impasse under this agreement, my colleague says that if the Panamanians turn this down, they can go negotiate with somebody else. They cannot. The language is very clear that under this treaty, if there is no canal in Panama for our use, there is no canal in Panama for the Panamanians' use. That language is very clear, so references to the contrary just do not hold water.

Mr. DOLE. That is not what Omar says.

Mr. GRAVEL. I do not want to use the body's time to reread the English language, which is quote clear. The quid pro quos bind both of us to a mutual agreement.

Mr. CHURCH. Will the Senator from Alaska yield?

Mr. GRAVEL. I am happy to yield.

Mr. DOLE. I hope we can have an up-or-down vote on this.

Mr. CHURCH. I think it would be appropriate to move to table the amendment, when time has expired. I merely want to point out that, although I am in full agreement with the distinguished Senator from Alaska, the provision this amendment would strike is at least as favorable for the United States as for Panama. Therefore, it is not restrictive. Still, if a majority of the Senate entertains a different view, then the way for the matter to be handled is not by amendment to the treaty itself, which would force a change in the text of the treaty and might well require a second plebiscite in Panama, but rather by an amendment to the articles of ratification.

I am certain the Senate will have a second opportunity to consider this matter in the form of an amendment to the articles of ratification. Then it can take such action as the majority deems fit.

Quite apart from the merits of the argument, pro or con, the wrong way to act would be to force a change in the text of the

treaty. On that ground alone, the Senate should vote to table this amendment.

Mr. President, if the Senator will oblige me further, I inquire of the Chair how much time remains to both sides.

The PRESIDING OFFICER. The Senator from Idaho has 5 minutes remaining. The Senator from Kansas has exhausted his time.

Mr. CHURCH. Very well. I am happy to accede to the request of the distinguished Senator from Alaska. He has 2 or 3 more minutes. Then, when he has competed his remarks, I shall move to table the amendment.

Mr. GRAVEL. Mr. President, I only conclude by the statement that, if we could go back to 1970, when the interoceanic canal study was completed, and if the canal at that time had come into being, the sea-level canal, on the average projections that they made as to what it would take in the way of revenue to amortize 60-year bonds at 6 percent interest, the revenue that subsequently we would have earned in the last 7 years would have paid handsomely to retire those bonds. In fact, there would have been almost a 100-percent profit above the cost of construction.

I can only say that, using that, I am not talking about the new tremendous discoveries of oil in Alaska or all these other facets. I am only saying that the present canal is moving toward obsolescence at a rate so fast that the new one coming into being would have been viable. That is the case that I make: That we are going to need a sea level canal. It can only come about with the good will of the people of Panama. We can best acquire that good will with the passage of these treaties unfettered by what the Senate might want to add.

I hope that my colleagues will recognize the enlightened self-interest of the United States of America and vote to table the amendment of my colleague from Kansas.

Mr. GRIFFIN. Does the Senator from Alaska have a minute left?

Mr. GRAVEL. How much time do I have left?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. GRAVEL. I am happy to yield a minute.

Mr. GRIFFIN. I thank the Senator from Alaska.

I guess one of the questions here is whether we have a fair agreement, as the Senator from Alaska describes it. On the one hand, we agree that we will not even negotiate with any other countries in the Western Hemisphere for the possible construction of a second canal.

And what does Panama give us? It gives us the promise that Panama will negotiate with us about the possible construction of a sea level canal within Panama.

On October 23 in a radio interview, General Torrijos was asked the question:

(Question). General, I would like to know if you think the Government will begin work, pardon me, studies regarding a possible sea-level canal.

(Answer). The production of oil in Alaska and the existence of large tankers practically forces one to think about the construction of a sea-level canal. Some very complete studies, which cost many millions, have already been done. Now it is necessary to update or nationalize them; that is, adapt them to the national interests. The new treaty obliges us to continue studying with the United States the possibility of constructing a sea-level canal, but it does not obligate us to build it jointly with the United States. They have the first option. And if we cannot reach

an agreement with them, we can seek the technology of any other country here in our world.

Well, that is not stating anything that anyone could not, of course, derive from the treaty itself as it is proposed, but those were the words of General Torrijos.

Obviously, they stand ready, possibly, to build a canal in Panama with anybody else they see fit if we do not meet their terms.

At the same time, we have tied our hands between now and the year 2000 to go to any other country and build such a canal.

Mr. GRAVEL. The truth of the matter is that the quote of General Torrijos is merely interpretive of the specifics of the treaty, and ties their hands as well as our hands. We cannot do anything without it. They cannot do anything without it.

But there is no question we could both agree, if we do not want to get involved in the sea level canal, we can let them do it, because we are going to be the beneficiaries of it.

That is what that quote is from General Torrijos. I think we do him an injustice to infer more than that.

It ways that under the treaty, very clearly, with respect to Panama, that this provision holds unless the two parties may otherwise agree. With respect to the U.S. side of it, it is also except as the two parties may otherwise agree.

So we do not know we will agree to in 1990, nor does Panama. But if we agree to let them do it, they can get the technology from Japan, Germany, or anywhere else to do it.

Of course, I think we do General Torrijos a great injustice with that quote out of context.

I think what is clear here what the treaty says, and the treaty says very clearly in the English language that both sides are treated equally.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CHURCH. Mr. President, I move to table the amendment.

Mr. DOLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Kansas. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. Anderson), the Senator from Arizona (Mr. DeConcini), the Senator from Missouri (Mr. Eagleton), the Senator from South Carolina (Mr. Hollings), the Senator from Maine (Mr. Hathaway), and the Senator from South Dakota (Mr. Abourezk) are necessarily absent.

On this vote, the Senator from South Carolina (Mr. Hollings) is paired with the Senator from Arizona (Mr. DeConcini). If present and voting, the Senator from South Carolina would vote "yea" and the Senator from Arizona would vote "nay."

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett), the Senator from Rhode Island (Mr. Chafee), the Senator

from Maryland (Mr. Mathias), the Senator from Pennsylvania (Mr. Schweiker), and the Senator from South Carolina (Mr. Thurmond) are necessarily absent.

I further announce that, if present and voting, the Senator from South Carolina (Mr. Thurmond) would vote "nay."

The result was announced—yeas 49, nays 40, as follows:

[Roll Call Vote No. 86 Ex.]

YEAS—49

Bayh	Hatfield, Mark O.	Muskie
Bellmon	Hayakawa	Nelson
Bentsen	Hodges	Pearson
Biden	Huddleston	Pell
Bumpers	Humphrey	Percy
Byrd, Robert C.	Inouye	Proxmire
Case	Jackson	Ribicoff
Church	Javits	Riegle
Clark	Kennedy	Sarbanes
Cranston	Leahy	Sparkman
Culver	Long	Stafford
Danforth	Magnuson	Stevenson
Durkin	Matsunaga	Weicker
Glenn	McGovern	Williams
Gravel	McIntyre	Zorinsky
Hart	Metzenbaum	
Haskell	Moynihan	

NAYS—40

Allen	Griffin	Randolph
Baker	Hansen	Roth
Brooke	Hatch	Sasser
Burdick	Hatfield, Paul G.	Schmitt
Byrd, Harry F., Jr.	Heinz	Scott
Cannon	Helms	Stennis
Chiles	Johnston	Stevens
Curtis	Laxalt	Stone
Dole	Lugar	Talmadge
Domenici	McClure	Tower
Eastland	Melcher	Wallop
Ford	Morgan	Young
Garn	Nunn	
Goldwater	Packwood	

NOT VOTING—11

Abourezk	DeConcini	Mathias
Anderson	Eagleton	Schweiker
Bartlett	Hathaway	Thurmond
Chafee	Hollings	

So the motion to table the amendment of Mr. Dole was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 38

The PRESIDING OFFICER (Mr. Moynihan). The question now recurs on amendment No. 38 offered by the Senator from Utah.

Does the Senator from Idaho wish to be recognized?

Mr. CHURCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHURCH. Is there any controlled time on the pending amendment?

The PRESIDING OFFICER. No, there is not.

Mr. CHURCH. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHURCH. Is the rule relating to germaneness any longer in effect?

The PRESIDING OFFICER. There is no requirement that this amendment be germane.

Mr. CHURCH. Is there any requirement that debate be directed toward this amendment under the germaneness rule?

The PRESIDING OFFICER. Not at this hour of the day, 3 hours having expired.

Will the Senator desist for a moment? The Senate is not in order.

Will Senators desiring to converse retire to the cloakrooms if they have a matter to be negotiated?

The Senator from Idaho.

Mr. CHURCH. Mr. President, I wish to take some time this afternoon to address a subject which, I believe, is weighing heavily on the minds of most of us who are well aware of the deep concern which has emerged during the last few days in Panama concerning the action we took on the neutrality treaty on March 16.

In approving that treaty, the Senate adopted 13 amendments, conditions, reservations, and understandings, all of which were intended to clarify and thus to strengthen the treaty.

The PRESIDING OFFICER. Will the Senator kindly suspend for a moment?

The Senator from Idaho is making an address of the greatest importance. Will Senators show him the courtesy of listening in silence or retire from the Chamber?

Will the Senate be in order?

The Senator from Idaho.

Mr. CHURCH. These were responsible actions. In the course of hearings of the Committee on Foreign Relations and the debate here on the floor of the Senate, particular aspects of the treaty were pointed out which many of us felt were ambiguous. We felt these ambiguities could lead to confusion and contention between the U.S. and Panama in the future, and that these points therefore had to be clarified if we were to achieve the intended purposes of these treaties—to assure the protection of long-term U.S. interests in the Panama Canal through a new, modern, and mutually acceptable treaty relationship with Panama.

It is highly regrettable, however, that in the course of strenthening the Neutrality Treaty—by removing the ambiguities that we found in it—we appear to have introduced a new ambiguity which is causing grave concerns among the people of Panama. I refer here to the first "Condition" which appears in the Senate's resolution of ratification—the provision popularly known as the "DeConcini Reservation."

Let us analyze for a moment why we did what we did, and why the people of Panama are concerned about it.

Mr. GRIFFIN. Mr. President, may we have order?

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The PRESIDING OFFICER. The Senator from Michigan is correct. The Senate has not shown its customary courtesy to the Senator from Idaho. Will those Senators wishing to converse leave the Chamber so that others may listen as they wish to.

The Senator from Idaho.

Mr. CHURCH. The Neutrality Treaty, as it was signed by President Carter and General Torrijos last September 7, contained a provision which reads as follows:

ARTICLE IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

During the hearings held by the Committee on Foreign Relations, top administration spokesmen, including the U.S. treaty negotiators and the Joint Chiefs of Staff, all testified that this language gave the United States the right to take necessary action—including military action to protect and defend the canal, even after the year 2000. During the hearings, this right was at times loosely referred to by Members of the Senate, the press, and on occasions by administration spokesmen as a right to "intervene." I believe we all recall that at that time Panamanian Government spokesmen were assuring their constituents that the treaty did not give the United States a right of "intervention."

These apparently contradictory statements about the fundamental security aspect of the new treaties gave rise to great concern here in the Senate. The Committee on Foreign Relations made it clear to the administration that it could not in good conscience report out the treaties favorably unless these ambiguities were clarified. At the same time, these apparent contradictions were creating equal concern in Panama, as the opposition groups there pointed out the discrepancies between the statements of the Panamanian Government's spokesmen, and those of the U.S. Government.

I repeat this recent history, Mr. President, to remind everyone that the problem we were facing last fall—which at that time appeared to be an enormous defect in the treaties—turned out to be largely a problem of semantics. There was no real disagreement between the two countries on the fundamental rights of each to act to protect the neutrality of the canal. The disagreement was over the way those rights were expressed. It was a problem over the use of the term "intervention."

Intervention to us may mean taking action for the limited and specific purpose of protecting our legitimate security interests in the Canal. But in Panama, and throughout the rest of this Hemisphere, the word "intervention" conjures up all that was humiliating and distasteful in their relations with the United States fifty years ago. To them it means U.S. Marines occupying Haiti and Nicaragua and running the governments of those countries for decades. It means the Platt amendment. And it means the repeated interventions of the United States in the internal affairs of Panama in the early part of this century. Under the original 1903 Treaty, we periodically sent our forces into their towns and cities—even those

hundreds of miles from the Canal—and changed their government if we were unhappy with its politics.

Over forty years ago, we recognized that intervention in the internal affairs of other nations was contrary to our own national interests. In the 1930's, we removed our troops from Haiti and Nicaragua, and repealed the Platt Amendment. And in 1936, we terminated our treaty rights to intervene in the internal affairs of Panama. Since that time, we have strongly promoted international agreements commiting all countries to respect the territorial integrity and political independeuce of their neighbors and to forswear intervention in their internal affairs. The Charter of the United Nations, the Charter of the Organization of American States, and the Inter-American Treaty of Reciprocal assistance—our pact of military alliance with our neighbors in this hemisphere—all contain provisions flatly prohibiting intervention in the internal affairs of other nations.

So the U.S. policy of intervention is long gone. But in the Latin America, the memory lingers on. The principal unifying factor in the foreign policy of the various Latin American nations for the past 40 years has been support for the principle of nonintervention. Having embarked 40 years ago on a new and more mature relationship with the United States, the countries of Latin America are determined to keep it that way. Thus, whatever we may intend by the term, loose talk in the United States about "intervention" raises deeply-felt concern throughout the hemisphere. It was for this reason we found ourselves in such difficulty last fall when we were discussing the security aspects of these treaties in terms of "intervention."

So what did we do about it then? President Carter and General Torrijos got together and issued a statement of understanding which clearly defined the right of the United States under the treaty to act to insure that the canal will remain open, secure and accessible. That portion of their statement reads as follows:

> Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

At the same time that they thus clarified what the treaty did mean, however, they also made clear what it did not mean. The statement goes on to say:

> This does not mean, nor shall it be interpreted as a right to intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

With the treaty thus clarified, the people of Panama went on to approve it by a 2 to 1 margin in a national plebiscite. The Senate of the United States voted 85 to 5 in favor of the leadership amendment to incorporate this clarifying statement into the text of the treaty and, like the people of Panama, voted to approve the treaty by a 2 to 1 margin. But in the process, as I indicated earlier,

the Senate adopted a further clarification which has given rise to an extremely delicate and emotional situation in Panama. Here is the text we adopted:

> Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operators are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

Now what is the problem with this language? It's purpose was to further clarify what the two countries had agreed to in the security provisions of the treaty. As General Torrijos put it in his letter of March 15 to President Carter, the treaty establishes "the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the canal." The Senator who introduced the provision in question indicated a very similar understanding. He stated:

> If America is to have any rights at all under this treaty, it must have the right to act independently to protect the canal and to keep it open.

So why the problem? There seems to be no disagreement as to our rights to take action to assure the openness and neutrality of the canal. No. The problem is not one of substance. Rather, it revolves around the emotion-charged matter of intervention in internal affairs.

As I noted earlier, the leadership amendment not only states what our rights are—it states what they are not. It makes perfectly clear that the United States has no interest in or intention of intervening in the internal affairs of Panama. But the provision we adopted on the 16th of March makes no such disclaimer; indeed, because it begins "notwithstanding * * * any other provision of the treaty * * *" it is being interpreted by the people of Panama as a nullification of the clear statement concerning nonintervention and respect for Panama's territorial integrity and political independence which the Senate voted 85 to 5 to adopt in the leadership amendment.

Now this was clearly not the intent of the Senate. The Senator from Arizona (Mr. DeConcini), who introduced the provision, stated:

> I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation.

So I think there can be little question about the true intention of the sponsor of the reservation. Other Senators who spoke in favor of the provision similarly indicated that its purpose was to clarify—not to nullify—the other provisions of the treaty.

So the objections being raised in Panama are not objections to what the Senate in fact intended in adopting this language. Rather, they are objections to an interpretation of the provision which the Senate did not have in mind—and in fact disclaimed—in discussing the provision.

Perhaps the people of Panama are overreacting. Perhaps they are interpreting this language out of contex. Clearly they are reading an intention into our language that was not acutally there.

But perhaps their reaction is not so inexplicable in view of Latin America's historical concern over U.S. intervention in their internal affairs which I outlined earlier. and perhaps it is not so unwarranted in light of repeated statements during this debate which showed little respect for the dignity of this small but proud ally.

In effect, Mr. President, we are facing the same situation we faced last fall. We have stated our right to take legitimate action to protect our interests in the canal; many people of Panama have misinterpreted the language we have used in stating those rights as evidence of an intent to revert to the era of gunboat diplomacy and to humiliate their nation.

What is the solution, Mr. President? Is it, as some have suggested, to prevail on General Torrijos to silence the expressions of concern in Panama so we can pretend they do not exist? Clearly not. It would be not only insulting to the people of Panama, but also a grave miscalculation, to make the assumption that the opponents of the Treaty have so long espoused in this debate—that nothing occurs in Panama unless General Torrijos directs that it occur. Whatever we may think about the Torrijos regime, it is clear in this instance that we are faced not with the political dictates of one man, or of his government. We are faced with the heartfelt concern of all segments of Panama society. The news reports from Panama over the past few days make it clear that this concern is being expressed not just by left-wing student groups, but by professional groups and by all the traditional democratic political parties, both conservative and liberal. The Communist Party of Panama is the only one that has not expressed concern—perhaps it sees some mileage to be gained in letting the problem develop further. Most significantly the business community of Panama is now calling for rejection of the treaty. These are the people who stand to gain the most from the treaties in economic terms.

Mr. President, this is a serious matter. As long as the Panamanian people believe that the language the Senate has adopted is intended to humiliate them as a nation, by delegating to the United States the ultimate right to govern their internal affairs, there is nothing we or General Torrijos can do to get them to accept these treaties. It would be contrary to our entire concept of human rights and, even more important, contrary to the national interests of the United States these treaties are designed to advance, to suggest that General Torrijos somehow stifle the dissent that has developed in Panama and go ahead as if nothing had happened.

What then is the solution? As I suggested earlier, Mr. President, we are in much the same situation as we were in last fall. Faced then with apparent differences in interpretation, we said what we did mean and what we did not mean. I would submit that we follow the same approach at this time.

Let us make it unmistakably clear that we will not back away from or dilute in any fashion the essential and legitimate rights to protect the neutrality of the canal which we have so carefully defined in the treaty and in the action taken by the Senate. But let us also clearly recognize that the people of Panama are not suddenly opposing the rights to take legitimate action which they have freely granted us in the treaty. Rather, they are opposing an ille-

gitimate interpretation of those rights. The problem, I repeat, is not what we did in clarifying our rights, but in what the Panamanian people are afraid we did.

Let us find an appropriate way to reassure the people of Panama that our intention was not to nullify the spacific pledge of nonintervention in the internal affairs of Panama, which 85 Senators voted to incorporate into the treaty.

Let us find a way to reaffirm the specific commitment to respect Panama's territorial integrity and political independence which we similarly voted to incorporate in the treaty.

Let us find a way to tell all the nations of this hemisphere that we have not in one afternoon nullified the last 40 years in the history of United States-Latin American relations.

Let us make it clear to the world that we are not seeking for ourselves the kind of rights the Soviets claimed in Czechoslovakia in 1968.

Mr. President, these treaties are too important to our national interests to allow them to fail over what amounts to a mere misunderstanding. These treaties were painstakingly negotiated over a 14-year period. The Senate has devoted an unprecedented amount of time to debating and perfecting them. They are good treaties—good for us and good for Panama. If we were to allow these treaties to fail, we would never be able to achieve better ones.

We have a duty to ourselves and to the American people to be sure that these treaties do not fail on account of misinterpretations of our actions.

We can tell ourselves that the fears being expressed by the people of Panama are unwarranted. We can say to ourselves that it is their fault if they have misinterpreted our intentions and our actions. We can criticize the Torrijos government for not doing a better job of explaining to the Panamanian people the true meaning of what we have done.

But in the end, we must recognize that, however unfounded, the concerns of the people of Panama are very real and serious concerns to them. We will not have done our duty if we do not address those concerns by clearly and precisely expressing our own intentions to the people of Panama.

Mr. President, I am not proposing that we undo what we have done, or water it down, or dilute it in any way. Fortunately, there is no reason to do so. What we can do and must do is reassure the people of Panama as to what we have not done. We must state categorically that we neither sought nor obtained a right to intervene in their internal affairs, nor do we have any intention of doing so. In this way we can show not only that we insist on preserving the legitimate rights of the United States to protect the canal, but also that we are prepared to respect the legitimate rights of the Panamanian people to independence and national dignity.

Mr. President, I trust that the Senate will find an appropriate way to communicate its true intentions to the people of Panama and to thus promptly resolve the misunderstanding that has arisen. In the meantime, we must proceed to complete our historic task of debating the Panama Canal Treaty. We have come a long way, and must not allow ourselves to be distracted at the last

moment by a temporary misunderstanding—a misunderstanding which will, in the end, rate at best only a footnote in the history of this great undertaking in which we have all invested so much.

[Mrs. Humphrey assumed the Chair.]

Mr. MOYNIHAN. Madam President, I rise to congratulate the Senator from Idaho for what in history may prove to be the critical address in this long, crucial debate. I speak, Madam President, as one of the handful of Senators who are supporters of the treaties, who nonetheless voted against the DeConcini amendment. I did out of a sense that we were not showing that sensibility of concern and feeling on the part of the people of Panama that is owing a neighboring nation, a nation with which we have had the closest relations for the longest time.

I can perhaps say personally that in the aftermath I ceased to participate as actively as I had previously done in this debate. On the first occasion I did speak, I spoke too strongly. I felt too strongly. I mentioned that only to suggest that this is a matter capable of arousing very strong feeling.

I think the Senator from Idaho has addressed the large point which has to be kept first in mind, which is what truly is the disposition of our Nation toward that nation? This is properly to be looked for in the text of documents, but much more powerfully it will be seen in the acts of history, in the trends of events sustained over what is now more that two generations in our political life, since the time of Franklin Roosevelt.

The United States has been judged, as, for that matter, have other countries in Latin America, when intervention in the affairs of others was a repeated event, not extraordinary, in Haiti, in Nicaragua, and it did occur in Panama. This was an age and era when such interventions, when such actions, were scarcely unknown in the world and not really very much thought to be illiberal, even.

The Senator may have had the occasion to visit Canada Square in Montreal. There is a great monument there to a regiment of Canadians who had gone off to fight in the Boer War. The monument is simply entitled, in large bronze letters, "Imperium et liberatis," Empire and Liberty. These were not to be entirely compatible views. We have changed, and the people no longer will accept that.

I think the Senator spoke to an important point when he mentioned the rights claimed by the Soviet Union in the case of Czechoslovakia in 1966, which have come to be known as the Khrushchev doctrine, the doctrine of proletarian internationalism, I believe, which gives the Soviet Union, by their judgment, the right, unilaterally, to intervene in other nations' affairs which have some comparable political system.

We have absolutely rejected such things. We have absolutely said no to that for others and for ourselves. This is not our disposition as a people. If we had a disposition that troubles someone such as myself, it would be a growing unwillingness to make those commitments to the responsibilities which inevitably we have as the largest and most powerful of the free nations in the world.

That is the problem which troubles American leaders and American Presidents. Will this Nation any more do what it has to do in

Western Europe, in Japan, in other parts of the world? The people of Panama might usefully consider that this is one of our major concerns. It is not that we are going around the world looking for adventure, but that we are too much of a strength for the world.

I would think that they might consider that the unique geographical position they hold in the world offers unique benefits but also unique burdens, not so much that we have because of our size, for the consequences of Japan and West Germany alike, but because of their location and where one of the largest nations in the Western Hemisphere built the canal and wants to continue to help operate it up to the year 2000.

I will not say the Senator has resolved all of my concerns, but he has spoken the truth about the disposition of this Nation and the intention of this Senate. It is not to intervene in the internal affairs of Panama at all, not one bit. That truth one might hope would be large in the minds, thoughts, and the considerations of the citizens of Panama as they now judge our further progress on this treaty.

Madam President, I rose merely to speak as someone who supports these treaties, who did not support the amendment in question, to say to those who might be listening in this Nation or in Panama, to the Members of the Senate listening in, and to those who will read this in the Record, the Senator from Idaho spoke the truth. This country has no intention to intervene in the affairs of Panama whatever. The Senate in adopting this reservation intended no such intervention. In no way did that condition in our minds in any way affect the basic understandings incorporated in the treaty by our negotiators and expanded in that direct documents exchange between the President of the United States and General Torrijos as the head of government in Panama.

Madam President, I have said my point, which is to congratulate the Senator, and to say that he certainly speaks for this Senator, who was in opposition in that particular matter. His statement accords completely with my understanding, and I think that would be the case for all the Senators.

Mr. SPARKMAN. Will the Senator yield?

Mr. MOYNIHAN. I am happy to yield to the distinguished chairman of the Committee on Foreign Relations.

Mr. SPARKMAN. I want to say that in the course of our consideration of these treaties, I insisted time after time that we abolish the word "intervene" or "intervention" so far as the handling of these treaties. I still believe that we ought to get out of our minds that we are approving at any time intervention in the internal affairs of Panama or any other country.

Mr. MOYNIHAN. May I say, and I hope the Senator will not think this presumptuous, there have been few men in the history of this Republic who have so much contributed to getting intervention not only out of our minds but getting it out of our foreign policy as John Sparkman of Alabama.

This is not a conviction you have brought recently to the conduct of foreign affairs; it is something you have stood for in one of the most distinguished careers in this body involving foreign affairs for—I dare not say how many years; more than a generation, sir.

Mr. SPARKMAN. I thank my distinguished colleague.

Mr. CHURCH. I subscribe to the remarks made by the Senator from New York. We all owe a debt of gratitude to the distinguished Senator from Alabama and I compliment him on his fine and distinguished career.

Also, I concur with what our distinguished chairman has said. "Intervention" is a word we should avoid because of its history and because of the way it is construed in Latin America. For 40 years, now, from the time that Franklin Roosevelt first enunciated the Good Neighbor policy, we have incorporated the principle of nonintervention as a cornerstone of our policy toward our Latin neighbors.

[Mr. Moynihan assumed the chair.]

Mr. CHURCH. We have expressly covenanted not to intervene in the internal affairs of Latin American countries in all of our principal treaties with the nations of this hemisphere, as well as in the Charter of the United Nations. Let no one labor under the misunderstanding that by adopting any amendment to the Neutrality Treaty, we abandon the cornerstone of American policy toward the Western Hemisphere.

It would indeed be a tragedy if the DeConcini amendment were interpreted differently than the author himself interpreted it in the course of the Senate debate.

Now I am happy to yield to the distinguished Senator from Alaska.

Mr. GRAVEL. I thank my colleague for yielding. I should like, one, to state very clearly that, as concerns Frank Church, the Senator from Idaho, I say he speaks the truth and I say I associate myself with his remarks. But I must differ with my colleague in this regard: He is very clear in his view of intervention, but I pray that we will always have leaders in this country that will be equally clear with respect to his view on intervention. That may not always be the case. We may not always have leaders as mature as my colleague from Idaho. For that reason, I, unfortunately, must differ and say that what we have done is most unfortunate.

We may well have to do something to correct the situation. I do not quite yet know what that would be, but I must add some information to this dialog which I think is at variance with his interpretation. I think my colleague is honest and his interpretation is well meaning, because that is him; that is Frank Church. But I think the realities that exist in the world today are somewhat different.

As I read the DeConcini amendment, I feel bad that we did not put up a greater fight at that time. I think we were all concerned with just winning. But I think the issue now is a little greater than that. I think I would rather have seen the treaty go down to defeat than have something that now I think casts a serious, serious shadow on that Neutrality Treaty.

I would say that, as my colleague quoted—and again, let me just say that I do not think that it will satisfy the people of Panama to have the single word of Frank Church. That is not going to do it. The word of Frank Church and Mike Gravel and anybody else will not do it. What is really going to do it is what is in the treaty, because when we are long done, that is what is going to be inter-

preted. I think we have created a tremendous ambiguity in that treaty.

Article V was very clear that the only military force would be Panamanians. Then, when we came on with the leadership amendment, that was very clear about intervention. And that had 85 votes, as the Senator pointed out. But the DeConcini amendment had 75. They both had a very large number of votes. I think we can only look at what the DeConcini amendment says, and that is very clear that we can intervene independently if we choose.

When then must go to what Senator DeConcini said on the floor in the debate prior to his amendment, and I think that is clear. I shall quote two passages. That is on page S3817:

> If the Panama Canal is closed, the United States has the right to enter Panama—

To enter Panama; not the canal—

> using whatever means are necessary to reopen the canal.

He goes on to say:

> There are no conditions, no exceptions, no limitations on this right.

Then, a little further on he states:

> I have been equally bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly government; political riots or upheavals.

This would be comparable to saying in this country that if we had an airline strike that crippled New York City and that inconvenienced foreigners, if they had the muscle to back it up and we had a treaty, we ceded those powers.

Mr. CHURCH. May I respond to the Senator?

Mr. GRAVEL. If I may just briefly complete it, I shall be happy to hear a response.

All I can say is that we may be well-meaning, but this is what is in the treaty. Twenty years from now, something very tragic could happen and we might have an interventionist leadership and we would rue the day that this confusion was added.

I though it was very clear before we added the DeConcini amendment. That is what made the confusion.

Mr. CHURCH. Let me say that the reason I made this speech was to establish some legislative history with respect to the intention of the Senate in enacting the so-called DeConcini amendment. I think it would be wrong if the legislative history was based solely on the debate that day, some portions of which have now been read again into the Record by the Senator from Alaska.

It is true that Senator DeConcini made some remarks that extended beyond security considerations for the canal itself. It is also true that in the course of his presentation he said:

> I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation.

Now, my address today is meant to be a construction of what the Senate as a whole did in adopting this particular reservation. I am sure that the Senator from Alaska would agree with me that there is nothing in the Record, either that day or any other day in this debate, to suggest that it was the purpose of the Senate to remove

what, for 40 years, has been the cornerstone of our relations with all our Latin neighbors: Namely to disclaim our adherence to the principle of nonintervention in the internal affairs of Latin countries.

I would concede to him that, in view of the adoption of the DeConcini amendment, it would be wise for the Senate to take some action to dispel any doubt on that score. I believe that it will be possible for the Senate to do so while fully preserving our rights to defend the canal and protect it against any threat to the regime of neutrality—principles to which both nations are pledged. I am not yet prepared to say exactly what form that action should take.

But the Senator and I do not really have any disagreement, and I think it would be a disservice for us to suggest to the radio audience that there is serious division between us.

I made this speech to attempt to clarify the intention of the Senate as a whole and to contribute to the legislative history connected with the DeConcini amendment.

In the course of the speech, I stressed the need for the Senate to consider some appropriate action to clarify that, in passing the DeConcini amendment, it was not our intention to claim a right to intervene in the internal affairs of Panama, or in any way to infringe upon the independence of that country.

Mr. GRAVEL. I might only state to my colleagues that there is no disagreement between us on the substance. Where I think I do part company is in attempting to understand how the Panamanians view it and how future leaders may choose to view it.

Mr. CHURCH. It is for this reason I believe some clarifying language is called for and I hope that the Senate will address itself to that in the next few days.

Mr. GRAVEL. If I hear my colleague correctly, that we will have a chance for the Senate to vote on some clarifying language, then he is correct. That is the ony way we can undo the damage that has been done, because if we do not have that clarifying language—and my colleague stated at the beginning the words of Senator DeConcini, that we will continue to respect the sovereignty—earlier, obviously, it was stated we had a pretty bad track record of not respecting that sovereignty.

So from the Panamanian point of view, that is not quite acceptable. I would think it unfair to those people—and I might say we are just talking about our side.

I heard a Senator today express a view of concern that we could not go dig a ditch in Panama. How does a Panamanian citizen listen to that when a Senator of some renown stands up and says, "Boy, I'm surprised we can't go and unilaterally dig the sea-level canal."

I resent the fact they would have a different attitude. So, from their point of view, there is deep concern.

Mr. CHURCH. Mr. President, I, too, am fully aware of the sensibilities, of the Panamanian people. Often in the course of this debate I have shuddered to think of how they must resent some of the demanding and deprecating things that have been said about them by Senators in this Chamber. But I would hope that they would remember that they are listening to individual Senators expressing individual viewpoints.

The Senate by its vote has overhelmingly rejected the arguments based upon demeaning appraisals of Panama and the Panamanian people. The Senate as a whole has reflected the viewpoint of the American people as a whole.

We, as a Nation, recognize that the Panamanians have been extraordinarily patient and forebearing in the course of this debate. We, as a people, recognize what staunch and steadfast allies they have been to the United States in our times of critical need, both in the First and Second World Wars.

The great majority of Senators have a profound respect for the people of Panama and understand why they are extremely sensitive to anything that smacks of interventionism.

That is why this afternoon I have tried to place in some perspective the action taken by the Senate when it approved the DeConcini amendment. I would not suppose that many Senators would disagree with me when I say that that amendment was not meant to repeal what has constituted the cornerstone of our foreign policy toward Latin America for the past 40 years, namely, our adherence to the policy and the principle of nonintervention in the internal affairs of Latin governments.

That is the whole purpose of my speech.

I recognize that a problem has been created, particularly in Panama, due to sensitivity over anything that smacks of interventionism. I hope that any doubts on that score can be allayed by some subsequent action of the Senate between now and the time we come to a final vote on this treaty.

Mr. HATCH. Will the Senator yield?

Mr. CHURCH. I am prepared to yield the floor at this time.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. GRIFFIN. I thank the Chair.

Mr. President, recent developments in Panama following Senate adoption of the DeConcini reservation have been described by some in the press and by some treaty supporters as "unexpected" and "surprising."

At the risk of saying, "I told you so," I must say that I, for one, have not been surprised.

Indeed, this Senator expressed deep concern on a number of occasions that Panama and the United States were not really in agreement on the alleged right of the United States, unilaterally, to use military force to defend the canal against any threat, domestic or foreign.

As I have repeatedly warned, an effort to rewrite the treaties here on the Senate floor—and then to present the revised treaty on a "take it or leave it" basis to Panama—would create understandable bitterness among the Panamanian people.

This was a principal reason for the position I have taken throughout the debate that the Senate should return the treaties to the President with the advice that negotiations be resumed so that the obvious ambiguities and other problems could be resolved between representatives of the two countries meeting on an equal footing.

As I said in a speech to the Senate on March 6:

We would be living in a fool's paradise to assume that these contradictory interpretations will simply go away if the treaties are ratified. Indeed, we would be most fortunate if they do not come back to haunt us in a most agonizing way in the years to come * * *

Obviously, it matters not how many times we declare and repeat that language in the treaty means one thing—if the people of Panama believe and openly insist that it means something else, we really do not have an agreement to ratify.

Let us review what has transpired:

Shortly after the treaties were drafted, some of the ambiguities—particularly with respect to U.S. defense rights—led to conflicting interpretations by Panamanian and American spokesmen.

In an attempt to clarify the situation, President Carter and General Torrijos issued a joint statement of understanding on October 14, 1977.

The Senate and American people were then assured by the State Department and the Foreign Relations Committee that under the Neutrality Treaty, the United States would have the right to use military force unilaterally to protect the neutrality of the canal against any threat, domestic or foreign. For example, the report of the Foreign Relations Committee proclaimed that the Neutrality Treaty, as clarified by the Carter-Torrijos statement of October 14, would allow the United States "to introduce its Armed Forces into Panama whenever and however the canal is threatened * * * The United States (would have) the right to act as it deems proper against any threat to the canal, internal or external, domestic or foreign, military or nonmilitary."

However, despite those assertions in the report of the Committee on Foreign Relations, it was clear to this Senator that Panamanian officials did not so interpret the Neutrality Treaty, nor did the Carter-Torrijos joint statement.

I spoke at some length in the Senate on March 6 and put in the Record a wealth of documentation to support the conclusion I had reached, that agreement between the two countries had not, in fact, been reached with regard to the defense rights of the United States.

For example, I quoted Foreign Ministry Adviser Luis Bejarano, who told the Panamanian people 3 days after the release of the Carter-Torrijos joint statement:

In the event of an attack on the Canal by a third power, the Republic of Panama must agree to the participation of the United States in the defense of the Canal. * * * [T]he Republic of Panama has primary responsibility for defending the Canal after 31 December 1999 and, in the event of foreign intervention by a strong nation, the Republic of Panama, after exhausting its tactical defense resources, *may* agree with the United States to carry out this defense if necessary. [Emphasis supplied.]

Obviously, that spokeman for the Panamanian Government did not interpret and understand this treaty as the spokesmen on the Senate floor have been representing it or as it has been represented by the Foreign Relations Committee report.

My remarks and the accompanying documentation took up nearly 20 pages of the Record, but my warnings were widely ignored by the media and brushed aside by the treaty proponents in the Senate.

Indeed, on March 6, after I documentated extensively the wide differences of interpretation which continued following the Carter-

Torrijos joint statement, Senator Church—I am sorry he is not on the floor at the moment—said this:

> A few minutes age, Mr. President, the able Senator from Michigan once again raised the specter of differing interpretations, as between the United States and Panama, with respect to our right to protect the canal . . . . To some extent, *all of this is so much ancient history.* Yes, there was a time when the treaty provisions . . . were being interpreted differently by some Panamanians and by some Americans. And yes, I stated flatly that I would not vote to ratify the treaties if these differing interpetations were not clarified by both parties. Such clarification was forthcoming on October 14 in the form of the Carter-Torrijos memorandum of understanding. In view of this clarification, I am forced to ask why the Senator from Michigan does not recognize that the specific purpose was to insure that the United States and Panama would interpret those critical provisions in exactly the same way; to wit, that *the United States would have the right to defend the canal against any threat in perpetuity* in accordance with its constitutional process . . . . [T]he incorporation of these critical provisions will serve to guarantee that there are no differing interpretations . . . . if the Senator from Michigan and others persist in suggesting otherwise, *they will have to be held responsible for a distortion of the* record. [Emphasis supplied.]

I suggest, most respectfully, that the events of the past week in Panama have demonstrated quite clearly that it has not been the Senator from Michigan who has been responsible for a "distortion of the record."

Mr. SARBANES. Mr. President, will the Senator yield for a moment?

Mr. GRIFFIN. I would like to finish my speech. I would have yielded to the Senator from Idaho, because I mentioned his name. I do not have very much more.

Mr. SARBANES. May I have the date on which the Senator from Idaho made the statement to which the Senator from Michigan referred?

Mr. GRIFFIN. March 6.

On March 16, the Senate adopted the so-called DeConcini reservation to the Neutrality Treaty, which provides that:

> If the canal is closed, or its operations are interferred with, the United States of America and the Republic of Panama shall independently have the right to take such steps as it deems necessary, in accordance with its constitutional precedents, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

In other words, Senator DeConcini merely was seeking to spell out in unambiguous terms some of the assurances given to the Senate by the Carter administration and by the report of the Committee on Foreign Relations.

Obviously, there would have been no Panamanian objection to the DeConcini reservation if Panama had understood the treaty language as the administration and the Foreign Relations Committee report had been contending all along.

For the record, let me say that I voted against the DeConcini reservation—not because I disagreed with the purpose or because I believe it had merit, but because I have said all along that I did not think the treaty should be rewritten in a substantive way on the Senate floor. I think any major changes should be achieved through renegotiation.

Many of our colleagues, particularly supporters of the treaty, obviously took the view or assumed that the DeConcini language would really not alter the meaning of the treaty. Thus, Senator Church said:

[T]his reservation must be considered, in my view, in part as a restatement in part as an elaboration of the amendment already adopted by the Senate to article IV of the Neutrality Treaty. As such, it is acceptable and I hope that the Senate will adopt it.

Senator Kennedy opposed the amendment, and then he said:

It stirs up what is already an emotional issue in Panama, *without adding to rights of the United States already recognized by the treaty.* [Emphasis supplied.]

Obviously, over the weekend, we have been learning about the Panamanian reaction, how they interpret the DeConcini amendment. In light of how they have interpreted all along the Neutrality Treaty.

In a memorandum dated March 28, 1978, Panamana's permanent representative to the United Nations informed the Secretary General of Panama's dissatisfaction with the DeConcini reservation, saying in part:

According to its proponent, the "DeConcini Amendment" is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government", pretending that said amendment must be construed to permit the United States to intervene in Panama in the event of labour unrest, strikes, a slowdown, or under any other pretext labeled as interference with Canal operations.

Treaty supporters have expressed surprise at the reaction in Panama. But the reaction there is fully consistent with the position taken by Panamanian leaders in the aftermath of the Carter-Torrijos joint statement of October 14, 1977. Here is how I summarized the differing interpretations in my floor statement of March 6, 1978:

Indeed—now, as before the joint statement—the two countries are not in agreement on two vital points:

First. Our administration continues to tell the American people that the United States will have the right to defend the canal's neutrality after the year 2000 against any threat, including an internal threat from within Panama. But spokesmen for Panama continue to assert that the United States will have such a right only if the Canal is threatened by a foreign power. Second. Our administration continues to tell the American people that the United States can determine unilaterally when such a threat exists. But Panamanian spokesmen insist that U.S. forces could defend the canal only if requested to do so by Panama or when such action is agreed to by Panama.

The strong Panamanian reaction to the Senate's adoption of the DeConcini reservation reinforces the deep concern which I have had along about the differing intepretations held by the two countries.

Even though the Senate has completed its action on the Neutrality Treaty, it is not to late to undo the mistake we made.

As I see it, there is a clear course that we should follow.

The two treaties are parts of an indivisable whole. One treaty cannot go into effect without the other. Accordingly, instead of adopting the Resolution of Ratification, that will be offered for this treaty, the Senate should adopt instead a substitute along the lines of one that I offered immediately before the final vote on the Neutrality Treaty.

And I shall offer a similar substitute resolution next Tuesday, providing for return of this treaty to the President of the United States, with the advice of the Senate that negotiations be resumed and continued until a more acceptable treaty can be fashioned.

I thank the Chair.

Mr. Allen addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. I thank the Chair.

Mr. President, I was interested in the remarks of the distinguished Senator from Idaho (Mr. Church) with respect to the meaning of the DeConcini amendment when he stated that in the days ahead he felt that some effort should be made to clarify the meaning of the DeConcini amendment. He went on to talk about our time-honored policy of nonintervention in Central and South America and the fact that the DeConcini amendment did not go counter to that and to talk about creating legislative history for the DeConcini amendment.

The door is closed, Mr. President, on legislative history for the DeConcini amendment because that amendment has been agreed to, it has become a part of the resolution of ratification of the Neutrality Treaty, and it has been approved by the United States Senate. And all dialog here on the floor cannot change the meaning of the DeConcini amendment once it has been adopted and once the resolution of ratification has been adopted. It is just like trying to restore Humpty Dumpty. It cannot be done.

Also, Mr. President, we all know that this is called the DeConcini amendment, but it would not have gone one step farther than the amendment to the treaty embodying the language of the DeConcini amendment would have gotten—and it did not get anywhere at all—unless the leadership itself had taken over this amendment and allowed its passage because there has not been one single dotting of an "i" or crossing of a "t" to either of these treaties that has not had the approval of the leadership, the managers, and the administration. So this treaty is theirs. If they have made any mistakes in it, they are their mistakes. It is not the mistake of those of us who are seeking to strengthen these treaties or in the alternative to kill them.

Mr. President, they say, "Let us clarify"—"clarify" is just a code word for weaken—"let us weaken the DeConcini amendment first by legislative history," which cannot be done because the door is closed on that treaty. "If we cannot do that, then let us water it down, let us clarify it, let us dilute it by something added to this treaty."

Mr. President, this treaty ends with the next century. The DeConcini amendment starts with the next century. So how in the world are you going to put a different meaning into the DeConcini amendment starting in the year 2000, when the present treaty ends at the beginning of the year 2000?

Also, Mr. President, are we going to play games with these Senators who sincerely felt that before they could vote for the Neutrality Treaty they had to be assured that the United States would unilaterally have the right to keep that canal open after the year 2000 no matter what it took and to say, "Well, Mr. DeConcini did not mean what they now say"?

I was very much intrigued at the colloquy between the distinguished Senator from Idaho (Mr. Church) and the distinguished Senator from Alaska (Mr. Gravel). And as that colloquy proceeded I noticed the distinguished Senator from Idaho wanted to get ahead and said "Senator, let me answer that question and respond to it."

The Senator from Alaska would not hear of that. He said, "We have done something wrong." The Senator from Alaska said, "We have done something wrong in adopting the DeConcini amendment."

And how right he is. But he was not giving the responses that the distinguished Senator from Idaho (Mr. Church) wanted him to give. He was not aiding in the colloquy. So he wanted to give an answer right away. The distinguished Senator from Alaska would not have any of that and he pointed out what a mistake had been made with the DeConcini amendment.

Mr. President, I can see how dictator Torrijos is a most unhappy man. If he, acting as the Government of Panama, agrees to the DeConcini reservation and, as he sees it, impugns upon the sovereignty of the sovereign State of Panama, he will be toppled by his own people, and if he submits the question to a plebiscite, the people will turn the treaty down. So, if there ever was a fellow between Scylla and Charybdis, or between the rock and a hard place, as the modern day expression is, it is dictator Torrijos.

Also, Mr. President, since we seem to be seeking as much approval of this treaty by the Panamanian people in shaping public opinion down in Panama with respect to action here in the Senate, I think the time has come to point out that the supporters of this treaty have been quite adept at pointing out what great friends of the Panamian people they are and what bad things have been said about Panama and the Panamanian people by Senators who are seeking to strengthen these treaties or, in the alternative, to defeat them. They say, "That is just those individual Senators talking, that is not the whole Senate, as you can tell by the vote."

Mr. President, the record will show who has been standing up for the Panamanian people and who has been standing up for dictator Torrijos. I will proceed to prove that right now.

The argument has been made against every amendment that has been offered except the leadership amendments, which were so deficient, I state, without fear of successful contradiction. Plea has been made and the argument has been made against every amendment, other than the leadership amendments that have been offered, "Do not do this, do not agree to this amendment; if you do we are in danger of having a plebiscite."

What is wrong with that? If we want to trust the Panamanian people, what is wrong with that? Who is casting aspersions upon the Panamanian people by saying, "Don't send this back to them, they might reject it"? Who is standing up for the Panamanian people? Those who want to offer amendments and guarantee that it will go back to the Panamanian people or those who support the treaties and say, "Let us not send it back to a plebiscite"?

So I hope that the Panamanian people will not get the idea that just because those who oppose the treaties have things to say about dictator Torrijos, that they do apply to the great Panamanian people, who are a great people, who want their sovereignty, who are entitled to the sovereignty over their land.

I dare say as I speak of the dictator down in Panama, I do not have any less regard for him than does the average Panamanian down there. That is the reason I think it is so important that this matter be submitted back to a plebiscite so that we can have a

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compact with the Panamanian people and not just with the Panamanian dictator.

I stated this morning, and the distinguished majority leader was quick to ask me to yield so that he could say he was opposed to my proposed amendment before I could even well explain it, and I suggested that before we concluded action on the treaty, I wanted to assure the right of the Panamanian people to express themselves on this changed treaty.

But the distinguished majority leader quickly got to his feet and announced that he would oppose any such amendment. Who is standing up for the Panamanian people? Who is seeking to give them a voice in agreeing to this treaty? Well, it is not the proponents, it is not the supporters of the treaty. It is those who are seeking to strengthen the treaty or, as I say, an alternative to defeating it. We are the ones who want the Panamanian people to speak, not the supporters of the treaty.

Now, Mr. President, would it be fair at this late date, after both sides have agreed on a date for a vote, to bring in some extraneous matter, something that has already been covered in the other treaty, something which cannot be debated on account of the time limitation, to try to cut down, dilute, the DeConcini amendment? That is not just my saying that is going to be done; that is the distinguished manager of the treaty, the distinguished Senator from Idaho (Mr. Church). He says something is going to be offered—he does not know what. "But we have got to change this around," is what he says. "We cannot let the DeConcini amendment go out even though it has already been approved," that is what he says, and it was OK'd by the leadership or it would not have passed. Every Senator knows that.

So every single word in this treaty as it now stands, and as the other treaty was approved, was the result either of action by the negotiators or a change approved by the leadership, the managers of the treaties, and the administration.

The opponents of the treaties have not added one single word to the treaties, unless it be said that Mr. DeConcini would not have voted for the treaty if his reservation had not been added.

How is Mr. DeConcini going to feel about this? I am sorry he has not been here today. I do not know whether he just has not come back or he is not on the floor.

[Mr. Gravel assumed the chair.]

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. ALLEN. No, I will not yield. I will yield for a question, but I do not want to yield for a discussion.

Mr. SARBANES. I just thought in fairness to Senator DeConcini it ought to be observed that it is my undestanding that he returned to his State to meet with his constituency over the weekend and he has not yet come back to Washington.

Mr. ALLEN. I thank the Senator.

Mr. SARBANES. Because there was some implication——

Mr. ALLEN. I just do not know that. I just do not know where he is.

Mr. SARBANES. The Senator did raise that point. It is my understanding he is at home with his constituency in Arizona.

Mr. ALLEN. I see. Well, I am glad to get that information. I am glad to yield the floor for that purpose.

Mr. SARBANES. I appreciate the Senator's yielding for that purpose.

Mr. ALLEN. I thank the Senator.

Would it be fair to the distinguished Senator from Arizona who, at this time, is among his constituents getting, I hope, the good advice that the people of Arizona are able to impart to him, would it be fair to him, who would not have agreed to vote for the first treaty without the acceptance of reservation word for word—they tried to water it down in their negotiations with him, and I can say to his credit he would not yield. He said, in effect, "This or nothing."

So now that they accepted his reservation, they accepted the exact wording, it was pushed by the leadership or it would not have been agreed to, we all know that, his vote was obtained, and Senator Cannon voted for the treaty, and it had been—he was not going to vote that way, and he was a cosponsor of the DeConcini reservation—would it be fair to these honorable Senators to undercut or dilute the DeConcini reservation when its acceptance was the method by which victory was obtained in the final vote on the treaty?

I must say, Mr. President, I believe that this victory that was achieved in the approval of this first treaty is going to develop into a hollow victory, because I do not believe this treaty is going to be approved by the Senate.

Mr. HATCH. Mr. President, will the Senator yield for a few questions?

Mr. ALLEN. Inasmuch as I did not yield to the distinguished Senator from Maryland, I will state to the Senator, as I did to him, I will yield for a question.

Mr. HATCH. Yes.

What is bothering me here today is there seems to be an attempt to malign Senators here in some of the comments made by the proponents of this treaty by indicating that Senators on this floor have been maligning the people of Panama.

Mr. ALLEN. It would just be the contrary.

Mr. HATCH. That is what I think. Is that not the Senator's recollection?

Mr. ALLEN. Yes, I say we stand for another plebiscite——

Mr. HATCH. That is right.

Mr. ALLEN [continuing]. In Panama to determine whether or not the Panamanian people approve of the treaties as finally agreed to here in the Senate.

The proponents of the treaties, the managers of the treaties, the leadership, the administration want no part of a vote by the people of Panama. They want to deal directly with the dictator.

As I pointed out a moment ago, the dictator is in quite a quandary, because he recognizes public opinion in Panama is now against the treaties, and if he accepts the treaties without a plebiscite, they are going to overthrow him, and if he submits it to a plebiscite, they are going to defeat the treaties.

Mr. HATCH. If I might interrupt the distinguished Senator from Alabama again, my friend and colleague, I would just like to praise

the distinguished Senator from Alaska who indicated that his stand today is the same as it was during the DeConcini reservation. He voted against the DeConcini reservation.

Mr. ALLEN. That is right, and I commend him for that nonchange of position.

Mr. HATCH. That is right; and it is very interesting to see who else voted against the Deconcini amendment. Because the distinguished Senator from Idaho (Mr. Church) voted for it. He vociferously supported that amendment.

As I recall the amendment, and I have a copy of it here, it is pretty clear, and the distinguished Senator is correct in why those Senators were pushing for it: So they could have this wonderful language proposed by the Senator from Arizona (Mr. DeConcini), a man whom all of us admire.

The Senator from Maryland (Mr. Sarbanes) supported it. The distinguished Senator from West Virginia (Mr. Robert C. Byrd) supported it.

But those who did not support it—in other words, those who voted against the Deconcini amendment—were the ranking minority member of the Foreign Relations Committee (Mr. Case); Mr. Clark; Mr. Cranston; Mr. Culver; Mr. Durkin; Mr. Garn voted against it; Mr. Goldwater voted against it; Mr. Gravel, whom I have complimented here for not changing his position, voted against it; Mr. Griffin voted against it; Mr. Hart voted against it; Mr. Hatch—myself, I voted against it; as a matter of fact Mr. Javits voted against it, known all over the world for his contributions to foreign relations.

Mr. Kennedy voted against it. Mr. Laxalt, one of the leaders on the opposition side, voted against it. Mr. McClure voted against it. Mr. McGovern voted against it. Mr. Metzenbaum; Mr. Moynihan—Mr. Moynihan voted against it. Mr. Schmitt, Mr. Scott, Mr. Stevens, Mr. Tower, and Mr. Weicker, all voted against the DeConcini amendment, which indicates something here.

Now all of a sudden I see these people—and I wonder if the distinguished Senator from Alabama will not agree—I see these very same people who were outspoken in their support for this amendment making noises all over this floor that somehow or other it is the rest of the Senators who are opponents of these treaties who have caused this problem, because they have been maligning the Panamanians. I have not heard any one malign the Panamanians.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. HATCH. The Senator from Alabama has the floor.

Mr. GOLDWATER. Will the Senator yield to me with the same understanding?

Mr. ALLEN. Yes, I yield to the distinguished Senator from Arizona.

Mr. GOLDWATER. Mr. President, I am prompted in part, because the name of my junior colleague is being spoken of, and I must say in his defense that he was absolutely sincere in this effort. He and I talked about this for some time, and he introduced it feeling that it was wise.

I might say that that same reservation was introduced as an amendment and roundly defeated by means of a motion to table.

Mr. ALLEN. Correct.

Mr. HATCH. That is right.

Mr. GOLDWATER. A strange thing I wanted to bring back to memory was that when I visited General Torrijos in January, I would say the principal matter we discussed was the subject of the defense of the canal.

Now, he recognized as rapidly as anyone that a national guard total force of 8,500, of whom 1,600 were trained infantrymen, with merely a handful of antiquated armament, could clearly not be expected to defend this canal; and while I cannot stand here and say categorically that we agreed to the subject that we be allowed to stay in perpetuity in the Canal Zone, as I recall it he did agree that there would be no objections to our continuing to train our airborne forces where we had trained them, in conjunction with the Panamanian forces.

So for the general to now be expressing surprise and some shock that the Foreign Relations Committee of the U.S. Senate would endorse U.S. forces remaining in Panama surprises me, unless my memory has completely left me, because he indicated that while it would not be desired, it was recognized that any attempt to invade Panama of any sized force—I am talking about even a battalion—would require more forces than they have, and that such attempts could possibly go on long after the year 2000.

So, frankly, I am going to watch developments with a great deal of interest, because I do not know how the Foreign Relations Committee is going to back off from this one. If it is a hot dog today, it was a hot dog then; and when they, almost to a man, approved this change, those, most of us, who are uninitiated in the subject of foreign policy would have to follow the leadership, because we look to the committees of Congress to guide us laymen through the tortuous paths of that which we do not know.

So, together with the Senator from Alabama, the Senator from Utah, and others, I think we are going to find some very, very interesting legerdemain, hocus-pocus, and dingle-dangle going on here in the next few days, trying to placate what seems to be an angry general in Panama for what the Foreign Relations Committee embraces with full gusto.

I thank my friend from Alabama.

Mr. HATCH. Mr. President, will the Senator from Alabama yield again, for me to ask one more question?

Mr. ALLEN. Yes, I am glad to yield to the distinguished Senator from Utah, provided I do not lose my rights to the floor.

Mr. HATCH. It was my understanding that the distinguished Senator from Alabama and a number of others, including myself, have consistently pointed out the disparities and ambiguities in these treaties, and that they raised an awful lot of problems. That is one reason why we have had so many of these substantive amendments to these treaties brought up. The Senator from Michigan indicated that he does not believe these treaties can be repaired with amendments, and that is the reason why he has voted, basically, against almost every amendment.

As I understand it, it has also been the position of the distinguished Senator from Alabama all along that these treaties are fatally defective, that they do not protect Panama or the United

States. If I do not misunderstand, I think both the distinguished Senator from Alabama and myself would agree with the distinguished Senator from Michigan that these treaties are not really clear and understandable.

Mr. ALLEN. They are not, to this good day, because we are still arguing about the meaning of the DeConcini amendment, which seemed perfectly clear to me.

I might say that Dictator Torrijos relied on the exchange of correspondence between him and the President on March 15, and we have those letters in the RECORD, in which Torrijos was complaining about some upcoming reservations. The President reassured him that nothing was going to be passed that would interfere with their understanding of the meaning of the treaties.

Well, apparently this does somewhat differ from their understanding of the treaties, it would seem, and no wonder. Let us read the language of the DeConcini amendment. The proponents argue, "Well, he did not mean what he said," but how can they say that about an amendment sponsored by a U.S. Senator which has been gone over with a fine-toothed comb by the administration attorneys, by the Secretary of State and the State Department, by the President himself, by Mr. DeConcini, who is an outstanding lawyer—how could they say it did not mean what the words say that it meant?

Let us see what it says. We can all read the wording. It was read and supported by the leadership. Let us see what it says:

Before the period at the end of the resolution of ratification—

Right at the tail end, in other words—

insert the following: "subject to the condition, to be included in the instrument of ratification of the treaty to be exchanged with the Republic of Panama—

Now, that is not talking about the resolution of ratification; that is in the exchange of instruments of ratification between the heads of state.

So this condition is to be placed in the exchange of notes between the dictator and the President—

subject to the condition, to be included in the instrument of ratification of the treaty to be exchanged with the Republic of Panama, that, notwithstanding the provisions of Article V—

That is where it says that only Panama, after the year 2000, shall have troops in Panama—

or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

If they had any interpretation such as they are trying to advance now, I do not know what it is. The distinguished Senator from Idaho (Mr. Church) said he did not know how to go about it, but something has to be done, something has to be done to change the wording of the DeConcini amendment. How can it be done, when that treaty has already been agreed to by the U.S. Senate, or had been accepted by the U.S. Senate? How will he change it?

The distinguished Senator from Idaho (Mr. Church), who is present in the Chamber, gave a speech in which he was seeking to set up some sort of legislative history with regard to the DeConcini amendment. How in the world are we going to have legislative history? Legislative history is established to indicate and to explain what the Senate, or what the House in the case of legislative history over there, meant when it passed a given piece of legislation. One cannot think up some 3 weeks later for what was meant by the wording there for the legislative history. The legislative history cannot be changed 3 weeks after the action has been taken. Someone might think up a good reason, "By the way, I thought up a good reason why that amendment does not mean what it says it means. I am going to go to the floor and point out this good reason that the DeConcini amendment does not mean what it says to mean."

(Mr. Sasser assumed the Chair.)

Mr. GOLDWATER. Will the Senator yield?

Mr. ALLEN. Yes.

Mr. GOLDWATER. Will the Senator briefly outline how the recent advocates of the DeConcini amendment might go about changing it?

Mr. ALLEN. With their great majority here in the Senate they can write words into this treaty. By a great use of force then can pass an amendment saying the DeConcini amendment does not mean what he says it meant. I dare say they could get a majority of the Senators. But that will not change the force of public opinion. It will not change the facts. I do not think it will placate the Senators who agreed to vote for this first treaty in return for agreeing to the DeConcini amendment, as interpreted by DeConcini and others, and as clearly related to the language of the amendment. I believe if they do seek to cut the ground out from under the DeConcini amendment they are going to lose enough votes here on the floor of the Senate to assure the defeat of this treaty.

Mr. GOLDWATER. I will ask my friend further, could that amendment be tabled?

Mr. ALLEN. Well, theoretically it could, yes. But actually the leadership is in control of well over 60 votes and those 60 acting pretty much monolithically could defeat a motion to table.

Mr. GOLDWATER. Let me ask the Senator one more question. This come to my mind as a layman. Let us say an amendment is offered which would put the meaning of DeConcini amendment in a different reservation. Would it be possible for this body to vote again on the first treaty of the change in what we might say to be the deciding reservation?

Mr. ALLEN. No. The only way to defeat the Neutrality Treaty, after accepting the DeConcini amendment as written and as explained by Mr. DeConcini, is to defeat this treaty. The defeat of the Panama Canal Treaty works to defeat the Neutrality Treaty as well, even though it has been approved by the Senate.

Mr. GOLDWATER. I thank the Senator.

Mr. HELMS. Will the Senator yield?

Mr. ALLEN. I yield.

Mr. HELMS. The fact remains, notwithstanding anything else, that the distinguished Senator from Arizona (Mr. DeConcini) advanced his amendment in good faith, is that not correct?

Mr. ALLEN. My attention was diverted. Will the Senator repeat his question?

Mr. HELMS. I merely raised the question about our distinguished colleague from Arizona (Mr. DeConcini). There is no question about his good faith in presenting the amendment on the basis which he did, is that correct?

Mr. ALLEN. That is correct. And efforts were made, I might say, to dissuade him from insisting on such strong language, but it was necessary to accept his amendment in order to get him to vote for the treaty, to accept his reservation, word for word. They did accept it and now they are saying it is going to be necessary to water it down.

Mr. HELMS. And all that having occurred, he then voted for the neutrality treaty in good faith?

Mr. ALLEN. Yes. He stated on the floor that he would not support the treaty if his amendment was not agreed to. Now the distinguished Senator from Idaho (Mr. Church) says it is going to be necessary to pass something to change the meaning which is being attached to the DeConcini amendment. I say that is water over the dam. That treaty has passed. Now if they seek to dilute that amendment in this treaty, it is difficult for me to see how that could be done inasmuch as the treaty we are on now expires in the year 2000, and the treaty with the DeConcini amendment does not even start until the year 2000.

Mr. HELMS. But even if it could be done, it would be an affront to the good faith of the Senator from Arizona, would it not?

Mr. ALLEN. Of course, it would be, and it would be an affront to the Members of the Senate who acted on the same assurance.

Mr. HELMS. I agree with the able Senator. Neither the Senator from Alabama nor the Senator from North Carolina can say with any certainty whether the Neutrality Treaty would have passed without the DeConcini amendment, and without the votes of Senators who accepted the amendment in good faith, but I have a feeling that the treaty would not have passed.

Mr. ALLEN. I was of the opinion that two of the cosponsors of the DeConcini amendment would not have voted for the treaty had not the DeConcini amendment, as written and as explained, been accepted.

Mr. HELMS. And endorsed and supported by the leadership and by the administration. Is that correct?

Mr. ALLEN. That is correct. It would not be part of the treaty now if it had not been agreed to by the President himself.

Mr. HELMS. The Senator is obviously correct.

I have some sympathy for the leadership and the sponsors of the treaties in their present anguish, now that some difficulty has arisen as a result of their maneuver in connection with the DeConcini amendment. I am sorry for them. Senator Griffin tried over and over again to warn the Senate of the defects in these treaties. The Senator from Alabama has been eloquent in his warnings. I have done the best I can, as have many others. No heed was paid to the Senator from Alabama, the Senator from Michigan, or to

any of the rest of us. This set of circumstances reminds me of Sam Ervin's story about a fellow down in North Carolina who killed his mother and father and then asked the court for mercy on the ground that he was an orphan. The leadership made their own bed in this matter, with great help from the President. I am sorry for them, but they were given fair warning.

Mr. ALLEN. The leadership is responsible for every word in the treaties. They have defended what the negotiators have done and have not allowed anything to be added without their express approval.

Mr. HELMS. And the Senator from Alabama has not added one syllable to the treaty, has he?

Mr. ALLEN. Unfortunately, I have not been able to. It is not that I have not tried.

Mr. HELMS. The Senator has tried valiantly, but he has not managed even to get a "t" crossed or an "i" dotted. Is that correct?

Mr. ALLEN. That is correct.

Mr. MAGNUSON. Will the Senator yield?

Mr. ALLEN. I yield.

Mr. MAGNUSON. There are two or three of us who have an important engagement and we would like to find out from the Senator from Alabama if we are going to vote on this tonight and, if we are, when.

Mr. ALLEN. As far as the Senator from Alabama is concerned, I do not believe there will be a vote, but the distinguished managers of the bill could get in at any time and move to table, which would cause a vote. I will say to the distinguished Senator I will not cause a vote this evening. If he can get a similar assurance from the other side, that will dispose of the matter.

Mr. MAGNUSON. I thank the Senator.

Mr. ALLEN. Have I responded to all of the inquiries of the distinguished Senator from North Carolina?

Mr. HELMS. Yes; and I thank the Senator for his courtesy.

Mr. ALLEN. I thank the distinguished Senator.

Let us see that Mr. DeConcini said about his amendment:

> The purpose of this amendment is quite simple, Mr. President. It is designed to establish a precondition to American acceptance of the Neutrality Treaty. That precondition states that regardless of the reason and regardless of what any other provision of the Neutrality Treaty might say or what interpretation it might be subject to, if the Panama Canal is closed, the United States has the right to enter Panama, using whatever means are necessary, to reopen the canal. There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as to the means necessary to insure that the canal remains open and accessible.

Mr. President, what is so bad about that amendment, I think it is a very fine amendment. After all, did not the two leaders, Republican and Democratic, say, when these treaties were first submitted to the Senate, that they could not vote for the treaties and that they would be defeated unless we were given the right unilaterally to intervene? It was only when that memorandum was entered into between the President and the dictator, allowing for a measure of right to defend the canal, and the leadership amendments were evolved, that the distinguished leaders agreed to support the treaties. Were they not driving for the right of unilateral intervention?

Sure, they were. That is what they said they wanted, as the Senator from Alabama recalls. They wanted the right to intervene militarily unilaterally.

Well, they seem to have gotten what they wanted. But the dictator got a very nice provision stuck in the leadership amendment that is not here. It is not in the DeConcini amendment. It was stuck in the leadership amendment or, prior to that, in the memorandum between the President and the dictator. That was that, in our intervention to protect the canal, we would not intervene with the internal affairs of Panama; we would not interfere with their territorial integrity; and we would do nothing to upset the independence of Panama. Those three things were stuck in the leadership amendment, but not the DeConcini amendment.

There, Mr. President, I believe we have the core of the dispute and the difference of opinion and Torrijos' protest because, as long as we just had the leadership amendment, it was so defective and so full of ambiguities and so full of qualifications that it held no fear or pause for Dictator Torrijos.

But the DeConcini amendment does not have these provisions that the dictator got inserted in the memorandum and that were carried over into the leadership amendment. I believe that is what is eating on them. This does give the United States the unilateral right to keep the canal open.

Mr. President, what sort of respect is that, talking about not according proper respect to Panamanians? I submit that those of us who have sought to improve these treaties and strengthen them or, in the alternative, to kill them, have shown greater respect for the people of Panama and less respect for the dictator than have the supporters of these treaties. Because we have sought, and I say that today, I was going to offer an amendment requiring this treaty to go back to the Panamanian people, showing that I have confidence in their good judgment. Although action on both of these treaties, if any amendment was offered, they would say, "Oh, we cannot vote for that; it might cause another plebiscite."

Does that show respect for the people of Panama, wanting to follow their will, their wishes, or show respect for Dictator Torrijos in wanting to follow his wishes?

This $100 million a year that Torrijos is going to get out of this treaty is what is going to keep him afloat. That is what is going to keep his dictatorial regime afloat. I would not be at all surprised, if we were to tailor this treaty to suit the best interests of the people of the United States and require a plebiscite, not only would the treaty be disapproved by the Panamanian people, but Mr. Torrijos would get his walking papers.

I think that would be a fine day for Panama if democracy should return to that fine republic, consisting of some fine American—and I say that in the broad sense—American people. I respect the great people of Panama and I want them to have a part in deciding this controversy. If we have overstepped our bounds when we have, by recommendation of the leadership, agreed to the DeConcini amendment, let us let the people of Panama say whether we have or not. Let us give them a voice in this issue and, at the proper time, I hope that the Senate will agree to this amendment sending this treaty back to Panama.

I yield to the Senator from Utah.

Mr. ROBERT C. BYRD. Will the Senator yield for a question?

Mr. ALLEN. I had planned to yield to the distinguished Senator from Utah, but inasmuch as my distinguished friend, the distinguished majority leader, wishes me to yield, I yield to him.

Mr. ROBERT C. BYRD. I have been listening to the debate. I ask the Senator, is the DeConcini amendment back before the Senate at this time?

Mr. ALLEN. It has been injected into the discussion in this fashion. The distinguished majority leader must not have been listening at the time the distinguished Senator from Idaho was speaking, when he said that something is going to have to be done to indicate a different meaning to the DeConcini amendment; that he did not know how it was going to be done, but that it would have to be done. That is how the issue came into the debate at this time.

I state to the distinguished Senator from Alaska, who has been supporting the treaties up to now—I do not know what his position might be now, but he stated that we went too far in agreeing to the DeConcini amendment; that he does not believe, if I correctly heard him, that it can be cured by an amendment to this treaty, inasmuch as the door has been closed on the other treaty and no legislative history can affect what has already taken place.

Mr. ROBERT C. BYRD. May I ask the Senator a further question?

Mr. ALLEN. Certainly.

Mr. ROBERT C. BYRD. An amendment by Mr. Hatch is pending, is that correct?

Mr. ALLEN. That is correct. But when I came into the Chamber, the distinguished Senator from Idaho was speaking of legislative history with respect to the DeConcini amendment. That is how it came in at this late hour of the day.

Mr. ROBERT C. BYRD. Very well. I wonder if we could reach an agreement to vote on the pending Hatch amendment, say at 5:45 p.m. today?

Mr. ALLEN. I would have no objection, except the distinguished Senator from Washington (Mr. Magnuson) asked the Senator from Alabama if there was going to be a vote and I stated, "Not as far I am concerned."

The motion might be made to table.

Mr. ROBERT C. BYRD. yes.

Mr. ALLEN. To table the amendment, and that I would not anticipate that there would be a vote.

I had not thought there would.

I would have no objection to agreeing to vote the first thing in the morning, but I do have my word out to the distinguished Senator from Washington.

Mr. ROBERT C. BYRD. I would be glad to get in touch with the distinguished Senator from Washington.

Mr. ALLEN. I would have no objection.

Mr. ROBERT C. BYRD. I wonder if we could agree to vote, say, at no later than 6 o'clock p.m.?

Mr. HATCH. Will the Senator yield?

Mr. GRAVEL. I would have an objection.

Mr. ROBERT C. BYRD. He would have an objection.

Mr. GRAVEL. I certainly would. I have been very patient. I waited around part of the afternoon. I would like to express myself on this, and I do not want to have it interrupted by a vote because we have had the opponents cackling here for the last hour over difficulty that we may have on our side, and I think there should be an explanation.

Mr. ROBERT C. BYRD. I really am not aware of any difficulties. I heard all day long that these crocodile tears have been shed. The carpet is wet where I stand. Everywhere I see the carpet is wet. There have been so many tears about all the difficulties that have arisen—and I know of none, really—but I would defer if the Senator is not in the mood to vote. How about 6:30?

Mr. GRAVEL. I would have no objection if I could get the floor and be recognized and make my expression of views.

I have been very patient, and I am prepared to, if it takes all night.

But I think there is another side that should be presented, and I have intended to present that other side before voting on any specific amendment.

Mr. ALLEN. I have no objection, I might say to the distinguished majority leader, I think, on a vote first thing in this morning, and I have no objection to a vote if we could get the approval of the distinguished Senator from Washington, to whom I am committed not to allow it to come to a vote, unless a motion to table——

Mr. ROBERT C. BYRD. Yes.

Well, Mr. Magnuson is still here. I am sure we would have no trouble with Mr. Magnuson.

What does the Senator from Utah say?

Mr. HATCH. We brought it up around noon today. I spoke for about half an hour and we have not had any chance to debate it.

I understand there are other Senators who want to speak. I, again, need to speak to it. Senator Sarbanes has indicated he needs to speak shortly on this amendment.

Mr. SARBANES. Very shortly, I assure the Senator.

Mr. HATCH. Well, I might add, there have been some Senators come up to me who have noticed how long this debate has taken today and have asked we vote tomorrow morning.

I really think we will need some time. I think we could finish the debate tonight. But I would recommend, if it is possible, because of some of the Senators who felt this was going on and on, that we vote tomorrow morning the first thing.

I would be more than happy to do that, and finish up whatever debate there is on this this evening, if both sides may be heard, and then vote the first thing tomorrow.

Mr. ROBERT C. BYRD. All right.

May I ask the Chair, on what article are we at this point, just for the record?

The PRESIDING OFFICER. The Senator is debating article III.

Mr. ROBERT C. BYRD. And there are how many articles, 14?

The PRESIDING OFFICER. Fourteen articles.

Mr. ROBERT C. BYRD. One annex, 1 minute, and we have 3 days left to debate the treaty.

The PRESIDING OFFICER. The majority leader is substantially correct.

Mr. ROBERT C. BYRD. I just want to express concern on the part of Senators who may have amendments to various articles that we do not run out of time without their having time to offer their amendments.

Several Senators addressed the Chair.

Mr. HATCH. I would be happy to set mine aside while others are brought up today and have back-to-back votes tomorrow, if that would make the majority leader happy.

Mr. ROBERT C. BYRD. Does the Senator have another amendment?

Mr. HATCH. I have another amendment, but not to this article.

Mr. ROBERT C. BYRD. I see no need to set it aside and bring up another.

Mr. HATCH. It has been set aside all day.

Mr. ROBERT C. BYRD. If we can get a vote on another amendment today, that would be agreeable.

I do not have the floor, but the Senator from North Carolina——

Mr. HELMS. Will the Senator yield for an inquiry?

Mr. ALLEN. Yes.

Mr. HELMS. I thank the Senator from Alabama.

Mr. ALLEN. Provided I do not lose my right to the floor.

Mr. HELMS. Mr. President, with that understanding, I will say to the majority leader, that I have three amendments.

I would be perfectly willing to enter into a time agreement on, say two of them this evening, and not have a vote on either of them and carry the votes over to tomorrow. That will get two of my several amendments out of the way.

Mr. ROBERT C. BYRD. Are they to this article?

Mr. HELMS. No, they are to the next article, but I want to do anything I can to expedite matters. But, to answer the Senator's question my amendments are addressed to the next article.

Mr. ROBERT C. BYRD. They are. Very well. We will talk about the Senator's amendments and possibly be able to reach an agreement before the Senate goes out.

Mr. HELMS. I merely want to help, if I can, with what may develop into a time problem later this week.

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. I agree with the majority leader. The clock is running and as the Senator has indicated we need to get on with it.

Mr. ROBERT C. BYRD. I thank the Senator.

I thank the Senator from Alabama for such time as he yielded.

Mr. ALLEN. I thank the distinguished majority leader.

As I understand, we have gotten nowhere with respect to setting a time for a vote, is that correct?

Mr. ROBERT C. BYRD. I believe the distinguished Senator from Alaska has indicated he wishes to address some remarks to the pending amendment.

Mr. GRAVEL. Not to the pending amendment, but to the subject raised, which has realy occupied our time for most of the afternoon. The amendment is of no concern to me.

Mr. ROBERT C. BYRD. Let me ask once more, is it possible to get a vote in relation to the pending amendment by, say 6:30 p.m. today, or by 7, no later than 7?

Mr. GRAVEL. I would have no objection if I could get the floor.

Mr. ALLEN. May I make this inquiry, inasmuch as the debate in which the Senator wishes to participate really has nothing to do with the pending amendment, could we vote on the pending amendment and then allow the Senaotor from Alabama to resume his discussion? Then we would suit everybody. We would have a vote and we would still have our debate.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. I hope the Senator from Alaska——

Mr. GRAVEL. If we vote right now, and then if the Senator would continue as long as he feels necessary, as long as it is not past midnight——

Mr. ALLEN. Twenty or Twenty-five minutes.

But if we can vote now, let me resume the floor for a limited time, it will not be long, and then the distinguished Senator from Alaska could be——

Mr. GRAVEL. Might I ask my colleague, since he has occupied the floor for a 20-minute period with the opponents of the treaty, might he not give me the courtesy to have 15 minutes after the vote and then he could retort, so we could really have a dialog?

We have been listening to the cackle, and I do not mind that, but I think we might have a little give and take.

Mr. ALLEN. I say to the Senator from Alaska, there was no cackling, as far as I am concerned, but possibly a few smiles.

Mr. GRAVEL. OI think he is entitled to it. I think anybody that throws gasoline on a fire and then laughs over people having difficulty putting out the fire——

Mr. ALLEN. I do not yield any further to the Senator.

Mr. ROBERT C. BYRD. If the Senator will yield to me, I believe I see the possibility here of our voting in relation to the Hatch amendment.

I ask unanimous consent that a vote occur in relation to the Hatch amendment at 6 o'clock p.m., with the time to be equally divided between now and 6 o'clock between Mr. Hatch or his designee and Mr. Church or his designee.

Mr. GRAVEL. Reserving the right to object, and I shall object, I think we are on a much more meaningful subject than the Hatch amendment. I do not think we should let go of it. It is really going to determine what the future will be with these treaties, so we could go ahead and have our amendments—I am explaining my reservation—if the Senator from Alabama has a filibuster going on and wants to go on, I am prepared to sit here and listen all night and after his is done I will take my turn in expressing my views.

So I do not think we should interrupt the Senator from Alabama if he wants.——

Mr. SARBANES. Will the Seantor from Alabama yield for a question?

Mr. ALLEN. Yes.

Mr. SARBANES. Do I correctly understand that the suggestion of the Senator from Alabama was that we take a short but reasonable period of time to make closing remarks, as it were, on the Hatch amendment, and vote; that then the Senator from Alabama thought the debate could be resumed, and I take it that it could be worked out between him and the Senator from Alaska on how

there can be an exchange? Was that essentially the Senator's suggestion?

Mr. ALLEN. Yes. I stated that I would not occupy the floor longer than an additional 25 minutes—in that range. I am not trying to prolong the matter.

I really think the distinguished Senator from Alaska should not have stated that the Senator from Alabama had a filibuster going, because he does not have. I am only trying to answer what the distinguished Senator from Idaho (Mr. Church) had to say by way of supposed legislative history and about seeking to undercut the meaning of the DeConcini amendment.

Mr. ROBERT C. BYRD. Mr. President, I talked with the distinguished Senator from Alaska, and I believe that I detect the possibility that we could vote in relation to the Hatch amendment within 10 minutes, so we can limit the debate on the Hatch amendment, 5 minutes to a side; and after that amendment is disposed of, we can carry on with the debate of the Senator from Alabama and the Senator from Alaska, both holding forth.

Mr. ALLEN. Provided the Senator from Alabama has the floor. Provided he is recognized immediately after the vote on the Hatch amendment.

Mr. ROBERT C. BYRD. The Senator from Alabama has indicated that he would not like to hold the floor for very long.

Mr. ALLEN. I said I thought I would conclude my remarks in the range of 25 minutes, give or take 5 minutes.

Mr. GRAVEL. Is that a unanimous consent request the leadership is propounding?

Mr. ROBERT C. BYRD. Yes.

Mr. GRAVEL. Reserving the right to object, and I shall not object——

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. GRAVEL. Because I think we should go forward with this, and I will be happy to sit here for 25 or 50 minutes or 2 hours and listen to the Senator from Alabama propound it.

Where I did get a little uptight—and I apologize to the leadership for that—was when Senator Sarbanes wanted to address an inquiry to the Senator from Alabama, and the latter would not entertain it. But then he proceeded to entertain it from Senator Goldwater, Senator Hatch, and Senator Helms. I do not mind that, either. He is entitled to do that. But I think if we want to give the color of fairness, we should be precise in how we do this, and not just spill the bucket and think we are fair.

Mr. ALLEN. I yielded twice.

Mr. GRAVEL. I withdraw any objection.

Mr. HELMS. Mr. President, reserving the right to object—and I hate to add to the Senator's difficulty—I have a problem with reference to the distinguished Senator from Virginia, who is on his way to Richmond.

Mr. ROBERT C. BYRD. I will give him a live pair. We will have one Byrd against the other—two Byrds with one vote.

[Laughter.]

That will beach my perfect voting record, but I am willing to do it.

Mr. HELMS. Of course, that would be quite satisfactory to the Senator from North Carolina, but I do not know whether it will be satisfactory to the Senator from Virginia. What is the difficulty in carrying the vote over until tomorrow?

Mr. ROBERT C. BYRD. No difficulty.

Mr. HATCH. Especially since I am willing to set aside this amendment and go ahead with other amendments.

Mr. ROBERT C. BYRD. We can call up another amendment.

Mr. HATCH. I do care a great deal for the distinguished Senator from Virginia.

Mr. ROBERT C. BYRD. I wonder whether I might check with the office of the Senator from Virginia (Mr. Harry F. Byrd, Jr.) and see if it would be agreeable to him for me to give him a live pair.

Mr. HELMS. If it is agreeable with his office, of course it would be agreeable to me.

Mr. ROBERT C. BYRD. Let us get the agreement, conditioned on that.

Mr. ALLEN. I call to the attention of the distinguished majority leader the fact that he said he would make it agreeable to the distinguished Senator from Washington (Mr. Magnuson). On that condition, I would agree.

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. ALLEN. I yield the floor, under the unanimous-consent agreement. As I understand, debate is now to be confined to the Hatch amendment, and there will be a vote. I yield the floor, on that condition.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, with respect to the deferral of the Hatch amendment, it has been very interesting to hear the colloquies which have taken place as a result of the incidents over the weekend.

Some of us have pointed out some of the difficulties the proponents have been having, it seems to me, in trying to foist the responsibility for these language and interpretation and disparity difficulties with the treaties upon the opponents of the treaties, indicating that the opponents have made statements deprecatory to the Panamanians and perhaps have not conducted themselves with respect for Panama, which of course is not the case.

The fact is that we have shown great deference to the people of Panama and will continue to do so, because we think a great deal of the people. The only instance I know of in which there has been any harsh language was an instance in which it was totally justified, on the basis of bringing out the drug connections with Mr. Torrijos' two brothers and others in Panama. I believe it is justified to speak about those types of incidents in Panama as being deleterious not only to this country but also to Panama.

I yield to the distinguished Senator from North Carolina, who will speak with regard to my amendment.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. ROBERT C. BYRD. Mr. President, the office of Senator Harry F. Byrd, Jr., has informed me that it will be perfectly agreeable to the Senator for me to announce a pair with him.

Mr. HATCH. What is our agreement for today? We are going to continue until what time?

Mr. ROBERT C. BYRD. We have 10 minutes, equally divided.

Mr. HATCH. Shall we start right now with the 10 minutes?

Mr. ROBERT C. BYRD. The agreement was that we start a moment ago, but it is all right with me to start now.

Mr. HATCH. I yield to the distinguished Senator from North Carolina.

Mr. ROBERT C. BYRD. Mr. President, I ask that the 10 minutes begin to run now.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I thank the distinguished majority leader for clearing up that dilemma concerning the distinguished Senator from Virginia.

Mr. ROBERT C. BYRD. I thank the Senator from North Carolina.

Mr. President, the amendment offered by Senator Hatch is needed to insure that the Republic of Panama understands and accepts the fact that payments made to it out of Panama Canal revenues must and will be made subject to the constitutionally required appropriations process of the U.S. Congress.

Every U.S. Senator knows the provision of article 1, section 9 of the Constitution:

> No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.

The Hatch amendment sets up a clear process by which this time-honored guideline of our Founding Fathers shall be dutifully adhered to, rather than bypassed.

Article III of the Panama Canal Treaty includes this language:

> 5. The Panama Canal Commission shall reimburse the Republic of Panama for the cost incurred by the Republic of Panama in providing the following public services . . .

And so forth.

Article XIII has this language:

> 4. The Republic of Panama shall receive, in addition, from the Panama Canal commission a just and equitable return on the national resources which it has dedicated to the efficient management operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

And then it goes on with the financial arrangements we are all familiar with.

The implementing legislation submitted by the State Department contains this language:

> The Panama Canal Commission shall pay directly from Canal operating revenues to the Republic of Panama those payments required under paragraph 4 of article XIII of the Panama Canal Treaty of 1977.

The point is this, Mr. President: The Panama Canal Treaty will remain an imperfect treaty, and in my opinion, inoperative, without the exercise by Congress of the appropriations power in the matter of transferring funds to Panama in connection with the matters dealt with in the treaty and implementing legislation.

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Department of State witnesses have acknowledged before various congressional committees that payments to Panama are subject to legislation.

The senator from North Carolina fears, however, that the State Department may hold to the position that mere passage of the implementing legislation will be sufficient.

As I have just quoted it, that legislation states the Panama Canal Commission will make direct payments to the Republic of Panama.

However, there is nothing in the treaties or the implementing legislation as proposed that indicates any necessity for scrutiny and authorization of such transfers of moneys specifically under the appropriations process of the U.S. Congress.

Mr. President, legislation cannot and does not amend the Constitution. Passage of the legislation implementing these treaties will not amend the Constitution to make unnecessary the appropriations process called for by our Constitution.

So the pending amendment of the distinguished Senator from Utah will clarify this important matter. It not only will clarify the issue; it will establish the very procedures by which the transfers of moneys shall be made in full conformity with our constitutional requirements.

And, as I have indicated at the beginning of my remarks, it will establish a clear understanding between the two Republics as to the basis and the processes on which and by which those transfers of moneys shall be made.

Mr. President, the Senator from North Carolina will not take any more time at this point to expand on his view. Let me just repeat, Senators all know the Constitution.

For an exhaustive treatment of that issue which the Hatch amendment addresses I want to call to the attention of the Senate an excellent paper compiled by W. M. Whitman, former Secretary of the Panama Canal Company, and now a consultant to the Merchant Marine and Fisheries Committee of the House of Representatives.

Mr. Whitman's paper dated November 1977, is entitled, "Panama Canal Treaty Payments and the Constitutional Power of Congress to Make Appropriations".

Mr. President, I want to pay tribute to Mr. Whitman for his diligence in the preparation of works such as this paper which have rendered great assistance to both Houses of Congress. The action of the Senate in pursuing various aspects of the treaties have been greatly aided by the background information and insights provided by Mr. Whitman.

Mr. President, I ask unanimous consent that this paper be printed in the Record.

There being no objection, the paper was ordered to be printed in the Record, as follows:

PANAMA CANAL TREATY PAYMENTS AND THE CONSTITUTIONAL POWER OF CONGRESS TO MAKE APPROPRIATIONS

I. INTRODUCTION

A. Question Presented

The question addressed in this memorandum is whether under Article I, section 9 of the Constitution, appropriations by the Congress are necessary to carry into effect

the provisions of the proposed Panama Canal treaty for annual payments to Panama.

B. Summary

In summary, the memorandum concludes that under Article I, section 9 of the Constitution, provisions of a treaty for payment of money do not become effective as domestic law in the absence of appropriation of the necessary funds by the Congress. Under the treaties with Panama now in effect, which also provide for annual payments to Panama, revenues derived from operation of the canal are treated as public moneys and expenditures of those funds are limited to those authorized by appropriation acts of the Congress. There is nothing in the language of the proposed treaty to take the annual payments to Panama provided by the treaty out of the operation of the general rule or to distinguish such payments from those provided by the existing treaties so far as concerns the application of Article I, section 9 of the Constitution. Accordingly, such payments may not be made without Congressional appropriations in the consideration of which, in the language of a resolution adopted by the House of Representatives in 1795, the Congress has the obligation to act as, in their judgment, may be most conducive to the public good.

II. CONSTITUTIONAL PROVISIONS

The three constitutional provisions directly involved are Article I, section 9, clause 7, the power to make appropriations; Article II, section 2, clause 2, the treaty power; and Article VI, clause 2, the supremacy clause. The text of these several clauses is set out below:

Art. I, sec. 9, cl. 7:

"No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; . . ."

Art. II, sec. 2, cl. 2:

"He [the President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; . . ."

Art. IV, cl. 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the land; . . ."

It is settled that the power of the President, with the advice and consent of the Senate, to make treaties with foreign countries extends to all proper subjects to negotiation between the United States and other countries.[1] It is also clear that such treaties may extend to subjects that are also within the legislative power of the Congress, i.e., a treaty is not necessarily invalid because it deals with a subject on which Congress has the power to legislate.[2] A treaty does not affect the power of the Congress to enact legislation on the same subject. In the event of a conflict between the treaty and the law, the later in time prevails.[3]

Once made, a treaty operates in a dual role: in its international aspect, it is a contract between the United States and the country with which it is made giving rise to rights and obligations under international law;[4] and under the supremacy clause of the constitution, a treaty takes effect as domestic law unless, in terms, it is made dependent on further legislative action by the Congress,[5] or unless the provisions of the treaty are in conflict with other provisions of the constitution.[6]

Analysis of the effect of a treaty as domestic law is usually cast in terms of whether or not the treaty is self-executing, i.e., whether it takes effect as domestic law without further action by the Congress. The state of the law in this respect is summarized as follows by the American Law Institute:[7]

"(1) A treaty made on behalf of the United States in conformity with the constitutional limitations indicated in § 118, that manifests an intention that it shall become effective as domestic law of the United States at the time it becomes binding on the United States.

"(a) is self-executing in that it is effective as domestic law of the United States.

"(b) supersedes inconsistent provisions of earlier acts of Congress or of the law of the several states of the United States.

"(3) A treaty cannot be self-executing under the rule stated in subsection (1) and have the effect stated therein to the extent that it involves governmental action that under the Constitution can be taken only by the Congress."

The provisions of the proposed Panama Canal treaty for annual payments to Panama by the U.S. Government agency to be established to operate the canal, raise directly the question whether such provisions are self-executing in view of Article I, sec. 9, cl. 7 of the constitution limiting to the Congress to the power to make appropriations.

There appears to be no controversy whatever as to the constitutional validity of treaty provisions under which the United States undertakes to make payments of money.[8] The first treaty made by the Government of the United States after the adoption of the constitution, the Jay Treaty of 1794 with Great Britain, provided for payment of debts owed by U.S. citizens or inhabitants to British creditors;[9] the treaties with France for the cession of Lousiana provided for payment to France of 60 million francs;[10] the Treaty of Paris, ending the Spanish-American War, provided for the payment of $20 million to Spain for the Philippine Islands;[11] the 1903 convention with Panama providing for construction and maintenance of the Panama Canal, provided for a lump sum payment to Panama of $10 million and annual payments to $250,000.[12] These examples could be duplicated many times over and in no instance has such a treaty provision been challenged as beyond the constitutional power of the President.[13]

If, as appears to be the case, Article I, sec. 9, cl. 7 of the constitution does not preclude the negotiation of a treaty providing for the payment of money by the United States, the conclusion is otherwise in respect to attempts to set up a procedure for transfer of funds in discharge of the treaty commitment without an appropriation by Congress.

After the ratification of the Jay treaty, the effect of the provisions of the treaty requiring expenditure of funds was debated at length in the House of Representatives. The debate did not involve the question whether the President could enter into a treaty requiring the expenditure of funds; the two questions at issue were (1) whether the House of Representatives was entitled to obtain copies of instructions given by the President of the negotiators, and (2) whether the Congress was required to appropriate the funds necessary to carry the treaty into effect, in view of the provision of Art. VI, clause 2 of the constitution declaring that treaties along with the constitution and laws made in pursuance thereof shall be the supreme law of the land.[14] President Washington rejected the demand of the House for copies of the instructions to negotiators,[15] but the House adopted a resolution introduced by Thomas Blount, vigorously supported by James Madison, providing as follows:

"When a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good." [16]

Congress thereafter enacted a law making the necessary appropriations.[17]

When difficulties arose in the execution of Art. VI of the Jay treaty, providing for payment by the United States of certain debts owing by U.S. debtors to British creditors, a second convention was negotiated and ratified providing for discharging the responsibility of the United States under Art. VI by payment of 600,000 pounds sterling in three equal annual installments.[18] On April 27, 1802, President Jefferson sent copies of the convention to the Congress with a brief message concluding as follows:

"I now transmit copies thereof to both Houses of Congress, trusting that, in the free exercise of the authority which the Constitution has given them on the subject of public expenditures they will deem it for the public interest to appropriate the sums necessary for carrying this convention into execution." [19]

The same principles were recognized and the same procedure was followed in reference to the three treaties with France for cession of Lousiana to the United States. In Article I of the second of the three treaties, the United States agreed "to pay to the French Government, in the manner specified in the following article, the sum of sixty millions of francs. . . ." Article II specified that payment to France would be effected by issuance of stock of $11,250,000 bearing interest at the rate of 6 percent, with a further provision for retirement of the principal in annual payments of $3 million, commencing 15 years after the date of the exchange of ratifications.[20] In his message to Congress on October 17, 1803, President Jefferson referred to the treaties with the statement that after ratification "they will without delay, be communicated to the Representatives for the exercise of their functions as to those conditions which are within the powers vested by the Constitution in the Congress." [21]

On October 21, 1803, the date of the ratification of the treaties, the President forwarded copies to the Senate and House of Representatives with a message which, after referring to his earlier message of October 17, in reference to the treaties, concluded:

"These, with the advice and consent of the Senate having now been ratified, . . . they are communicated to you for consideration in your legislative capacity. You

will observe that some important conditions cannot be carried into execution, but with the aid of the Legislature, and that time presses a decision on them without delay." [22]

Adherence to the view that provisions of treaties for the payment of money by the United States are not self-executing, but that Congress is required to exercise independent judgment in considering appropriations for such payments, has not been confined to the House of Representatives.

During the debates in the Senate on entry by the United States into the League of Nations and related treaties negotiated at the end of World War I, a resolution was introduced to request the Judiciary Committee to advise the Senate as to whether there was any constitutional objection to one of the treaties providing for military assistance to France. In the course of a comprehensive review and analysis of the treaty making power, Senator Kellogg (who was later to become Secretary of State) referred to the exclusive power of the Congress to make appropriations as follows:

". . . it is well settled that while the treaty-making power can obligate the United States to the payment of the sums of money, it can not itself appropriate from the United States Treasury the amounts specified or compel the Congress to provide for their payment . . . Undoubtedly nations dealing with the treaty-making power are presumed to have knowledge of this limitation." [23]

The relationship of the supremacy clause and the constitutional power of Congress to make appropriations was considered in the federal circuit court at an early date in a case involving the effect of an 1836 treaty with an Indian tribe, which among other things, provided for payment of the net proceeds of the sale of 160 acres of land to the owner of the buildings on the land. In that case the court said:

"A treaty under the Federal Constitution is declared to be the Supreme law of the land. This, unquestionably, applies to all treaties, where the treaty-making power, without the aid of Congress, can carry it into effect. It is not, however, and cannot be the Supreme law of the land, where the concurrence of Congress is necessary to give it effect. Until this power is exercised, *as where the appropriation of money is required,* the treaty is not perfect. It is not operative, in the sense of the Constitution, as money cannot be appropriated by the treaty making power. This results from the limitations of our government. . . . As well might it be contended that an ordinary act of Congress, without the signature of the President, was a law, as that a treaty which engages to pay money, is in itself a law. . . . It [the treaty-making power] cannot bind or control the legislative action in this respect, and every foreign government may be presumed to know that as far as the treaty stipulates to pay money, the legislative action is required.[24] (Emphasis supplied.)

The view that a treaty provision for the payment of money is not self-executing but requires an appropriation by the Congress is also reflected in the American Law Institute comment on section 141 of its restatement of foreign relations law, quoted above, which states:

"f. Constitutional limitation on self-executing treaties. Even though a treaty is cast in the form of a self-executing treaty, it does not become effective as domestic law in the United States upon becoming binding between the United States and the other party or parties, if it deals with a subject matter that by the Constitution is reserved exclusively to Congress. For example, only the Congress can appropriate money from the Treasury of the United States.[25]

"Illustration:

8. The United States enters into a treaty with State A under which A agrees to cede a portion of its territory to the United States in return for payment of $7,200,000. Advice and consent to the ratification of the treaty is given by the Senate and it is ratified by the President. The ratification does not have the effect of appropriating the $7,200,000. Further action to this effect must be taken by both Houses of Congress.[25]

This view of the effect of Article I, section 9 has not been disputed by the Department of State in the hearings on the Panama Canal treaties signed in September 1977. In hearings on the treaties before a subcommittee of the Senate Judiciary Committee, the Legal Adviser of the Department of State conceded that Article 1, sec. 9, cl. 7 of the Constitution constitutes a limitation on the impose taxes nor directly appropriate impose taxes nor directly appropriate funds." [26]

Similarly, at hearings on the treaty on September 29, 1977, Attorney General Griffin Bell advised the Senate Foreign Relations Committee that:

"It is generally assumed that the specific powers granted to the House of Representatives and the Congress in fiscal matters (Article I, section 7, clause 1 and Article I, section 9, clause 7, money bills and appropriation power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the

expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the pursestrings."

In the light of the constitutional principles summarized above, it appears that the provisions of the proposed Panama Canal treaty for payments to Panama are not self-executing but require legislative action by the Congress unless there is some special element involved in the treaty provisions or in the nature of the canal operation that would serve to take the payments to Panama out of the operation of the constitutional rules that would otherwise apply. Review of the pertinent treaty provisions and of the legal and fiscal characteristics of the operation of the canal, either at present or under the proposed treaties, discloses no such distinguishing characteristics.

III. PANAMA CANAL TREATIES AND OPERATING STRUCTURE

A. 1903 Treaty

In 1902 an act of Congress, popularly known as the Spooner Act, authorized the President to acquire control of the land and other rights necessary for the construction and operation of a transisthmian canal and to proceed with the construction of such a canal when such rights were obtained.[27] After an abortive effort to obtain the necessary rights in a treaty with Colombia, and following secession of Panama from the Republic of Colombia, the United States on November 18, 1903, entered into a treaty with the Republic of Panama providing for the acquisition by the United States of the rights specified in the Spooner Act and for the construction and operation by the United States of a transisthmian canal at Panama Article XIV provides that:

"As the price or compensation for the rights, powers, and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars ($10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars ($250,000) in like gold coin, beginning nine years after the date aforesaid. . . ."

B. 1936 Treaty

A treaty between the United States and the Republic of Panama signed March 2, 1936,[28] among other provisions, abrogated certain provisions of the 1903 treaty, and placed restrictions on residence, importations, and commercial activity in the Canal Zone.[29] Article VII of the 1936 treaty increased the amount of the annuity payable to the Republic of Panama under Article XIV of the 1903 treaty to four hundred thirty thousand Balboas (B/430,000) as defined in a separate monetary agreement, effected by an exchange of notes on the same date as the treaty. The treaty authorized payment of the annuity in any coin or currency provided the amount so paid was the equivalent of B/430,000 as defined in the monetary agreement.

C. 1955 Treaty

A third treaty between the United States and the Republic of Panama, signed January 25, 1955,[30] contained among other provisions, an article that increased the annuity to one million nine hundred thirty thousand Balboas (B/1,930,000) as defined by the agreement embodied in the exchange of notes of March 2, 1936, but authorized the United States to discharge its obligation with respect to payment of the annuity in any coin or currency provided the amount so paid is the equivalent of one million nine hundred thirty thousand Balboas (B/1,930,000) as so defined.[31]

D. Panama Canal Organizational Structure

Construction of the Panama Canal was accomplished by the Isthmian Canal Commission under the provisions of the Spooner Act, *supra*. As construction approached completion, Congress passed the Panama Canal Act of August 24, 1912,[32] providing for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone. The Act authorized the President to discontinue the Isthmian Canal Commission and to complete, govern and operate the Panama Canal through a Governor of the Panama Canal. The pertinent provisions of the Panama Canal Act were later incorporated in the Canal Zone Code, enacted in 1934.[33]

The adjuncts of the Panama Canal, referred to in the Panama Canal Act, were principally consolidated in the operations of the Panama Railroad Company, originally created in 1849 under the laws of the State of New York as a private corporation for the construction and operation of a railroad across the Isthmus of Panama. At the time of the construction of the Panama Canal all the stock of the Company was acquired by the United States and, after the canal was completed, the railroad conducted certain business operations supporting the maintenance and

operation of the canal, including operation of a transisthmian railroad, a steamship line operating between the United States and the Canal Zone, docks, harbor terminals, coaling plants for bunkering ships, commissaries for supplying employees and ships, dry and cold storage plants, hotels, and the telephone system of the Canal Zone. The Supreme Court has characterized these operations as auxiliaries primarily designed and used to aid in the canal's management and operation,[34] and they have been similarly described by the Congressional Committees responsible for Panama Canal affairs.[35]

In 1945, the Government Corporation Control Act [36] designated the Panama Railroad Company as a wholly-owned government corporation and prohibited the existence of any such wholly-owned government corporations created under the laws of a state. Accordingly, in 1948, the Panama Railroad Company was reincorporated under a federal charter with authority to continue its operation in support of the maintenance and operation of the Panama Canal.[37]

Under legislation enacted in 1950, a basic change in the organizational structure of the enterprise because effective July 1, 1951.[38] One purpose of the reorganization was to separate the business operations of the canal enterprise, including operation of the waterway, from those functions associated with civil government of the Canal Zone. All the functions of the agency previously known as The Panama Canal, except those relating to civil government, health and sanitation were transferred to the Panama Railroad Company which was renamed the Panama Canal Company. The Panama Canal agency retained its governmental functions and was renamed the Canal Zone Government. A second purpose of the reorganization was to give the Panama Canal Company authority to prescribe the rates of tolls for use of the canal subject to final approval by the President.[39] Previously, power to prescribe rates of tolls had been vested exclusively in the President since the enactment of the Panama Canal Act in 1912.[40]

The basic provisions of the 1950 reorganization legislation were subsequently incorporated into the 1962 edition of the Canal Zone Code.[40] Under the statutory scheme, the Panama Canal Company and the Canal Zone Government function as an integrated enterprise although each is an independent agency of the United States.[41]

The Panama Canal Company is described in the law as a body corporate and an agency of the United States for the purpose of maintaining and operating the Panama Canal and conducting business operations incident thereto and incident to the civil government of the Canal Zone.[42]

The powers of the Company are enumerated in its charter.[43] In general, the principal activities of the Company are (1) operations directly involved in the movement of ships through the canal and (2) supporting services. The latter include vessels repairs, harbor terminals, a railroad across the Isthmus, a supply ship operating between the United States and the Canal Zone, motor transportation facilities, storehouses, an electric power system, a communications system, a water system, and service acitivities essential for meeting the needs of employees, such as living quarters, commissaries and restaurants.

Under its charter the Company is required to be self-sustaining although appropriations are authorized to cover any operating losses, [44] or for the capital improvements. [45] Appropriations for operating losses are required to be repaid.

The Company is also required to reimburse the Treasury for interest on the net direct investment of the United States in the corporation at rates fixed annually by the Secretary of the Treasury,[46] for the annuity paid under the 1903 treaty as amended by the 1936 treaty, and for the net cost of operation of the agency known as the Canal Zone Government.[47]

The Board of Directors of the Company is required to review annually its working capital requirements together with foreseeable requirements for plant replacements and expansion and to pay any amounts in excess thereof into the Treasury.[48] Since 1950 the Company has paid $40 million into the Treasury for this purpose.

IV. FISCAL MANAGEMENT OF GOVERNMENT AGENCIES

Article III of the proposed Panama Canal treaty specifies that the U.S. Government agency to be established to operate the canal "shall be constituted by and in conformity with the laws of the United States." The laws of the United States governing the fiscal management of government agencies in general are incorporated in Title 31 of the U.S. Code.[49]

The Executive Departments and non-corporate federal agencies are subject generally to the provisions of title 31, except the provisions of the Government Corporation Control Act. Wholly owned government corporations are subject to the provi-

sions of the Government Corporation Control Act and to many of the other provisions of title 31 as well.

The provisions of title 31 clearly delineate the fiscal responsibilities of government agencies generally and their dependence on appropriations to authorize the expenditure of funds. The Budget and Accounting Act, 1921, defines "department or establishment" to include "any executive department, independent commission, board, bureau, office, agency or other establishment of the Government," and the term "appropriations" to include funds and authorizations to create obligations by contract in advance of appropriations or "any other authority making funds available for obligation or expenditure." [50] All moneys received from whatever source for use of the United States are required to be paid into the Treasury.[51] Detailed provisions are made for submission of estimates for appropriations for expenditure by government agencies.[52] Expenditures in excess of appropriations are prohibited, and all appropriations or funds made available for obligation are required to be apportioned to avoid the necessity for deficiency or supplemental appropriations.[53]

Agencies of the government in corporate form, such as the agency now responsible for operation of the Panama Canal, are established pursuant to and operate in accordance with the Government Corporation Control Act, and other applicable provisions of title 31 of the United States Code. The Government Corporation Control Act requires a government agency subject to the Act to submit annually to the Congress, through the Office of Management and Budget and the President, a budget program which among other things must include a statement of financial condition and of income and expense, a statement of sources and application of funds, and such other supplementary statements and information as are necessary or desirable to make known the financial condition and operation of the corporation.[54] The Congress, after consideration of the budget program, is required to enact legislation "making necessary appropriations, as may be authorized by law, making available for expenditure for operating and administrative expenses such corporate funds or other financial resources, or limiting the use thereof as the Congress may determine and providing for repayment of capital funds and the payment of dividends." [55] The legislation making funds available for payment of expenses of the corporation is regularly incorporated in the annual appropriation acts enacted by the Congress.[56] Accounts of corporations are required to be kept with the Treasury, or with the approval of the Secretary of the Treasury, with a Federal Reserve Bank or a bank designated as a depository or fiscal agent of the United States.[57] Agencies in corporate as well as non-corporate form are subject to the provisions of the anti-deficiency act requiring apportionment of all appropriations or funds made available for obligation.[58]

V. PANAMA CANAL FUNDS AND PAYMENTS TO PANAMA UNDER PRESENT TREATIES

A. Panama Canal Funds

The basic framework for operation of the Panama Canal under the 1903 treaty was provided by section 5 of the Panama Canal Act referred to in Part III of this memorandum. Under that Act, the President was authorized to prescribe "tolls that shall be levied by the Government of the United States for the use of Panama Canal" which were required to be fixed at rates sufficient to pay the estimated cost of the actual maintenance and operation of the canal.[59] Under the general laws of the United States applicable to the handling of funds of government agencies, tolls and other revenues were paid into the Treasury as miscellaneous receipts, and all disbursements were covered by direct appropriations.[60] Exceptions to the general rule, permitting expenditure of canal revenues before being covered into the Treasury were covered by appropriations made by the Congress.

Thus, section 6 of the Panama Canal Act authorized the President, through the Panama Railroad Company or otherwise, to operate dry docks, repair shops, yards, docks, wharves, warehouses, storehouses and other necessary facilities and appurtenances, "in accordance with appropriations hereby authorized to be made from time to time by Congress as part of the maintenance and operation of the Panama Canal. Moneys received from the conduct of said business may be expended and reinvested for such purposes without being covered into the Treasury of the United States, and such moneys are hereby appropriated for such purposes, but all deposits of such funds shall be subject to the provisions of existing law relating to the deposit of other public funds of the United States, and any net profit accruing from such business shall annually be covered into the Treasury of the United States." [61]

Similar provisions were included in the Sunday Civil Appropriations Act, 1917, which also "approved out of any money hereafter received as tolls, before such money is covered into the Treasury as miscellaneous receipts" amounts necessary to make refunds of tolls that were erroneously collected.[62]

After the Act of September 26, 1950, the agency previously known as The Panama Canal and renamed Canal Zone Government, continued to pay all revenues into the Treasury and receive direct appropriations to cover expenses of performance of its various duties in reference to the civil government of the Canal Zone.[63]

In the opertions of the canal and related facilities, the Panama Canal Company is subject to the provisions of the Government Corporation Control Act.[64] As noted above, under that Act, funds of the Copmpany, which must be deposited into accounts with the Treasury or depository banks approved by the Secretary of the Treasury,[65] are made available for expenditure by appropriations enacted annually by the Congress, after consideration of a detailed budget program submitted to Congress by the President in the Annual Budget of the United States.[66]

B. Payments to Panama

Funds for the lump sum payment to Panama of $10 million provided for in Article XIV of the 1903 treaty were appropriated by Congress by the Act of April 28, 1904.[67] An apropriation of $250,000 to enable the Secretary of State to make the first annual payment to Panama, due February 28, 1913, was made in a deficiency appropriation act for that year.[68] Funds for the annual payments to Panama under the applicable treaties were thereafter regularly included in appropriation acts for the Department of State until a permanent appropriation was enacted for making the annual payments in the amounts specified by the 1903 and 1936 treaties ($430,000).[69] In 1955 the appropriation was increased to $1,930,000 to cover the corresponding increase in the payments provided by Article I of the 1955 treaty,[70] and subsequent appropriation acts have adjusted the amount of the annual payment to reflect the effect of the relationship of the dollar to the price of gold.[71] The current amount of the annual payment ($2,328,000) is shown as one of three permanent appropriations in the Department of State budget for fiscal year 1978.[72]

When Congress provided in 1950 for operation of the canal by the government corporation previously known as the Panama Railroad Company and renamed the Panama Canal Company, the corporation was required to reimburse the Treasury for the amount of the annual payments to Panama under Article XIV of the 1903 treaty as modified by Article VII of the 1936 treaty, then totaling $430,000 a year.[73] When the 1955 treaty increased the amount of the annuity payment to Panama to $1,930,000, a Senate amendment of the bill to implement the treaty that would have required the corporation to reimburse the Treasury for the amount of the increase was deleted in conference.[74] The amount of the annual payment to Panama reimbursed to the Treasury is one of the costs of operation of the canal recovered from user charges under the tolls formula enacted by Congress,[75] but the payment by the corporation is to the Treasury, not to Panama, and the total amount of the annual payment to Panama is covered by appropriations budgeted by the Department of State.

VI. PROPOSED PANAMA CANAL TREATY

A. Operation of the Panal Canal—The Panama Canal Commission:

Insofar as concerns the question of the compatibility of the provisions of the proposed Panama Canal treaty with the provisions of the constitution limiting to the Congress the power to make appropriations, the pertinent provisions of the proposed treaty include the following:

Article I of the proposed treaty[76] grants to the United States for the duration of the treaty, "the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the canal."[77]

Under Article III of the treaty:

The United Strates "may" "establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment."[78]

The United States "shall, in accordance with the terms of this treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America."[79]

The Panama Canal Commission is to be supervised by a nine-member Board, the membership of which is to be comprised of five nations of the United States and four nationals of Panama.[80]

The United States is to employ a national of the United States as Administrator of the Commission and a Panamanian national as Deputy Administrator through December, 1989. After that date the Administrator is to be a Panamanian and the Deputy Administrator a United States national.[81]

On the effective date of the treaty, "the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone." [82]

Other than to specify the name of the agency to be established to operate the canal and to provide for Panamanian participation in the supervisory Board and appointment of a national of Panama, first as the Deputy Administrator and later as Administrator, the treaty leaves the form of the agency and the description of its powers entirely to the laws of the United States.

The laws of the United States governing the funding and fiscal obligations of government agencies generally are summarized in Part IV of this memorandum, and the application of those laws to the various agencies presently involved in the administration of the Panama Canal is described in Part V.

B. Payments to Panama

Article III of the treaty provides that "the Panama Canal Commission shall reimburse the Republic of Panama" in the amount of $10 million per annum for certain described services in canal operating areas and housing areas presently provided in the Canal Zone by the Panama Canal Company and Canal Zone Government. Provision is made for adjustment of the amount of the payment in three years for inflation and "other relevant factors affecting the cost of such services." [83]

Article XIII of the treaty provides that:

The United States of America transfers without charge, to the Republic of Panama all right, title, and interest the United States of America may have with respect to all real property, including non-removable improvements in the present Canal Zone, on a time schedule set out in the Article.[84]

The Republic of Panama shall receive "from the Panama Canal Commission" a return on the national resources dedicated to the opertion of the canal in the form of three categories of annual payments: [85]

a. "An annual amount to be paid out of Canal operating revenues" computed at the rate of 30c per Panama Canal net ton, or its equivalency, for each vessel transiting the canal after entry into force of the treaty for which tolls are charged;

b. A fixed annuity of $10 million to be paid "out of Canal operating revenues" and to "constitute a fixed expense of the Panama Canal Commission."

c. An additional annual amount of $10 million "to be paid out of Canal operating revenues" to the extent such revenues exceed expenditures with a provision for carry over of unpaid balances of this payment to future years.

C. Effect of Treaty Provisions for Payment to Panama

Nothing in the language of the proposed treaty serves to take the stipulated payments to Panama out of the accepted principle that a treaty providing for the payment of money is not self-executing but, under the Constitution, requires appropriations by the Congress. In the 1903 treaty, the United States agreed to pay to Panama a lump sum of $10 million and annual payments of $250,000. Appropriations were required and have been obtained for all such payments.

The prescription of the proposed new treaty that the payments to Panama are to be made by the Panama Canal Commission appears to be without significance in this context. The Commission is the agency of the United States that the treaty provides will be "constituted by and in conformity with the laws of the United States of America" by means of which "the United States of America shall. in accordance with the terms of this treaty and the provisions of United States law" carry out its responsibilities under the treaty. The responsibilities are clearly those of the United States as a party to the treaty and as principal of the agency to be established under United States law. Presumably it would not be seriously contended that the effect of the constitutional provision limiting to the Congress the power to make appropriations can be circumvented by the device of providing in the treaty that a payment without appropriations is to be made by a named government agency instead of by the United States.

The purpose of the addition in Article XIII of the treaty of the language that the payments provided in that article are to be made by the Commission "out of canal operating revenues" is not immediately apparent. The "canal operating revenues" referred to are presumably the "tolls for the use of the Panama Canal, and other charges" which the United States (not the Panama Canal Commission) is authorized to "Establish, modify, collect and retain" by Article III, section 2(c) of the treaty. These revenues are the same in kind as those that have been derived by the United States from the Panama Canal since it was opened to commerce and which have been expended pursuant to appropriations by the Congress since that time.

It may be that the objective of the provision of the treaty for making the payments "out of canal operating revenues" was to identify such payments as part

of the cost of operation for purposes of establishing rates of tolls. Such a construction necessarily assumes that revenues will be sufficient to cover both the payments to Panama and operating expenses other than such payments and leaves unanswered the obvious question of the results of a disparity between the amount of revenues and the total of such expenses—is such a deficiency to be absorbed by the United States Government by appropriations to cover losses, or by Panama through acceptance of less than the amount of the payment stipulated by the treaty? In either case, the provision for payment out of revenues does not appear to affect the constitutional requirement for appropriations to carry the provisions into effect.

The provision of section 4(c) of Article XIII for payment of $10 million "out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission" bears some resemblance to the present provision of law requiring the agency operating the canal to pay into the United States Treasury annually in reduction of the investment of the United States in the canal, such funds of the agency as are in excess of requirements for working capital and forseeable plant replacements and expansion.[87]

Viewed in that light the provisions of section 4(c) of Article XIII would substitute Panama for the United States as the beneficiary of funds in excess of those required for operating and capital expenses, and effectively precludes further reduction of the U.S. Government's investment in the canal. This, of course, would represent a substantial departure from one of the present laws governing operation of the canal; a matter left by the treaty to the discretion of Congress.[88] In any event, like the provision of Article XIII for annual payments based on the aggregate measurement tonnage of ships using the canal during the year, the qualification introduced by section 4(c) relates to the determination of the amount of the payment, not to the necessity for Congressional appropriations to authorize payment.

The provisions of Article XIII of the treaty for payments to Panama "out of Canal operating revenues" also invite comparison with the provisions of the various acts of Congress referred to above appropriating or making available for expenditure revenues of the Panama Canal without such revenues having been covered into the Treasury. Viewed in that light, the payment provisions would represent an attempt to provide permanent appropriations for the treaty payments, an objective clearly precluded by the constitutional limitation to the Congress of the power to make appropriations.

Finally, it is not considered that the provision of Article XIII section 4(a) for calculation of the payment to Panama to be made annually under that section affects the constitutional requirement that treaty provisions for payment of money be carried into effect by Congressional appropriations. That section provides for payment of an annual amount computed at the rate of $.30 per Panama Canal net ton, "or its equivalency" for each vessel transiting the canal for which tolls are charged. The rate of $.30 per Panama Canal net ton "or its equivalency" is to be adjusted periodically for changes in the wholesale price index.

The obvious difference between the payment provided in this section and the annual payments originally provided in the 1903 treaty and modified by the 1936 and 1955 treaties, is that the latter established a fixed sum while section 4(a) of the new treaty provides for a variable annual payment depending on the measurement tonnage of ships paying tolls for use of the canal. Apart from an inherent ambiguity as to the meaning and effect of the phrase "or its equivalency" as used in the section, the required computation is a straight-forward arithmetical calculation. The provision for adjustment of the rate per ton used in the calculation to reflect changes in the wholesale price index is new only in the standard applied for the adjustment; annual payments under the existing treaties are adjusted for fluctuations in the price of gold in relation to the dollar. In any event, there is no basis for concluding that the provisions of section 4(a) for calculation of the payment or adjustment of the rate used in the calculation obviate the necessity for appropriations as required for the payments under the existing treaties.

In an early opinion upholding the constitutional validity of a treaty providing for the issuance (but not the payment) of bonds to an Indian tribe, the Attorney General correctly stated the rule applicable to the payments provided by the proposed treaty as follows:

"According to Article I, section 9, of the Constitution, as construed by the practice of the Government, an Act of Congress is necessary to appropriate money to pay the public debt, however created. The change of the form of the debt from a general stipulation in the treaty to bonds with a particular provision does not take away that necessity." [89]

FOOTNOTES

[1] *Asakura* v. *City of Seattle,* 265 U.S. 332 (1924); See American Law Institute, Restatement, Second, Foreign Relations Law of the United States, (1965) §§ 117, 118.
[2] *United States* v. *The Schooner Peggy,* 1 Cranch 103 (1801); *Hizo* v. *United States, 194 U.S. 315 (1904); Cook* v. *United States,* 288 U.S. 102 (1933); *Bacardi* v. *Domenech,* 311 U.S. 150 (1940)
[3] *The Cherokee Tobacco,* 11 Wall. 616 (1870); *Head Money Cases,* 112 U.S.580, 598 (1884); *Taylor* v. *Morton,* 23 fed. Cas. 784 (CC Mass., 1885)
[4] *Foster* v. *Neilsen,* 2 *Pet.* 253 (1829); *Head Money Cases,* 112 U.S. 580 (1884)
[5] An example is Item I of the Memorandum of Understandings Reached attached to the 1955 Treaty with Panama for which the United States agreed that "Legislation will be sought" to authorize the U. S. Government agencies in the Canal Zone to conform their employment practices to certain stated principles.
[6] *Reid* v. *Covert,* 346 U.S. 1, at 17 (1957); *The Cherokee Tobacco,* 11 Wall. 616, 620 (1870)
[7] *Restatement, Second, Foreign Relations Law of the United States,* (1965) § 141
[8] See XIII Op. Atty. Gen. 354 (1870)
[9] 8 Stat. 116
[10] Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements Between the United States of America and Other Powers,* Vol. 1, P. 511
[11] 30 Stat. 1756
[12] 33 Stat. 2234
[13] See Crandall, *Treaties, Their Making and Enforcement,* 1966, pp. 178–182
[14] 5 Annuals of Congress, 4th Cong., 1st sess., pp. 426–783
[15] Id., pp.759–762
[16] Id., pp. 771–782
[17] I Stat. 459
[18] Convention for Payment of Indemnities and Settlement of Debts, concluded January 8, 1802; ratified April 27, 1802, proclaimed April 27, 1802. The text of the Convention appears in Malloy, *Treaties, etc.,* Vol. 1, p. 610.
[19] Debates and Proceedings, Seventh Cong., pp. 293, 294
[20] For the full text of the treaties see Malloy, *Treaties, etc.,* Vol. 1. p. 513
[21] Annals, 8th Con., p. 11
[22] Id., pp. 17, 18
[23] 58 Cong. Rec., Pt. 4, p. 3680 at 3687.
[24] Turner v. American Baptist Missionary Union, Fed. Cas. No. 14251, CC Mich., (1852), 24 Fed. Cas. 345, 346.
[25] Restatement, Second, Foreign Relations Law of the United States, (1965), p. 435.
[26] Hearings, Subcommittee on Separation of Powers, Committee on the Judiciary, United States Senate, 95th Cong., 1st Sess., Panama Canal Treaty, Part 2, p. 4.
[27] 32 Stat. 481.
[28] 53 Stat. 1807.
[29] Article III; see C.Z. Code, Appendix IX, § 34.
[30] TIAS 3297.
[31] Article I.
[32] 37 Stat. 560.
[33] 48 Stat. 1122.
[34] New York ex rel. v. Rogers v. Graves, 299 U.S. 401, 406 (1937).
[35] H. Rept. No. 2396, 80th Cong., pp.1–2; S. Rept. No. 17401, 80th Cong., pp.1–2.
[36] 31 U.S.C. 841 et seq., 59 Stat. 597.
[37] 62 Stat. 1076.
[38] Act of September 26, 1950, 64 Stat. 1038.
[39] See H. Rept. 2935, 81st Cong., and H. Doc. 460, 81st Cong., for analysis of the objectives of the Act of September 26, 1950.
[40] See Panama Canal Act of August 14, 1912, 37 Stat. 560, and 2 C.Z. Code (1934 ed.) § 411.
[41] 76A Stat. 1, et seq.
[41] See 2 C.Z. Code § 62(g).
[43] 2 C.Z. Code §§ 61–75, 121–123.
[43] 2 C.Z. Code §§ 65–66.
[44] 2 C.Z. Code § 72.
[45] 2 C.Z. Code § 62.
[46] 2 C.Z. Code § 62(e).
[47] 2 C.Z. Code § 62(g).
[48] 2 C.Z. Code § 70.
[49] Pertinent provisions of title 31 include the following:
1. The Budget & Accounting Act of 1921 (31 U.S.C. §§ 1–64, 71, 471, 581, 581a).
2. Budget & Accounting Procedures Act of 1950 (31 U.S.C. §§ 2, 11, 14, 16, 18a–18c, 22–24, 65–67, 581–581c 847).
3. Chapter 10, §§ 471–564, headed "The Public Moneys."
4. Chapter 11, §§ 581–752Z, headed "Appropriations."
5. The Government Corporation Control Act, §§ 841–871.
6. Chapter 22, §§ 1151–1176, headed "Fiscal Controls."
[50] 31 U.S.C. 2.
[51] 31 U.S.C. 484.
[52] 31 U.S.C. 581–752Z.
[53] 31 U.S.C. 665.
[54] 31 U.S.C. 847, 848.
[55] 31 U.S.C. 849.
[56] See, for example, P.L. 95–85, Department of Transportation and Related Agencies Appropri-

ation Act, 1978, approved August 2, 1977.
[57] 31 U.S.C. 867.
[58] 31 U.S.C. 665.
[59] 37 Stat. 562.
[60] Annual Report of the Governor of the Panama Canal, Fiscal Year 1915, pp. 10 et seq., 41–47, 297, 298, 300.
[61] 37 Stat. 563. These provisions were reenacted as Chapter 4 of Title 2 of the Canal Zone Code (1934 ed.) comprising sections 51 and 52. In 1947, Chapter 4 was expanded into four sections, 51–54, retaining the provisions for appropriations and covering net profits into the Treasury. 63 Stat. 601. The sections were repealed by the Act of September 26, 1950, 64 Stat. 1049, when the canal and related supporting facilities were transferred to the Panama Canal Company for operation under the provisions of the Government Corporation Control Act.
[62] Act of June 12, 1917, 40 Stat. 179.
[63] See Annual Report, Canal Zone Government, Fiscal Year 1976, p. 135; the functions of the Canal Zone Government in relation to the operation of the canal under the 1950 legislation are summarized in Part III of this memorandum.
[64] 31 U.S.C. 846; 2 C.Z. Code 66; Act June 29, 1948 (62 Stat. 1076).
[65] 31 U.S.C. 867. The provisions of the Government Corporation Control Act are summarized in Part IV of this memorandum.
[66] See, for example, Department of Transportation and Related Agencies Appropriation Act, 1978, 91 Stat. 402 at 414.
[67] 33 Stat. 420.
[68] Act March 4, 1913, 37 Stat. 913.
[69] Department of State Appropriation Act, 1954, 67 Stat. 368. See S. Docs. 83d Cong., 1st Sess., Vol. 7, p. 180.
[70] Supplemental Appropriation Act, 1956, 69 Stat. 464.
[71] The "permanent" appropriation for annual payments to Panama was increased to $2,095,405 by the Supplemental Appropriation Act, 1973, 86 Stat. 1498; and to $2,328,000 by the Department of State Appropriation Act, 1974, 87 Stat. 640.
[72] Hearings, Subcommittee of Committee on Appropriations, House of Representatives, 95th Cong., 1st Sess., Department of State, Justice, Commerce, Judiciary, and Related Agencies Appropriation Act for 1978, Part 2, p. 40.
[73] Act Sept. 26, 1950, § 7, 64 Stat. 1041; 2 C.Z. Code 62(g). The dollar amount reimbursed to the Treasury adjusted for devaluation of the dollar is currently $519,000. Hearings, Subcommittee of Committee on Appropriations, House of Representatives, 95th Cong., 1st Sess., Department of Transportation & Related Agencies Appropriations for 1978 Part 1, p. 686.
[74] H. Rept. No. 1196, 85th Cong., 1st Sess., to accompany H.R. 6709.
[75] Act September 26, 1950, § 12, 64 Stat. 1022; 2 C.Z. Code 412.
[76] Sen. Exec. N, 95th Cong., 1st Sess.
[77] Art. 1, sec. 2.
[78] Sec. 2(d).
[79] Sec. 3. An illustrative description of the activities to be performed by the Commission, attached in an Annex, is referred to in section 4 of Article III. The Annex is published in Selected Documents, No. 6B, Department of State Publication 8914, Documents Associated with the Panama Canal Treaties, p. 1.
[80] Sec. 3 (a).
[81] Sec. 3 (c).
[82] Sec. 10.
[83] Sec. 5.
[84] Sec. 2.
[85] Sec. 4. At current levels of traffic, the payment for passenger and cargo vessels paying tolls on the basis of Panama Canal net tonnage, would be approximately $43 million. The section provides for adjustment of the 30 cents rate in future years to reflect changes in the wholesale price index.
[86] Article III sec. 3.
[87] Act of June 29, 1948, § 2, 62 Stat. 1076, now incorporated in 2 C.Z. Code § 70.
[88] Presumably, legislation enacted by the Congress to constitute the Panama Canal Commission would establish fiscal requirements to be met by the Commission as has been done for the present operating agency by the Act of June 29, 1948 (62 Stat. 1076) as amended by the Act of September 26, 1950 (64 Stat. 1041).
[89] XIII Op. Atty, Gen. 354 at 360 (1870).

Mr. HELMS. I thank the able Senator from Utah for yielding to me.

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Senator from Utah has 1 minute; the Senator from Maryland has 5 minutes.

Mr. SARBANES. I thank the Chair.

Mr. President, the other day we considered an amendment which proposed to include in the text of the treaty a subject which could be handled by statute here in Congress, because it dealt with a matter entirely within our jurisdiction. I rose to oppose that amendment, because I take the view that on those matters where

we retain jurisdiction and can change by statute we should not place such matters into a treaty with another country. To do so would mean that we could only change the provisions concerning the matter by treaty change when, in fact, it is a matter that is within our jurisdiction and with which we can deal by statute.

The subject matter of the amendment offered by the distinguished Senator from Utah is exactly such a subject matter. As I indicated the other day, it is my intention to take this approach toward amendments which may be offered which seek to take a subject matter, over which we can exercise control by statute, and to place it in a treaty we are making with another country.

Why should we do that if we are really concerned about maintaining the maximum amount of control in our own hands? Why should we lose the control we have, through the use of statute, over a particular subject matter by placing the subject matter in a treaty? As long as we retain statutory control, we can do it in a particular way that serves our purposes and if we evolve a different way for doing it, we can change the manner of doing it. We can add a requirement from time to time. We can eliminate a requirement from time to time.

When we have that kind of control, why should we take the subject matter, put it into a treaty with another nation, and thereby give that other nation some degree of control over a matter that is otherwise completely within our own discretion?

I submit that that approach defies logic, defies commonsense and most important of all runs counter to what is in our best interests.

I am not contending that the substance of the suggested amendment as to how to handle the matter may not in fact be the best way to do it. The point I am making is that it is a subject matter that we can deal with by legislation. Given that this is the case we ought not to take the subject matter and make it part of the treaty. This would mean that if we want to change how we deal with the subject we can only accomplish that change by an amendment to the treaty which, of course, then involves another nation. We have a subject matter here that does not have to be included in the treaty and therefore we do not have to bind ourselves to deal with it by treaty. It is open to us, to Congress, to the United States, to make its own determinations as to how this subject matter should be dealt with.

Given that this is the case, it seems to me prudent and sensible to maintain in our own hands the maximum amount of discretion and control over this subject matter. The way to do that is not to place it into the treaty which then means that the other nation with whom we have the treaty would thereafter be involved in determining how that subject matter should be dealt with.

Not only is that not necessary here, but in fact to include it in the treaty is to place limitations upon our own power to deal with this subject matter. We may well want to deal with it in the way that the Senator from Utah has suggested in the amendment. But we may want to deal with it that way over a period of time and at some future time as different procedures or concepts evolve we may want to change how we deal with it. As long as we do not lock it into the treaty, we have the power, the control, and the discretion to make such changes.

If you take a subject matter that is entirely within our own purview and put it into the treaty, then you needlessly and unwisely give another nation a role to play, and I just do not think we should do that. I do not think we need to do that. We do not need to lose something in terms of our own control and jurisdiction over the subject matter. For that reason I oppose the amendment of the Senator from Utah.

The PRESIDING OFFICER. The time of the Senator from Maryland has expired. The Senator from Utah has 1 minute.

Mr. HATCH. Mr. President, that is the very reason we would like to have it dealt with in the treaty because we would like to deal with it legislatively, but the implementing legislation indicates that it is not going to do that. If the subject can be dealt with by legislation, why is it that the implementing legislation clearly indicates that the substance of my amendment will not be followed? Therefore, we want the Constitution to be abided by. The best may to do it is by this amendment. It does not hurt the Panamanians in any way, and it corrects an obvious defect in the treaties and in the implementing legislation.

So I recommend that my colleagues vote for this amendment, because it is a worthwhile amendment and one worthy of their consideration.

The PRESIDING OFFICER. The time of the Senator from Utah has expired.

Mr. SARBANES. Mr. President, I move to table the amendment of the Senator from Utah and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Utah.

On this question, the yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the distinguished Senator from Virginia (Mr. Harry F. Byrd, Jr.). If he were present and voting he would vote "nay." I have already voted "yea." I, therefore, withdraw my vote.

Mr. BAKER (after having voted in the affirmative). Mr. President, on this vote I have a live pair with the distinguished Senator from South Carolina (Mr. Thurmond). If he were present and voting he would vote "nay." I have voted "yea." I therefore, withdraw my vote.

Mr. FORD (after having voted in the negative). Mr. President, on this vote I have a live pair with the Senator from South Carolina (Mr. Hollings). If he were here and voting he would vote "yea." I have voted "nay." I, therefore, withdraw my vote.

(Mr. Matsunaga assumed the chair.)

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. Anderson), the Senator from Arizona (Mr. DeConcini), the Senator from Missouri (Mr. Eagleton), the Senator from South Carolina (Mr. Hollings), the Senator from South Dakota (Mr. McGovern), the

Senator from South Dakota (Mr. Abourezk), the Senator from Virginia (Mr. Harry F. Byrd, Jr.), and the Senator from New Hampshire (Mr. McIntyre) are necessarily absent.

On this vote, the Senator from Minnesota (Mr. Anderson) is paired with the Senator from Arizona (Mr. DeConcini). If present and voting, the Senator from Minnesota would vote "yea" and the Senator from Arizona would vote "nay."

I further announce that, if present and voting, the Senator from New Hampshire (Mr. McIntyre) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett), the Senator from Rhode Island (Mr. Chafee), the Senator from Nebraska (Mr. Curtis), the Senator from Missouri (Mr. Danforth), the Senator from New York (Mr. Javits), and the Senator from South Carolina (Mr. Thurmond) are necessarily absent.

The result was announced—yeas 54, nays 29, as follows:

[Roll Call Vote No. 87 Exec.]

YEAS—54

Baker	Hatfield, Mark O.	Moynihan
Bayh	Hatfield, Paul G.	Muskie
Bellmon	Hathaway	Nelson
Bentsen	Hayakawa	Nunn
Biden	Heinz	Packwood
Bumpers	Hodges	Pearson
Byrd, Robert C.	Huddleston	Pell
Case	Humphrey	Percy
Chiles	Inouye	Proxmire
Church	Jackson	Ribicoff
Clark	Kennedy	Riegle
Cranston	Leahy	Sarbanes
Culver	Long	Sparkman
Durkin	Magnuson	Stafford
Ford	Mathias	Stevenson
Glenn	Matsunaga	Stone
Gravel	Melcher	Weicker
Hart	Metzenbaum	Williams
Haskell	Morgan	Zorinsky

NAYS—29

Allen	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Helms	Scott
Cannon	Johnston	Stennis
Dole	Laxalt	Stevens
Domenici	Lugar	Talmadge
Eastland	McClure	Tower
Garn	Randolph	Wallop
Goldwater	Roth	Young
Griffin	Sasser	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—3

Robert C. Byrd, for.
Baker, for.
Ford, against.

NOT VOTING—14

Abourezk	Danforth	McGovern
Anderson	DeConcini	McIntyre
Bartlett	Eagleton	Thurmond
Byrd, Harry F., Jr.	Hollings	
Chafee	Javits	
Curtis		

So the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HEINZ. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I believe the Senator from Alabama is to be recognized. Will the Senator yield to me?

Mr. ALLEN. Yes, I will.

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama (Mr. Allen) is recognized.

Mr. ROBERT C. BYRD. Mr. President, may I inquire of the distinguished Senator from Alabama, the distinguished Senator from North Carolina, and the distinguished Senator from Nevada as to whether or not there are any further amendments to article III? I do not believe there are. If that is the case, we could move on to article IV, Mr. Helms could lay down an amendment tonight to article IV, and we can get an agreement on it, I believe—if Mr. Sarbanes is agreeable, Mr. Helms is—to allow 1 hour on that amendment, to be equally divided, the time to begin tomorrow.

Mr. LAXALT. Mr. President, apparently all proposed amendments to article III of the treaty have not been disposed of. The Senator from Nevada (Mr. Cannon) indicated earlier that he might want to process his amendment this evening, but he has left the Chamber. If we could have moment to contact his office and verify that——

The PRESIDING OFFICER. The Senate will be in order. The Chair is unable to hear what Senators are saying.

Mr. ROBERT C. BYRD. I wonder if we could move on to article IV.

The PRESIDING OFFICER. Senators will please suspend until the Senate is in order.

The Senator from West Virginia.

Mr. ROBERT C. BYRD. Could we move on to article IV, subject to allowing Mr. Cannon to call up an amendment to article III tomorrow?

Any Senator can do that if he wants to, in any event.

Mr. LAXALT. That would be perfectly agreeable to me.

Mr. GOLDWATER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. GOLDWATER. While we are still in session this afternoon, and there are a few Members on the floor, I would like to take this opportunity to commend our majority leader. It has been brought to the attention of our colleagues several times here that at one time he was opposed to the Panama Canal Treaty.

Now, I am a rather stubborn individual, and I am known for sticking to my ideas; but I think I would be crazy if I did not change my mind once in a while.

So I rise at this time in defense of a man who has seen fit to change his mind. I think, as one famous old Senator said—oh, I forget what he said, but it was pretty good thinking [laughter]—something about consistency being the hobgoblin of little minds.

So I want to defend my leader. Although I wish he had not changed his mind, I defend him for doing it, and always will.

Mr. ROBERT C. BYRD. Mr. President, if the Senator from Alabama will allow me, I have been asked the question twice as to why I had changed my mind, and I spread the reasons on the record, and I

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have been glad to do so. In fact, I have thought on one or two occasions I would slip a note to the Senator who has the floor and ask him to ask me why I changed my mind, so I could spread it on the record; and I have been able to do that twice.

But I am glad there are Senators on the floor who will rise to my defense, because I need that kind of defense. I know I can depend on the distinguished Senator from Arizona always to be fair, just, and reasonable, as he has just demonstrated once again.

Mr. President, could we move on to article IV?

The PRESIDING OFFICER. There being no further amendments to article III, the clerk will read article IV.

ARTICLE IV

The legislative clerk read as follows:

Article IV, Protection and Defense.

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes—

Mr. ALLEN. Mr. President, I ask unanimous consent that further reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Article IV is as follows:

ARTICLE IV

PROTECTION AND DEFENSE

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The right of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

3. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

4. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Goverments respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Mr. ALLEN. Mr. President, the distinguished Senator from Alaska (Mr. Gravel) having expressed a wish to respond to certain of my comments, I would like, subject to yielding first to the distinguished Senator form North Carolina, to ask that the Senator from Alaska be permitted to speak for 15 minutes, and that I then be recognized again.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ALLEN. I yield first to the Senator from North Carolina.

UP AMENDMENT NO. 19

Mr. HELMS. Mr. President, I simply wanted to send to the desk an amendment and ask that it be stated.

Mr. ALLEN. I had also promised to yield to the Senator from Arkansas for 3 minutes.

The PRESIDING OFFICER. Is the Senator form North Carolina now offering his amendment?

Mr. HELMS. That is correct.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk proceeded to read the amendment.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Before the first sentence of paragraph 2 of article IV, insert the subparagraph designation "(a)".

"(b)(1) When in the peformance of official duties, the vessels and aircraft operated by or for the United States Forces may move freely through Panamanian air space and waters without impediment.

"(2) Similarly, the vehicles, equipment, and personnel of the United States Forces may, when in the performance of official duties, move freely in the Republic of Panama without impediment.".

Mr. HELMS. I ask unanimous consent that the amendment be laid aside, in accordance with the unanimous-consent request propounded by the distinguished majority leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, could we get a unanimous consent that there will be a 1-hour time limitation on the amendment to begin running tomorrow when the Senate resumes its consideration of the treaty, to be equally divided in accordance with the usual form?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HELMS. I thank the Senator from Alabama and I thank the Chair.

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield 4 minutes to the distinguished Senator from Arkansas (Mr. Hodges), as in legislative session, and to then yield to the Senator from Alaska (Mr. Gravel).

The PRESIDING OFFICER. The Senator from Arkansas is recognized for 4 minutes, as in legislative session.

THE PANAMA CANAL TREATY

The Senate continued consideration of the treaty.

Mr. GRAVEL. Mr. President, first, I wish to express my gratitude to the Senator from Alabama. We could probably go on for more than 25 minutes. I wanted to interject my thoughts into this colloquy so it could be more evenly balanced.

The Chamber has fallen into silence. This is the first silence we have had today in the deafening cackle. I think that is the proper word, the deafening cackle that we have had. I think it is occasioned by reports coming out of Panama and the obvious disagreements which have appeared, or the fissures which may appear, within the proponents of the treaties which are before us.

I think it is most unfortunate that the Members of the Senate who are so close to these treaties would find relish in this because, as I stated earlier and I will state again, their joy is somewhat like the job of an arsonist who has thrown a can of gasoline into a house. The house is burning down and they relish that. But what they relish even more is the fact that the firemen who are trying to put out the fire are having difficulties in coordinating their activities.

That they find relish in that I think is unfortunate, very unfortunate indeed, because if we have a dilemma before us today it is because of the opponents of the treaty who truly are opponents to change. The Senator from Alabama, I think for the first time, revealed truly one of his goals. That is, as he stated, to topple the Torrijos government and institute, as he sees it, a democracy.

I would first like to speak to that particular problem because, one, toppling of the Torrijos government, if that can be done from the Senate floor, would be very innovative, and, two, I do not think it is any guarantee that it would bring about democracy. I think we would be better advised, rather than to meddle tactically in domestic affairs of another country, to look to ourselves.

With respect to Mr. Torrijos, I do not think he needs any defense. I think the record should be made abundantly clear to the American people and to the people of Panama that he is the head of state and should receive the proper respect from Members of the Senate in the position he occupies.

I do not think there is a leader in this country who can claim that he has doubled the amount of schools in his tenure of office, and that is what Mr. Torrijos has done in Panama. That is quite an accomplishment. I do not think that has even been done in Alabama or in Alaska. Doubling the number of schools by a person is an unsual accomplishment because it is education and knowledge which is a touchstone of democracy. So if a foundation is being built for democracy, I submit that the present leader of Panama has made a contribution in that direction.

Also, if there is a reason why he has been abused so much by Members of the Senate, I think I know why. It is because he has put the United States of America to the test more than any other

leader in the history of Panama. Every single leader of Panama since the 1903 treaty was signed has been trying to get that treaty changed. This is the first time that a leader of Panama has been able to get it to the floor of the Senate. He negotiated a treaty and did a good job.

If we respect and honor Jimmy Carter as the President of the United States and admire him for the courage he demonstrated in bringing the treaty to the Senate floor, then I think we owe the same respect to the gentleman who was on the other side of the negotiating table because it takes two to tango, and it takes two to bring us where we are.

So if this treaty is good, as I think it is, and I think many people throughout the Nation think it is good, then the credit should go, one, to Jimmy Carter and, two, to Omar Torrijos—equally, not one above the other.

I can understand some people who hold an archaic view of what the United States should be, who hold an archaic view of gunboat diplomacy in Panama. I can understand that, if they are mad at the change of events or if they want to vent their anger. They want to vent that anger at the person who brought it thus far. So I do not say this by way of defense of anything that Mr. Torrijos has done, or his leadership. I stated it as a simple fact for any person to observe, and it would not take much of an observation to recognize that unusual accomplishment. That is what gets a lot of people mad on this floor, the fact that he has been able to realize the aspirations of his own people.

I think it is a bit of an exaggeration when my colleague from Alabama tells us that he is for the Panamanian people. If he is so much for the Panamanian people, then he ought to be for the treaty that the Panamanian people have overwhelmingly already approved.

When he says he wants another plebiscite in Panama, what he is saying is that he really wants to change that treaty so that there will have to be another plebiscite, a plebiscite that will turn it down.

I venture this thought: If there were a vote tomorrow in Panama on the Neutrality Treaty, based on what knowledge I have, if there were a plebiscite, it would be turned down, overwhelmingly.

As I stated earlier in the day, if I were a citizen of Panama and going to vote on this Neutrality Treaty in Panama, I would clearly vote against it. It gives unbelievable rights to a foreign power over my sovereignty. If we had a labor dispute on the Panama Canal after the year 2000, the United States could unilaterally send in troops to correct the labor dispute. As I view it, a labor dispute in the United States is a very internal situation and a labor dispute in Panama is a very internal situation.

Let us now recapitulate as to how we got ourselves into the dilemma we have. First, let us look to the motivation of the proponents of the treaty on this side of the aisle, starting with the President of the United States. In my mind, Jimmy Carter has demonstrated courage and leadership of an unusual order. There is no question that his taking leadership on the Panamanian treaty to bring about a change that would create justice between ourselves and Panama was a very unusual act.

I think that there will be no personal benefit to him except in the retrospect of distant history. It was really an oddity that there should be such a view held, just prior to the vote on the first treaty, that we should vote for the treaty because it will make Jimmy Carter look bad in his leadership role if the treaty were turned down. I can assure you that Jimmy Carter will not look bad in anyone's eyes as history looks back upon what has taken place.

It would have been the Senate that would have looked bad had the treaty been turned down. That is who really would have been hurt, not Jimmy Carter. He did the best of his ability. He brought the treaty to us. If we turned it down, it would be the Senate that would have turned down the treaty, and Jimmy Carter would have done his work and we would have done our work. So I think his motivation is fine, honorable, and, in my mind, in the great tradition of this great country of ours.

Let us look at the motivation of the Senate leadership, Senator Robert C. Byrd. I think that here, again, he demonstrated equal courage, because I am sure that this is not a popular issue in his constituency, and he is one who can read his constituency very well. But, I think, he characterized his views with the Edmund Burke statement; that is, that he not only owes the people of his State, West Virginia, his industry, which he has given more than I could ever have thought possible; but he also owes the people of West Virginia his judgment. Oftentime, it takes courage to exercise that judgment.

The same thing is true of Frank Church. This is not a popular issue in the State of Idaho, any more than it is popular in the State of Alabama. So when a man stands up on this floor and is prepared to take his political life in his hands, that, I think, is meaningful, particularly when you know that he is talking from the bottom of his heart as to what is important.

Then to see Senator Sarbanes stand on this floor, day in and day out, to provide leadership in this matter in a most skillful and able manner, also, I think, indicates courage, because the easy way out on this issue is to cop out to the demagoguery and to the false emotion that has pervaded this country. That is the easy way out. To my mind, to stand up and say what is right when there are no benefits in it for your constituency and yourself, that is what takes courage, and where great political damage could happen to yourself.

I stated a while back that had we had a secret vote on the treaties, the treaties would have passed a long time ago. What does that mean? That means the people in this Chamber know what is right and what is wrong. They know a change has to take place and if they could have voted secretly, they would have seen that a change would take place.

What happens in a democracy? By and large, the people of the country make cowards of the Senators. That is right; we are cowards. We are afraid of losing our jobs, so we cower to general public opinion, whether that public opinion is informed or not. We cower down.

So here we have a situation, because of the great sums of money that have been put up by the radical right, confusing the Nation with false information, in some cases outright lies; we have a

situation where the proponents of a decent treaty have been pushed to the wall and, with their backs up against the wall, they made a normal human error. That is what I think is really the problem that has occurred today.

The human error was that the form became a little more important than the substance. In this case, I equate the form with the desire to pass a treaty. The substance is, is it a good treaty?

I was quite upset during the period that these amendments were accepted and were put on; not the DeConcini amendment. A lot of the other amendments were not worth the attention they got. "Cosmetic" is probably the kindest word I can use. They were put on so that we could have something that we could take back to the people and tell them, "Hey. I voted for the treaties, but, boy, I cleaned them up before I voted and it is OK now."

The issue is a very clear issue: Do we give back the canal to the people of Panama so we can continue using the canal? That is it. That is the issue. We can talk about defense and troops, and a lot of it is just eyewash.

The proponents of the treaty—and here, now, I mean the full gamut—we are all at fault. I for not speaking up when I thought better; General Torrijos for pushing too fast, with the inexperience of his first year, trying to push the Senate to get a decision on this. They were pushing to have a vote last September. They think they have problems now; just imagine what they would have been last September.

Then the leadership for agreeing to take the measure up and bring it to the Senate for a vote before they knew we had the votes. We did not know we had the votes until the last day. And we bought the last votes with the DeConcini amendment.

So the situation we have today is that we now have passed a treaty that is unacceptable to the Panamanian people. Now we have an interested dilemma. We see the error. We can slough over it. We can finesse it, which is obviously what we politicans generally attempt to do to avoid embarrassment.

What will happen? Well, the Panamaian people will turn down the treaty. So we can say that we in the Senate did our job and it is not our fault that the Panamanian people turned down the treaty.

Of course, we have heard this all day long, talking about the misunderstandings. That was no misunderstanding about the treaties that were brought to us. The misunderstanding is in this Chamber. That is where the misunderstanding is. The misunderstanding is what pushed the acceptance of the DeConcini amendment, which is not misunderstood in Panama. It is clearly understood in Panama and, from their point of view, it is not acceptable. It is an invasion of their sovereignty for perpetuity. I confess, as I read the English language, I view it exactly that way. It is an invasion of their sovereignty for perpetuity and they are not going to accept it.

So we are faced with this dilemma: We pass the treaties and they vote it down. Who is going to look bad in the court of world opinion? We Senators will stand up and pontificate and make speeches and tell them what a great job we did passing these

treaties, and those terrible Panamanians did not have the gratitude to accept what we threw them.

Of course, with all the media in this country, we will come off well. Fortunately, the media in this country are beginning to mature. In fact, I might say the media on this subject have been very good all along.

Mr. ALLEN. Would the Senator repeat that?

Mr. GRAVEL. I think the media have been correct on this subject all along.

Mr. ALLEN. I am sure the Senator would think that, inasmuch as they have been drumming for the treaties all along. I can see how the Senator might think they are responsible. Of course, I have just the opposite view, I say to the distinguished Senator from Alaska.

Mr. GRAVEL. That is right. The reason I think the media are doing a good job right now is I share the same view they have. That is not unusual, to have that view.

I would like to reinforce the record at this point and ask uanimous consent to have printed in the Record an editorial from the Washington Post, a Time essay from the Time magazine, and what I feel is a most perceptive piece by Haynes Jonhson entitled "Trial" which appeared on April 9. I think all of those would reinforce the Record with respect to where we stand right now.

There being no objection, the material was ordered to be printed in the Record, as follows:

RESERVATIONS ABOUT DECONCINI

The "DeConcini Reservation," which the Senate attached to the first Panama Canal treaty, is a ratty thing to behold. Imposed on a desperate (and careless) White House by Sen. Dennis DeConcini (D-Ariz.) as the price of his vote, it authorizes the United States on its own to use military force "in Panama" to keep the canal open and operating after the year 2000, when ostensibly Panama would be in full control. The "reservation" is arrogrant. It mocks the intent to replace the dangerously obsolete terms of the 1903 treaty with a relationship respectful of a small country's sovereignty and pride. And it could yet kill the two Panama treaties.

Here is why: From the moment it was enacted, Mr. DeConcini's handiwork galled all Panamainians, regardless of their attitude toward the government or the new treaties. All other Latins, too, instantly understood that the language trod grossly on Latin America's traditional resentment and fear of American intervention. It can be argued that, regardless of treaty language, this country has the power to intervene in Panama, and would. But to state that, to rub Panama's nose publicly in the dirt, is intolerable. So it is no surprise that the Panamanians, passing beyond their initial, relatively subdued criticism of the reservation at home, are now soliciting international sympathy for their objections to it. Once international support for their position solidifies, as almost certainly it will—and why not?—they may opening reject the reservation and hope to face the United States down.

MYTHOLOGIZING THE PANAMA CANAL

Getting the first Panama Canal treaty through the Senate last month was roughly the equivalent of putting a big tanker through the waterway: there was no room to spare. The second treaty, providing for the gradual transfer of authority to Panama by the year 2000, is expected to have an equally narrow passage when it comes up for a vote on April 18. Opponents of the treaty have intensified their pressure on wavering Senators, and a defeat of the second treaty would force renegotiation of the entire agreement, with potentially explosive consequences. Seldom, in fact, has a project that is so clearly in the national interest faced such a desperate fight for approval.

The opposition to the treaty is a curious mixture of cynicism and conviction. After a period of many setbacks overseas, Americans have been in no mood to accept what seemed to be another reversal. Moreover, the canal is fixed in the popular

imagination as a memorable achievement of American vigor and know-how. Why, people asked, should it be given away under any circumstances? There were reasonable answers to such a question, but they were not provided by the superpatriots of the hardcore right wing, who thought they had a sure-fire issue and promptly started to exploit it. Their lavishly financed propaganda barrage has often made a hash of the facts. Many people have been led to believe that the treaty constitutes some kind of massive giveaway that will leave the esteemed and still vital waterway in the clutches of rapacious crypto-Communists who will thereupon thumb their noses at the helpless giant to their north. Nothing could be further from the truth.

The pact profoundly commits the U.S. to the defense of the canal from here to eternity. Until 2000, the U.S. maintains control of the waterway; at the turn of the century, Panama takes over, but the U.S. has the right to keep the canal open and functioning. Indeed this provision has been strengthened because of the doubts among treaty opponents. Responding to their pressure, the White House accepted two reservations that clearly state that the U.S. can send troops into Panama to protect the canal if it is shut down for virtually any reason.

The treat, in fact, gives the sanction of law to U.S. intervention if the need arises. This provision has been made so explicit by the reservations that Panama now has sent a letter to other Latin American nations suggesting that it may not be able to accept the treaty in its present form. Rather tolerant through all the tumultuous and sometimes insulting Senate debate, Panamanians have been pushed close to their limits; and there are, after all, two parties to the treaty.

The second Senate vote does not come at the best of times. The Soviet Union is rapidly building up its armaments and brazenly sending its Cuban allies into Africa to stir up trouble and challenge American interests. Many treaty supporters, including Senator Henry Jackson, are understandably concerned that a ceding of the canal may be interpreted as another American retreat. But the U.S. is hardly backing down from a Soviet threat; it is rising to the occasion of settling a dispute with an ally. If it is a sign of weakness to capitulate to an enemy, it may well be an indication of strength to make timely concessions to a friend.

Now, perhaps Gen. Omar Torrijos, the Panamanian leader, is feinting, or trying to win an international moral victory to cover Panama's humiliation. Or perhaps he is merely gathering international support to deter further hurtful amendments that the Senate may impose on the second treaty (covering the period up to 2000). It may yet turn out that Panama's crushing need for the new revenues promised by the treaties will induce the general to swallow his pride, brush aside his opposition and accept the admimistration's worried assurances that the reservation does not really alter the substance of the first treaty. It is not inconceivable that he will bow to the threats of Sen. Howard Baker (R-Tenn), who, incredibly, takes the position that since he, Howard Baker, has "really gone out on a limb for these treaties . . . our friends in Panama ought to know that just the twitch of an eyelid, just the slightest provocation or expression that these treaties, or this treaty in this form, is not acceptable to Panama, and this whole thing could go down the tube." By jingo, Mr. Baker, how could Panama dare to inconvenience your presidential aspirations?

Such are the stakes for both countries, however, that anyone wishing them well is reduced to foisting upon Panama an additional burden of compromise. Presumably, that is why President Carter, in the text of an interview released yesterday, said that "any statement, even if it is well-based, by the Panamanians that would cause consternation or doubt in the minds of U.S. senators could very well endanger the passage of the second treaty." We say with genuine regret that we do not see that the Panamanian government has a good alternative to learning to live with the DeConcini reservation. To carry its anger to the point of giving the Senate the pretext to turn tail on the treaties would be a disaster. In a fairer world, it would not be this way. The fact is that the United States lacks the maturity, and the administration the political prowess, to make things come out otherwise.

The shame of this approach is evident. If, however, Panama finally balks at accepting the American revision of the first treaty, or if the Senate piles more equally egregious amendments on the second, then it is clear where the principal responsibility for the resultant diplomatic catastrophe will lie. It will lie on uninformed, insensitive, posturing legislators like Dennis DeConcini and Howard Baker—men demonstrably blind to the requirements of treating other nations, even a small, close, friendly and strategically vital nation like Panama, with decency and respect.

Trial

(By Haynes Johnson)

In a week the Senate prepares to vote on the second, and final, of the Panama Canal treaties. The canal has stirred more words and less passion than any supposed major issue in memory. Most senators, and Americans undoubtedly want to be done with it. Certainly there are more critical questions. It's hardly surprising that passage of the second treaty was assured—until, that, is the last few days.

Now, we're told, the treaty package is in jeopardy. The problem, it's being said in Washington, lies with the Panamanians. At the last moment they are letting their concerns be known and raising the prospect that they may reject the treaties as amended and ratified by the Americans. Howard Baker, leader of the Republican pro-treaty forces in the Senate, had bluntly warned the Panamanians to cool it, or risk losing all.

"Any rocking of the boat," Baker said, "could put these treaties in extreme peril." If the Senate gets the idea Panama is dissatisfied, or if any action occurs either in street demonstrations or in protests at the United Nations—well, there goes the deal.

Spoken, appropriately, like a big brother to a wayward sibling. Keep quiet and smile, or else.

There is a problem with the treaties, but it doesn't lie with the Panamanians. As presently amended, the first of the treaties represents a negation of almost 50 years of bipartisan American foreign policy. It puts us back in the business of nakedly advocating intervention in the internal affairs of other nations, something history and a host of documents we've legally subscribed to presumably put to rest long ago.

Now that American practice has always lived up to American ideals. At times we have violated our own oaths and attempted to overthrow or subvert other Latin nations—Guatemala in the 1950s, the Bay of Pigs in the 1960s, Chile in the 1970s all are part of broken U.S. promises. But in each case our secret interventions caused serious international problems for America contributing to a tarnishing of the U.S. reputation for good faith abroad and to a lessening of belief in the government at home. Today, particularly, in the post-Vietnam, post-imperialist America when we are preaching the cause of human rights and supporting the rights of emerging nations, a U.S. endorsement of the principle of armed intervention defies belief.

This is an offensive doctrine. It will be a tragedy if allowed to stand. The test lies not with little Panama, but with us. It's not too much to suggest that American principles are on trial here, and that the Senate still can redeem them. The question is whether we act like a great power, assured of our strength and confident in our convictions, or like a petty, churlish state—whether, in short, we uphold what we have pledged to uphold.

And there the record of history is clear.

In the fulminations of the critics, Panama has been mythologized into a nation of peasants lusting to get their hands on the Canal Zone as soon as the U.S. relinquishes it. Panama in fact, contains a substantial, sophisticate, much-traveled business community with close ties to the U.S. Its leaders are just as determined as anyone to gain control of the waterway that divides their country in two. For them, it is a matter of national and indeed group pride. They feel they are perfectly capable of running the canal; it is a role for which they have been groomed in their dealings with the U.S. Approval of the treaty would probably strengthen their position in Panama, since the left wing would no longer be able to campaign effectively on a program to seize the canal. It is no accident that the opposition to the treaty is as intense among the left in Latin America as it is among the right in the U.S.

When treaty supporters make these facts known to their constituents, they find that opposition often melts away. As the issues have been clarified, the public has turned around in its opinion. Sentiment against the treaty is as strong in Arizona as anywhere in the nation, yet when Democratic Senator Dennis DeConcini went home over the Easter recess, he discovered that the "reaction was not nearly as hostile as I expected. I found pretty good acceptance." Since he had sponsored one of the two reservations sharpening the treaty's language, he could legitimately boast that he had improved the pact. When he got a phone call from Jimmy Carter in Nigeria asking for his vote on the second treaty, DeConcini replied that he would have a reservation or two to offer. Said the President: "My door is open."

Another last-minute convert to the treaty, Montana's Senator Paul Hatfield, ran into heavier flak among his constituents. He is particularly vulnerable because he was appointed to the Senate last January and is up for election in the fall, When a fellow Senator remarked to Hatfield's wife Dorothy Ann that her husband was at

least getting a lot of publicity from his ordeal, she snapped, "So did the Los Angeles strangler." Nonetheless, Hatfield has learned that independence has its rewards. Elden Curtiss, the Roman Catholic Bishop of western Montana, publicly endorsed Hatfield's vote as "courageous." A bit belatedly, the President also called Hatfield from Nigeria to express his thanks for the vote that put the first treaty over.

Anxiety about the second vote raises anew the problem that confronted the great British Statesman Edmund Burke when he was elected to Parliament. In a speech to his Bristol constituents, he recognized that it was "his duty to sacrifice his repose, his pleasures, his satisfactions to theirs." But he went on to say: "Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion." On grounds of judgment alone, the Panama Canal treaty would probably have easily been approved long ago. Without pressure from their constituents, a sufficient number of Senators would doubtless have voted for the pact. Perhaps Senators would show more respect for their constituents by assuming that they, too, can understand the merits of the case if it is properly explained to them. By supporting the treaty at a time when leadership is urgently needed, the Senators under the sharpest attack may look back on this episode with considerable pride.

Franklin Roosevelt generally gets credit for reversing the old Yankee imperialist, Colossus of the North Jingoist stance toward Latin America. The second Roosevelt up-ending the interventionist policies of the first: It made for instant political mythology.

In fact, FDR's "good neighbor policy did mark a new era in Latin American relations. That first year of his presidency he dispatched a U.S. delegation to an International Conference of American States meeting at Montevideo. Out of that came a formal document on "The Rights and Duties of States," which the United States signed. Article 8 declared: "No state has the right to intervene in the internal or external affairs of another."

It was a sweeping renunciation of the right of intervention that had been troubling the hemisphere during the era of gunboat diplomacy and the dispatching of the Marines to protect our interests—mainly private investments—for so many years.

But the truth is it was Roosevelt's predecessor, the historically unlucky Herbert Hoover, who should get the praise for putting America on a different course toward its neighbors. Until Hoover's presidency, American policy was militaristic and arrogant: we did what we pleased, whenever and however we wished.

Hoover changed that. Not long after taking office he stated flatly that it "ought not to be the policy of the United States to intervene by force to secure or maintain contracts between our citizens and foreign states of their citizens." In other words, he promised never to intervene to protect American property rights abroad. Even despite the great pressures of the Depression, when debts were repudiated throughout Latin America, he never wavered in his resolve.

His Republican administration had made possible the acceptance of FDR's further pledges and policies.

From that point on, the United States repeatedly reiterated its approval of the principle of nonintervention. Roosevelt traveled to a celebrated Buenos Aires conference in 1936 at which a new treaty strengthening the pledge not to intervene "directly or indirectly" was signed by 22 nations, including the United States.

Over the decades those principles have been reaffirmed legally and in writing, again and again by this nation—and not only as regards the hemisphere. In the U.N. charter, in the charter of the Organization of American States, in declarations signed at Chapultepec, Mexico in 1945, in the Treaty of Rio de Janeiro after World War II—all these brought fresh United States pledges against intervention.

Nor does the record end there. In the Helsinki accords, signed three years ago by President Ford, similar statements received our pledges. When he spoke to the Helsinki conference after signing the documents, Ford said "The United States gladly subscribes to this document because we subscribe to every one of these principles." Nonintervention was first among the basic principles of relations between states he cited. It was followed by, in Ford's words, "sovereign equality, self-determination, territorial integrity, inviolability of frontiers."

That same year a new protocol to the Rio Treaty was signed at San Jose. A new article provided that: "Nothing stipulated in this treaty shall be interpreted as limiting or impairing in any way the principle of nonintervention . . ." And the United States also voted in favor of a resolution then which reaffirmed "solemnly the principle of nonintervention."

All in all, hardly an ambiguous record.

Before the Senate voted on the first Canal treaty last month, the president struck a bargain with a little-known Democratic senator from Arizona. The deal; the senator, Dennis DeConcini, would vote for the treaty if the president would support an amendment DeConcini proposed. Carter agreed, the arrangement was made public.

DeConcini's amendment which the Senate adpoted, gives the United States the unilateral and perpetual right to intervene in Panama militarily if the canal is closed or its operations are in any way interfered with, as defined by the United States. As DeConcini told the Senate:

"There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as the means necessary to insure that the canal remain open and accessible."

And, his key passage on the use of military force:

"These words are absolutely crucial because they establish the American right . . . to take military action if the case so warrants. It further makes it clear that the United States can take military action on Panamanian soil without the consent of the Panamanian government."

As Senator Edward M. Kennedy (D-Mass.) said at the time, Panama was being asked "to accept an amendment which has the right of military interventionism—not just during this century, but for all time."

Whether Panama finally accepts or rejects that outrageous interference in its sovereign affairs is not the point here—although that language clearly holds disturbing implications for all nations with which the United States has relations. The point is whether this country's repeated pledges mean what they say.

It's inconceivable that a single U.S. senator would accept such intrusion in the affairs of his state, by any force, anywhere, anytime. It should also be inconceivable for the Senate to fail to recognize that this language establishes an unworth, and unnecessary, principle.

Mr. GRAVEL. Now, how do we get ourselves out of this dilemma? I think it is not going to be an easy task to get out of this dilemma, because the Senator from Alabama is a very bright parliamentarian and he sees the flaw in what has taken place. We can be sure we are not going to have any easy time in correcting the situation.

I think what we have to look forward to is some degree of difficulty. I would suggest there are ways to correct it and that is to face the music. When we have made a mistake, just confess it and go forward. Here is the music we have to face—the Senate of the United States may not be mature enough to vote the right thing.

I think it would be a terrible tragedy, a national tragedy, to have these treaties fail, but we may not be mature enough to vote it. There may not be enough courage on this floor to vote for what is right.

We can do one thing. We can pack these treaties up, if we cannot carry the vote straight out without watering it down, which would require that the Panamanians then vote the treaties down. We owe to ourselves to give them a decent agreement. We negotiated one and we have one before us.

Now, I do not think it is going to be very wise to pack up an agreement and send it down to them and they vote against it. Let us be honest, at least about that and bring it for an up or down vote. If we do not have the votes, fine. That does not stop the leadership of the Senate from trying to work its craft, and that is to effect compromise, to make little turns so we could pick up some votes. There is nothing wrong with that. That is what leadership is all about, and what they are trying to do. I commend them for that and I hope in the next few days they will be able to work some-

thing out, that is, something that will correct the DeConcini reservation.

There will be no way of slipping by it. If we do not have the votes, the treaties will fail, and the failure will clearly be with this body. It will not be sloughed off on somebody in Panama, or sloughed off on President Carter, or sloughed off on the House. It will be our responsibility, if we were not courageous enough or mature enough to vote it.

I would also recommend, if that is the case, what we do is take the treaties back to the Foreign Relations Committee and leave them there until after the election. This issue would surface as a big issue in the election. Some people would win and some would lose on it. And after, take them out next February and have another vote. There might be a little more courage in this body since the election would be 2 years away, and there might be enough votes to go ahead and pass the treaties.

It is always going to be a question of passing the treaties or not passing the treaties, because this issue is going to have to correct itself.

Those opposed to the treaties are living in another world that does not exist and it will not come back. So we have to go with change that will accommodate justice between ourselves and Panama.

There is another possibility and I just thought of it today. I have spoken of it privately to my colleagues from Alabama, because one thing sort of rankles me a little bit, and it is a simple little thing. We are so proud of our democracy in the United States and we vilify, unfortunately, Mr. Torrijos so badly, and his leadership, dictators, and that kind of government, but, in point of fact, on this treaty he had a plebiscite.

He was more democratic in the handling of the treaty in Panama than we have been in the United States. This is not to criticize ourselves, because we are structurally bound in the Constitution on the way we do a thing. But I think a person from Mars looking at the way both nations handled the issue, would have to admit that "dictatorship" handled it a lot more democratically than the "democratic" government did.

So it might not be a bad idea to have a little experiment in the Nation, and let us have a plebiscite. I do not know but I will do some research in the next few days, and if it looks legally possible maybe I will offer it to my good friend from Alabama to cosponsor it with me and we will have a plebiscite in the United States.

Why should the Senate of the United States take all the heat from its constituents in voting for this very difficult issue?

That is the reason why the treaties cannot pass. We are afraid to vote for what is right. So why not just let the people make that decision? That is very dangerous—I say that sincerely, not with tongue in cheek.

The PRESIDING OFFICER. The Senator's 15 minutes have expired.

Mr. GRAVEL. I am almost finished, may I have another 2, 3, 4, or 5 minutes?

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield an additional 5 minutes to the distinguished Senator from Alaska without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Alaska is recognized for an additional 5 minutes.

Mr. ALLEN. Mr. President, following that, I ask unanimous consent I might yield to the distinguished Senator from Virginia (Mr. Scott) such time as he may request without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAVEL. I thank my colleague. He is most generous.

As I stated, I would hope, if we do decide that a U.S. plebiscite might be worth while, that he would join me. I think it is something at this point to investigate.

I do not say it lightly, that this would be an unusual event, because I think——

Mr. SCOTT. Will the Senator yield very briefly?

Mr. GRAVEL. No. If I might just finish.

Is it for an unanimous-consent request? I want to finish what I am saying.

Mr. SCOTT. It is on the question of the plebiscite. There has been a plebiscite in one city in California. The treaty was defeated by a margin of more than 5 to 1.

Mr. GRAVEL. That is fine. In fact, that is the point I want to make right now.

If we had had a plebiscite, let us say, about in the 1880's or 1870's on the Indian policy that was undertaken by the United States of America, I think that Indian policy might best be characterized by General Sherman's statement at a dinner in New York when he held up a nickle and made the statement that the best Indiana were dead Indians.

I think if we had had a plebiscite in the United States of America at that time, the American people would have voted for that policy. Very tragic.

I think if we had had a plebiscite on the Vietnem War in 1965, 1966, 1967, 1968, 1969, or 1970, that probably the American people would have voted for that holocaust, that murderous event we had in Southeast Asia. I think that would have been a tragedy.

I think that 6 months ago if we had had a plebiscite on the treaties, they probably would have been defeated, and that would have been a terrible tragedy for American foreign policy.

But the test of a democracy and the test of the people and the test of the Senate is all the same test. It is, are we mature enough to handle representative government? That is the test. Are we mature enough to have a better society with justice? That is the test.

I would be prepared to put the American people to that test.

I am not too sure that the Senate of the United States is mature enough to vote for these treaties without mirrors. We are just playing with some mirrors and it has backfired in our faces.

I will submit that we are just beginning to get the rumblings out of Panama. There will be a lot more than that. So if we cannot pass the treaties without the DeConcini-type amendments, we cannot pass the treaties and we ought to know that.

If the American people are not prepared to vote for these treaties, if there is a new regime of justice between ourselves and Panama, then the world ought to know that, because how else can

we grow, how else can we improve ourselves if we do not know our deficiencies?

We can go ahead and sput the rhetoric of how great we are, what great things we do, how we do not believe in intervention, and then go ahead and intervene through the CIA, go ahead and intervene with the Bay of Pigs. We may have had 40 years of nonintervention policy. The only problem is that we did not practice it.

The sooner we cut out these delusions that we have about what we are or are not, the sooner we are going to be a great people, greater than we are.

So I favor a rhetorical point of view this evening and can only say, what is the danger of having a plebiscite by the American people? Let them rip their guts out the way the Senate has been. Let the dialog take place with all the people. Let those who sit back and say, "I don't have time to get interested in this issue, and we'll give the money to the radical right to fight the issue"—if they want it taken over by the radical right, all they have to do is lay back.

There are no free rides in citizenship. This issue is so vital, affecting our relationship with the most important part of the world to us, this entire hemisphere, that we cannot skid by and slough off on this issue.

So if the American people think they can continue gunboat diplomacy, if that is what they want, then let them vote for it. I have a higher opinion of the American people than that. I cannot think of a better way to educate the American people than that by letting them be a part of the decisionmaking process. It would not be all that difficult. We could have a referendum, a plebiscite, in this country next November, when we are going to have national elections; and the people can vote for or against the treaties as they stand, the way the Panamanian people have done.

After an investigation, I will come back to this body and report whether that is a feasible alternative. I certainly will counsel with my colleagues from Alabama, who is fond of plebiscites for Panama. If they are good for Panama, they are good for us.

I thank my colleague for this accommodation on this subject. I am sure I am giving him food for thought and reason for dialog, and I will listen to his views attentively. I thank him.

Mr. ALLEN. I thank the Senator.

The PRESIDING OFFICER. The additional 5 minutes of the Senator from Alaska (Mr. Gravel) have expired.

Mr. ALLEN. Mr. President, I yield to the distinguished Senator from Virginia (Mr. Scott), with the understanding that I do not lose my right to the floor.

Mr. SCOTT. Mr. President, I appreciate the distinguished Senator from Alabama yielding to me briefly.

I speak now only because of the statements made by my friend from Alaska. It seemed quite obvious that he was being critical and in complete opposition to the views of the distinguished Senator from Alabama.

One thing about a government such as we have, with the two bodies of Congress, is that we can say almost anything we wish to say on either the floor of the House or the floor of the Senate, and

that is part of the legislative process. We can have a difference of opinion without being disagreeable with one another.

While I do have the highest respect for my distinguished friend from Alaska, I have a very minimum of high regard for the position he has taken and the words he has spoken for the last 20 minutes or so. I disagree with the Senator from Alaska in almost everything he said.

He has referred to the opponents of the treaty as being desirous of toppling the government of Torrijos. He has referred to some Members of the Senate as mentioning that Torrijos is a dictator. I believe everybody knows that we have a lawful government in Panama, an elected government in Panama. There was a coup, and the present chief of state of Panama, through the use of the Guardia Nacionale, the National Guard of Panama, assumed the position he now occupies.

I think he is a dictator. I do not believe there is any doubt that General Torrijos is a dictator. Why not say "the Dictator in Panama"? He is a dictator. We say, "the President of the United States." He is the President of the United States.

The distinguished Senator speaks of putting America to the test. I agree with this statement, but in a way different from that of the distinguished Senator from Alaska. I think America is being put to the test. America is put to the test in many ways.

We are thought of as being one of the leaders of the free world. If we submit to the wishes of the Government of Panama, of dictator Torrijos, is that going to mean that in the world of public opinion, the United States is going to stand a little higher? I think not. I think the nations of the world will doubt whether the United States will stand up for itself.

Under the treaty that is now under consideration, we would give away $9.8 billion worth of U.S. Government property, and we would pay the Republic of Panama for taking it; about $1.5 billion in tolls; and approximately $750 million in either tax revenue or loss of tax revenue by the United States between now and the time the treaty would end.

It was said that Panama might reject the treaty, as if that would be a bad thing; that Panama might reject the treaty, because of the amendments. To my knowledge, there have been no amendments. The DeConcini amendment was not an amendment; it was an understanding. There is considerable doubt as to whether it has any binding authority.

I believe the disturbance we hear about is very much like the Uncle Remus story of Brer Rabbit: "Please don't throw me in the briar patch." After he was thrown in the briar patch, he mentioned that he was born and bred in the briar patch.

I think the Panamanian Government wants the sovereignty, the title, the control of the Canal Zone. I believe that once they have the sovereignty, the title, and the control, they can say, much like Brer Rabbit said—that that is really what they had in mind.

When we speak of demogoguery, of cowering to public opinion, of listening to the voice of the people of this country, that is the kind of government I believe we have. I believe that is the kind of government our Founding Fathers obtained for us when we won our independence. We have a republican form of government or a

representative democracy. We are here to act on behalf of the American people.

I had a poll taken of the people of Virginia as to how they felt about this canal. I posed the simple question: "Do you favor the ratification of the canal treaties?" Eighty-seven percent of the people of Virginia who responded said they favored rejection of the treaty. Only 13 percent favored ratification.

The Senator speaks of returning this to the committee and having a vote after the election. I would support him in any move such as that because I think that after the election and after each Senator has been assured of how the people felt, we would have no difficulty in rejecting these treaties. I believe that after the election, some of the Senators in the class that is up for election this time will not be here to vote on the treaty.

We can read from the Federalist Papers and we can read from the letters that Thomas Jefferson wrote the statements made by some of the early Americans who were prominent in the formulation of our Government; and we find such statements as, "The only safe depository for the government is in the people themselves."

So while we are Senators and while we are elected to exercise our own judgment to a certain extent, I do not believe we are elected to fly—or would be elected if the people felt that we were going to fly—in the face of the overwhelming majority of the people of America.

To me the people of this country do not want this giveaway treaty, and I am not really concerned about the people of Panama. I was elected by the people of Virginia, the people of the United States and I feel that it is the duty of every Member of this Senate to do what is best in his judgment for the United States. We are U.S. Senators. Sometimes I hear voices on this floor that speak in such a way as one, a stranger to this body, might think that they were Senators from Panama rather than the Senators from particular States.

I am not going to attribute that to any individual Senator, but basically we are here to listen to the voice of the people and we are here to represent the people who elected us to office. In a nation of 215 million or 220 million people, of course, it is impossible to have a true democracy, but I would like for us to have representative government as closely as we can to representing the will of the people. The people are opposed to this treaty, and I feel that the treaty should be rejected.

Mr. President, I have talked with the distinguished majority leader, and I expect that he is probably listening to the discussions here on the floor over the device in his office, and I told him that I would like to have time after the vote on the Stevens amendment on Wednesday. I understand the vote is to be not later than 4 o'clock on Wednesday of this week. And I ask unanimous consent that I might be recognized after the vote on the Stevens amendment to discuss the treaty and to offer an amendment if I see fit to do so at that time.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Maryland reserves the right to object.

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Mr. SARBANES. Did I understand from the Senator that he discussed this request that he has just made with the majority leader and the majority leader acceded to it?

Mr. SCOTT. He indicated he would make the request on my behalf if I wanted him to do it. So there is no conflict with the majority leader.

Mr. SARBANES. Mr. President, on, as I understand it, that understanding, that the majority leader has acceded to the unanimous-consent request which the Senator from Virginia has just propounded, I will, of course, not object.

The PRESIDING OFFICER. Is there objection?

The Chair hears none. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I appreciate the distinguished Senator from Alabama yielding this time to me, and certainly I would not want to infringe further upon his time, but I did want to take the opportunity of making the unanimous-consent request while I was on the floor.

I yield.

Mr. ALLEN. I thank the distinguished Senator from Virginia.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, the hour is growing late, and I shall not detain the Senate a great while.

We have been discussing this afternoon the DeConcini amendment to the Neutrality Treaty, and my interest in the amendment at this time is caused by the fact that the distinguished Senator from Idaho (Mr. Church) was seeking by an expression of views on the floor at this time, some 3 weeks after the agreement on the DeConcini amendment and the approval of the Neutrality Treaty, to establish legislative history with respect to the DeConcini amendment.

Of course, it is not possible to establish legislative history with respect to something that has already taken place, because legislative history is supposed to give the background of and to explain the reasons why the Senate acted as it did with respect to a particular legislative matter, and the legislative history must be created before the action on the legislative proposal, because it explains why the Senate did what it did when it took such action.

So the door is closed now to creating legislative history with respect to the DeConcini amendment.

The second proposal that the distinguished Senator from Idaho suggested was that something must be done in this treaty to indicate, in effect, that the DeConcini amendment means something other than what the DeConcini amendment provides. How we are going to be able to do that I do not know. It cannot be done and obtain the approval of this treaty, in my judgment. Of course, I know the leadership has more than 51 Senators who would vote for a proposal submitted by the leadership as a solution of this dilemma. But in doing so, Mr. President, I feel confident that the leadership would lose enough votes of Senators who voted for the first treaty on account of the DeConcini amendment and do not want any weakening of that amendment.

Also, Mr. President, it seems to me that it would be, in effect, going back on a trade, and we will have to admit that trading took place, that the DeConcini amendment was approved by the admin-

istration; in return several Senators voted for the treaty who would not have voted for the first treaty without the DeConcini amendment. Having obained the approval of the first treaty by agreeing to the DeConcini amendment, it comes with poor grace, it seems to the Senator from Alabama, to suggest that we must undercut the DeConcini amendment, make it say something that the words do not say, that were not said here on the floor, because, after all, a trade should be a trade, I assume. And the distinguished Senator from Alaska seemed to be pretty well of that opinion that we made a mistake, the Senate made a mistake, when it agreed to the DeConcini amendment, but it was necessary to pass the treaty.

Having obtained the benefits of the passage of the DeConcini amendment, and having obtained the approval of the treaty by this device, how can the leadership, the managers of the treaty, come forward and say that the DeConcini amendment does not mean what it was thought to have meant and what it says that it means by a mere reading of the wording of the DeConcini amendment?

Mr. President, one of the chief reasons given for the approval of these treaties by the Senate was that it was necessary in order to remove the danger of sabotage to agree to these treaties, to eliminate riots, insurrection, guerrilla action against the canal.

Well, it seems somewhat anomalous that it seems likely, based on the fact that some riots and demonstrations were already taking place in Panama, that the approval of the Senate of these treaties will result in riots in Panama and not eliminate them.

I commend the distinguished Senator from Alaska for his praise of the President in regard to these treaties. He has taken an unpopular issue and has pushed it to near approval by the Senate. But, as the distinguished Senator from Alaska says, a mistake was made. The proponents of the treaties have made their bed and now they should lie in it. They agreed to the DeConcini reservation to pass the treaty, and now they do not know what to do with it except to try to undercut it.

My authority for that is the distinguished Senator from Idaho (Mr. Church) who said there is something that has got to be done, and it has got to be done in the next few days, to indicate a different meaning to the DeConcini reservation from what has been attached to that reservation.

You tamper with this treaty in that regard, try to undercut DeConcini, and you are going to lose this treaty.

I would say, Mr. President, that dictator Torrijos—I say that with apologies to my distinguished friend from Alaska (Mr. Gravel)—must be a most unhappy man in Panama at this time. If he presents this treaty to the Panamaniam people I believe, just as does the distinguished Senator from Alaska (Mr. Gravel), that the people of Panama will overwhelmingly defeat the treaty.

If it goes the other route, as head of state ratifying the treaty, he is going to be toppled in Panama just as sure as can be, in the judgment of the Senator from Alabama.

So apparently the effort will be made to change the meaning of the DeConcini reservation to provide in some way that it does not have a meaning that the Panamanians attach to it and that a reading of the reservation would indicate.

Mr. President, the treaties were negotiated by American and Panamanian negotiators. They were submitted to the Senate. A memorandum was agreed to between the President and the dictator. That memorandum became the leadership amendment, which was accepted here in the Senate and, I might say, that it promised the most and delivered the least; that is, the leadership amendment, of any amendment, any major amendment, that I have seen presented here in the Senate.

So, Mr. President, if there are ambiguities—and they abound—if there are ambiguities in the treaties and in the amendment, whose fault is it? Is it the fault of those who have sought to strengthen these treaties or failing in that to defeat them? Well, hardly. We have not been able to pass a single amendment. So if we have a treaty full of ambiguities, it is the responsibility of the American negotiators, it is the responsibility of the administration, it is the responsibility of the leadership, and it is the responsibility of the managers of these treaties. They have controlled collectively every single word that has gone into these treaties or into the resolution of ratification, every single word. So do not let them say the opposition to the treaties has caused this sad state of affairs. The people of Panama do not want this treaty. Mr. Gravel, a strong supporter of the treaty, says the people of Panama would overwhelmingly defeat the treaties if submitted to them.

Well, all through this debate, Mr. President, the managers of the treaties have tried to indicate that the opponents of the treaties have spoken disparagingly or put in a poor light the Panamanians, whereas they have held up for the sovereign rights of the Panamanians; and far be it from them to say anything derogatory about the Panamanian people.

Well, Mr. President, let us examine that a moment. If there have been any derogatory statements made of any Panamanian citizens it has not been something said about the people of Panama as such. But in the main it has been directed at the Panamanian dictator. As to the people of Panama it is our wish that they have an opportunity to vote on what the Senate has done.

The distinguished Senator from Alaska (Mr. Gravel) said:

> Well, the Senator from Alabama wants a plebiscite because he knows the Panamanian people will vote down the treaty.

It is the position of the Senator from Alabama that I would not object to seeing them voting down the treaty, but it is the position of the Senator from Alabama that if the treaty is to be agreed to it needs to be agreed to by the people of Panama because that is the best opportunity, Mr. President, agreement by the people of Panama is the best opportunity we have to prevent riots, to prevent demonstrations, to prevent sabotage because those who are protesting in Panama now against the treaties are protesting because that is something the U.S. Senate, they feel, is ramming down their throats.

But if we condition our approval on a plebiscite in Panama that would be the people of Panama acting, and the legs would be cut from under any demonstration against the treaties. But let Dictator Torrijos approve these treaties and you are going to see bloodshed in Panama. They do not like the treaty. They do not like

the treaty as agreed to by the Senate. I first thought Mr. Torrijos was just engaging in a ploy to see to it that no further amendments were agreed to. But I can sense his great difficulty in Panama in satisfying the people with respect to the action that has been taken.

Now, is that done by the opposition to the treaties? Was the DeConcini amendment put in by any one of the 32 Senators who voted against the Neutrality Treaty? No, it was not. Were any of the reservations put in by any of the 32 Senators who voted against the treaty? No, not to my knowledge, and I was here all the time.

This treaty as it now exists is the product of the administration and the leadership, and I submit that with the tremendous majority they have had on votes here in the Senate, they find the treaties not giving satisfaction to a large percentage of the people of the United States—I believe a great majority—and they are not giving satisfaction to a great number of Panamanians, and I believe a majority there.

And who is responsible for it? Is it the opposition to the treaties? No; the proponents have had carte blanche to word the treaties as they wanted to. They have knocked down all amendments offered by the opposition. They have not improved the treaties in any way suggested by the opposition. They have shaped the treaties and the reservations to suit themselves; they had full control.

Now, after having done that, after having accepted and recommended the DeConcini amendment to the Senate, they are unhappy with what they have done.

I do not believe the Senate is going to get the matter out from under that difficulty. Oh, I do not mean they cannot pass an amendment saying that the DeConcini amendment is meaningless, it means nothing, it does not change the leadership amendments. But it does, Mr. President. It gives the United States the right unilaterally to keep the canal open when the United States deems it necessary, and to use military power to keep it open if that is necessary. And that is a departure from the leadership amendment, because it was couched in three limitations—the leadership amendment, mind you, has a paragraph in there put in by the Panamanians, put in by the dictator or his representative, that qualifies our right to intervene to protect the canal. In the first place, we could not interfere with the internal affairs of Panama; second, we could not interfere with the territory of Panama; and third, we could not interfere with the independence of Panama.

In effect, we agreed that the dictatorial regime of dictator Torrijos would be preserved. And, of course, the treaties start pouring in $100 million a year into Torrijos' coffers and, of course, they want that to get started right away.

So, Mr. President, I hate to see this treaty, with its supposed affront—I do not feel that it is—its supposed affront to Panama, to see the Panamanians reject it if a plebiscite is held, or, if not subjected to a plebiscite, to see the upheaval that seems certain to come about if the treaties are approved and submitted to Panama in their present form.

So, Mr. President, if the plebiscite is held, yes, I would hope that the Panamanians would reject the treaties, because I believe that the Panamanians should have the right to make the decision on

this matter. It should not be made by Torrijos, and if it is made by Torrijos only, it is going to cause riots and demonstrations, and a probable upheaval in Panama.

Whether the people turn it down or whether the people approve it, it would come nearer having the backing of all Panamanians than if we turn it down. But it seems that if it is submitted to them all, it is going to cause considerable rioting in Panama.

Mr. President, after the President, and the leadership, and the Senators who voted for this first treaty have gone to such a great length to please the Panamanian people, to fight off amendments, to reach a compromise with some of the Senators on the DeConcini amendment, to be on the verge of giving them the canal, and then to have riots and demonstrations in Panama, with the President of the United States, who has stuck his neck out to get these treaties approved, hanged in effigy in Panama, I think certainly indicates a lack of appreciation of those who have cast their lot with Torrijos and who have sought to prevent any changes in these treaties. And yet, because they are not liked by all in Panama, we see this demostration against them.

Mr. President, like it or not, the DeConcini amendment is part of this treaty, and——

Mr. ROBERT C. BYRD. Mr. President, Will the Senator yield?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. I take it the Senator is going to support the treaty now with the DeConcini amendment attached?

Mr. ALLEN. The DeConcini amendment has been voted on. It is a part of the Neutrality Treaty.

Mr. ROBERT C. BYRD. But I say, I take it the Senator is going to support this treaty with the DeConcini amendment?

Mr. ALLEN. I believe the Senator has heard my statement. I have indicated no such thing.

Mr. ROBERT C. BYRD. Yes, I have listened to the Senator today expound on the DeConcini amendment, and I have been utterly amazed, as I am sure the people of Panama must be amazed, to find that they have such a friend as the very able Senator from Alabama has demonstrated himself to be.

Mr. ALLEN. Yes, I am trying to protect their right to have a voice in this treaty. I surely am.

Mr. ROBERT C. BYRD. The Senator has demonstrated his friendship for the Panamanians today, and I am sure that my amazement has been surpassed only by that of the Panamanians.

Mr. SARBANES. If I could say——

Mr. ALLEN. I believe the people of Panama will come nearer approving of the position of the Senator from Alabama than they will approving of the position of those who are sending these treaties down to Panama against which they are now demonstrating.

Mr. ROBERT C. BYRD. The Senator has even predicted, and I have heard him predict today more than once—several times—that if the treaties are submitted by plebiscite to the people of Panama, they will reject them. Not only that, but there will be riots and demonstrations in Panama; that Torrijos will get his walking papers. Did I hear the Senator predict that?

Mr. ALLEN. If the Senator listened carefully, I said that in my judgment, the public sentiment was so strong in Panama against

the treaty, as finally agreed to here in the Senate, that if the matter is not submitted to plebiscite and dictator Torrijos ratifies it on his own, that will result in toppling dictator Torrijos, on account of public sentiment in Panama. That is my opinion.

Mr. ROBERT C. BYRD. The Senator is going out on a limb.

Mr. ALLEN. That is all right. The Senator from West Virginia has gone out on a limb in sending a treaty down to Panama which will meet with so much popular disapproval. He has gone out on a limb and the limb is being chopped off by dictator Torrijos.

Mr. ROBERT C. BYRD. The Senator from Alabama predicted the other day that the amendment by Mr. Hatch would garner more votes in the Senate than any other amendment had to date.

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. That was a prediction.

Mr. ALLEN. Yes, it was. I will answer that. I thought the distinguished Senator from West Virginia would be one of those voting for it. Back in 1975 he was a cosponsor of a resolution that called for there to be no cession to Panama or other divestiture of U.S.-owned property, tangible or intangible, without prior authorization by the Congress, the House and Senate, as provided in article IV, section 3, clause 2 of the U.S. Constitution.

The distinguished Senator from West Virginia, I recognize, might change his position with regard to a treaty, but I did not feel that he would change his mind with respect to a constitutional issue and his view of that constitutional issue as expressed in this resolution back in 1975, of which the distinguished Senator from West Virginia was a cosponsor.

Mr. ROBERT C. BYRD. Yes, but——

Mr. ALLEN. Can I finish, please?

Mr. ROBERT C. BYRD. Will the Senator let me respond?

Mr. ALLEN. I had not finished. I thought that the Senator, along with seven other Senators who voted for the first treaty but were cosponsors of this resolution, both as to House action being required and as to their being no agreement on the Panama Canal treaty, would go along with what they had advocated back in 1975.

Mr. ROBERT C. BYRD. What the distinguished Senator from Alabama did is he did not wait for any hearings; he did not wait to hear what the Joint Chiefs might say; he did not even wait until we had a treaty before the Senate. He announced his opposition. He did not wait for any hearings; he did not wait for any testimony.

He did not wait for any evidence; he did not wait for anything to change his mind. He made up his mind in the beginning. I respect him. He has stuck by his guns. But he is determined to defeat these treaties one way or another by amendment. We can adopt every amendment the Senator has offered to this treaty, and I dare say—of course, I do not know—I would venture to say that he would still vote against the treaties. He announced that in the very beginning. He made 24 speeches last year that he was against the treaties.

Now that the Senate has turned down most of the amendments thus far, he is grasping at a straw. He continues to grasp every little straw that comes along in the wind. Now he talks about demonstrations in Panama. He talks about submitting the treaty to

another plebiscite. The constitution of Panama provides that the treaty be submitted to the people for a plebiscite, and that was done. Now he seeks to write into this treaty an amendment that would force on the people of Panama what in essence would be a constitutional change in that country.

The Senator from Alabama did not change his mind. His mind is not subjected to being changed on this.

I have twice laid on the record my response to what the Senator has just read.

Mr. ALLEN. Did the Senator take one view in 1975 of the constitutional issue about whether the House needed to act, whether it needed action by the Congress? Did he change his mind on that constitutional issue as well as on the desirability of the treaty?

Mr. ROBERT C. BYRD. I will ask the Senator a question. Did the Supreme Court ever change its mind on a constitutional issue?

Mr. ALLEN. That is not what I asked the Senator. Has the Senator changed his mind?

Mr. ROBERT C. BYRD. I am asking the Senator from Alabama.

Mr. ALLEN. If the Senator declines to state it——

Mr. ROBERT C. BYRD. I do not decline to state it. But if the Supreme Court can change its position on a constitutional issue and with good reason——

Mr. ALLEN. I am not asking that question.

Mr. ROBERT C. BYRD. I am giving the answer.

Mr. ALLEN. I am not asking about the Supreme Court.

Mr. ROBERT C. BYRD. I heard the Senator. I am answering this as I want to answer it, if he wants me to. If the Supreme Court changed its position on a constitutional question, I think that any Senator should retain the same right, and he has the same duty, to change his position on a constitutional question if, in his judgment, after more thorough study of that question he sees that he was wrong the first time. He should change. I did see that I had not considered that question the first time. I just signed a resolution. Someone came around and asked, "Will you sign this resolution?"

Mr. ALLEN. It does not sound like the distinguished Senator from West Virginia would sign something without knowing what is in it.

Mr. ROBERT C. BYRD. No; he does not, ordinarily. I submit I did not give it the careful thought I should have. Beside that, I did not have the treaties before me at that time.

Mr. ALLEN. I am talking about the constitutional question. It has nothing to do with the treaties.

Mr. ROBERT C. BYRD. That is all right. I have studied the constitutional question thoroughly. I have made two or three speeches on that constitutional question lately. I have thought it over. I have done some research and I have come to what I think now is the right conclusion. So like the Supreme Court of the United States, which reverses itself from time to time, I retain that same right. I think it is my duty. I did change my view.

Mr. ALLEN. I asked has the Senator changed his mind?

Mr. ROBERT C. BYRD. Yes. But I was not required to answer the Senator's first question. I dealt with it, built on it block by block, and then my peroration, and then the final sentence. And the court of appeals has upheld my position. They upheld my position.

Mr. ALLEN. The Senator changed his mind from his 1975 position on both scores, on the advisability of the treaty and on the constitutional issue involved; is that correct?

Mr. ROBERT C. BYRD. On the advisability of the treaty, I did not have the treaty before me.

Mr. ALLEN. The Senator said something about somebody changing his mind. My opinion was announced back under President Nixon. My opinion was announced in a newsletter that I sent out to some of my constituents over the State back in October 1971. I saw the treaties coming on, just as the distinguished Senator from West Virginia did, in 1975. I guess he had an idea about whether the canal was going to be given to Panama or not when he joined in this resolution. The Senator from Alabama did not form his opinion just recently. Obviously, he did not change his mind.

I appreciate the Senator saying the Senator from Alabama has not changed his mind.

Mr. ROBERT C. BYRD. And is not going to.

Mr. ALLEN. Not on this particular issue, no.

Mr. ROBERT C. BYRD. No.

Mr. ALLEN. I have made up my mind on it. My position is justified by the facts and by the confusion in which the supporters of the treaties now find themselves.

Mr. SARBANES. Will the Senator from Alabama yield for a question?

Mr. ALLEN. If the distinguished Senator from West Virginia is through propounding his question.

Mr. ROBERT C. BYRD. I have temporarily withdrawn from the field.

Mr. ALLEN. I think it might be well.

Mr. ROBERT C. BYRD. But I am going to witness the continuing engagement. I had to leave my weary steed at the door, where they required that I hitch him to the hitching post, and my blunted sword I have thrown aside for a moment. I just wish I had that blue blade that the king's son bears from Alabama. I can fully defend the position which I take today——

Mr. ALLEN. I know the Senator has answered to his satisfaction.

Mr. ROBERT C. BYRD [continuing]. On the treaty and on the constitutional question. And I am supported by the recent decision of the court of appeals, which I realize chagrined the distinguished Senator from Alabama and those who supported him in their unsound position vis-a-vis the constitutional question. I feel rather good that the court of appeals supported me, and I am sure that the Senator from Alabama recognizes that what the appeals court has done will probably stand if it should go to the Supreme Court.

Mr. ALLEN. I am glad the distinguished majority leader knows what the Supreme Court is going to do, because very few of us know.

Mr. ROBERT C. BYRD. I have as much right to make a judgment as to what the Supreme Court will do as the Senator from Alabama has as to the Panamanian people.

Mr. ALLEN. I have some indication as to the Panamanian people. If the Senator has been reading about the riots down in Panama and the burning of the President down there in effigy, he would have some feeling about the opinion of the people in Panama. I

doubt if the Senator has any pipelines into the thinking of the Supreme Court.

Mr. ROBERT C. BYRD. I need only to look at previous decisions.

Mr. ALLEN. Oh, I see. So the Senator is confident that the Supreme Court is going to sustain that.

Mr. ROBERT C. BYRD. I have no doubt; no doubt.

Mr. ALLEN. I am glad the distinguished majority leader has no doubt.

I am highly honored that the distinguished Senator comes in from time to time and propounds questions to me and, in addition to propounding questions, makes lengthy comments on the remarks of the Senator from Alabama. I do not recall his so honoring any of the other Senators who have sought to approve these treaties or, in the alternative, to defend them. I feel highly honored that the distinguished majority leader does come in from time to time to engage me in colloquy. I appreciate that.

Mr. ROBERT C. BYRD. The Senator recognizes my great respect for the Senator from Alabama. I have the greatest respect. I do not say that facetiously; I do have. But I just felt constrained, as I listened to the Senator's stentorian voice, almost in dulcet tones as it came across public radio, to come in and just ask on what basis the Senator could predict, as he has predicted, some of the things that he has stated today.

Mr. ALLEN. Yes, I have predicted that if this matter is submitted to plebiscite, it will be defeated. I am backed up in that opinion by the distinguished Senator from Alaska, who supports the treaty. He states unequivocally that, in his judgment, these treaties, if submitted to plebiscite in Panama, would be overwhelmingly defeated. He made that remark within the last 45 minutes.

Mr. ROBERT C. BYRD. The Senator from Alaska has a right to that opinion. I personally do not have any way of knowing.

Mr. ALLEN. I feel that is an indication of the view of the leadership from the fact that the distinguished manager of the treaty, the distinguished Senator from Idaho (Mr. Church) has said on this floor, do not approve this amendment, because any amendment will result in the defeat of the treaties. I assume he meant by that that the people of Panama would reject a treaty that had been amended. I believe, if I am not mistaken, that the distinguished majority leader has argued that point on the floor of the Senate, making that very same argument.

Mr. ROBERT C. BYRD. I am not sure.

Mr. ALLEN. I am rather sure, I say to the distinguished majority leader.

Mr. ROBERT C. BYRD. I remember an occasion or two before, when the Senator thought that I had said something and we had the transcript read and we found that the Senator from Alabama was wrong. I do not think I have——

Mr. ALLEN. I do not recall that occasion. But I accept that the distinguished Senator does.

Mr. ROBERT C. BYRD. Well, maybe I am wrong again. But I do not think I have made that argument. Maybe I have.

Mr. ALLEN. That has been the Senator's opinion, has it not, that the treaty should not be amended?

Mr. ROBERT C. BYRD. Oh, no; I offered a joint leadership amendment.

Mr. ALLEN. I understand that, but that was based on the memorandum between the dictator and the President. But aside from the so-called leadership amendment, which, with all due respect—and the Senator did not write those amendments or I would not make this statement—promise the most and give the least of any amendments that have been offered heretofore, I might say.

Mr. ROBERT C. BYRD. Of course, that is the opinion of the Senator from Alabama, because his one objective here is to defeat the treaties one way or another. And if he can demean the leadership amendment, he would do it anyway to achieve that basic goal of defeating the treaties. The Senator would not vote for these treaties if the Senate had adopted every one, every one of the amendments that the Senator from Alabama has offered, and he knows that.

Mr. ALLEN. The distinguished Senator said that the Senator from Alabama would defeat these treaties any way that he could. Of course, the Senator from Alabama would defeat the treaties any way that he honorably could. But I recall——

Mr. ROBERT C. BYRD. I agree.

Mr. ALLEN. I am not stating this as honorable or dishonorable, but the facts can speak for themselves.

Mr. ROBERT C. BYRD. It is not dishonorable, and I did not mean to impute anything like that.

Mr. ALLEN. I understand. But we do know that the DeConcini amendment was accepted by the leadership, because the President had agreed on the DeConcini amendment and had used that in order to get at least one and possibly two or three votes for the treaties. That is the point that the Senator from Alabama has been making this afternoon, that, having accepted the DeConcini amendment, based on what the distinguished Senator from Idaho (Mr. Church) has said, an effort is going to be made in this treaty to put in a provision to indicate that the DeConcini amendment means something somewhat different from what it meant at the time the DeConcini amendment was agreed to. The Senate, thereafter, agreed to the treaty and the cosponsors of the DeConcini amendment were found voting for the treaty.

I do not think the Senator from Alabama is doing anything other than arguing this matter on its merits. If he can contribute to the defeat of the treaties, I believe that he has rendered a public service. But the Senator from Alabama has no concessions to make to anybody. He cannot ask them if they have any concerns about the treaty. He cannot have meetings of doubtful Senators and inquire about their concern. All he has is the logic, which I believe is backed by the people of the United States; whereas, of course, the administration has other facts that they can call into play——

Mr. ROBERT C. BYRD. And the leadership.

Mr. ALLEN [continuing]. In an effort of votes.

Mr. ROBERT C. BYRD. Do not leave out the leadership.

Mr. ALLEN. That is the Senator saying that. I would not suggest that the distinguished majority leader would make any concession to any Senator to get him to vote for the treaty; far from it.

Mr. ROBERT C. BYRD. I hope the Senator from Alabama will not underestimate his capabilities and the resources that he has at his command. He is chairman of a subcommittee. He conducted hearings on the constitutional aspect.

Mr. ALLEN. Yes; we have done that and made our report.

Mr. ROBERT C. BYRD. They have had lengthy hearings; he has made his report. So he does, he is not disarmed by the support that he has to depend on, logic alone. He does an excellent job in conducting hearings. He brought forth a report. So let it not be said that the Senator from Alabama is without spear or buckler or shield or sword. I would not want the Senator from Alabama to leave us with that impression.

Mr. ALLEN. He certainly is not heavily armed, I say to the distinguished majority leader, who has so much power in this body. The Senator knows I am one of his staunchest supporters.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Does the Senator from West Virginia seek recognition?

Mr. THURMOND. Mr. President, Luis Kutner, a Chicago attorney and president of the Commission for International Due Process of Law, has written an excellent article entitled, The New Panama Canal Treaties: A Potential Diplomatic Pearl Harbor.

Mr. Kutner is an internationally famous attorney and author on Habeas Corpus and Human Rights. He is the author of the World Habeas Corpus and chairman of the World Freedom Centers. He was nominated for the 1975–76 Nobel Peace Prize and has been extremely active worldwide promoting human rights.

Mr. Kutner's article is very informative on the canal issue and concludes that the United States should not abandon the Panama Canal and give back the sovereignty over the Canal Zone to Panama.

Mr. President, I ask that this article be placed in the Record at the conclusion of my remarks. The article follows:

THE NEW PANAMA CANAL TREATIES: A POTENTIAL DIPLOMATIC PEARL HARBOR

(By Luis Kutner)

The New Panama Canal treaties have become the subject of one of the most emotional political debates in years, perhaps the most controversial issue since the Vietnam War.[1] It has been described as an issue which touches "the nerve endings of American citizens" as few issues ever have.[2] At the heart of the controversy is the 1903 Hay/Bunau-Varilla Treaty [3] under which the Canal was built—and which the new treaties replace,[4] for it is the source of the major issue of debate here: the sovereignty question.[5] Thus, in order to fully understand this and other related issues involved, we must first understand the historical events that led up to the treaty of 1903.[6]

Interest on the part of the United States in building a Panama canal, out of recognition of the strategic importance of this area in Central America (just as the Spanish had recognized it centuries before when Balboa crossed the Isthmus to discover the Pacific Ocean), came about as early as 1821, at the time Panama signed a formal agreement declaring independence from Spain and unified with Colombia then called New Granada).[7] Five years later Henry Clay, as Secretary of State, publicly stated that he favored construction of such a canal across Panama [8] to extend trans-isthmian transit "to all parts of the globe upon the payment of just compensation and reasonable tolls." [9]

What might be called the first basic Panama Canal treaty [10] was negotiated in 1846 with New Granada by the U.S. Minister there, Benjamin A. Bidlack, and was subsequently ratified in 1848. [11] Under the terms of this "Treaty of Peace, Amity, Navigation, and Commerce" [12] New Granada agreed to grant to the U.S. a "free and

open" transit or right of way "across the Isthmus of Panama" *via* any "modes of communication that now exist, or that may be, hereafter, constructed" in exchange for a U.S. guarantee to protect New Granada's territorial integrity within its province of Panama. President Polk, in his submission of the Mallarino-Bidlack Treaty for Senate ratification, emphasized its advantages to American commerce in that such a Panamanian passage would shorten the route to "our possessions on the northwest coast of America," as well as to Asia. The year after the treaty was ratified, a New York company began to build a railway across Panama that was completed in 1855. This first trans-continental railroad was also the first specific step toward the construction of the Panama Canal.[13]

By the 1850s, however, the U.S. has cause to worry about the efforts of a stronger naval and commercial rival, the British, who were seeking to establish a protectorate over all of Central America and, thereby, obtain control over any ship canal in that region. So, to prevent such a monopoly, the U.S. entered into a cooperative agreement with the English, known as the Clayton-Bulwer Treaty, to share equally in the construction, operation, and defense of any such canal to be built in the future. Although later Presidents and Congresses came to feel that this country should have a canal solely under American control rather than sharing it with England, the Clayton-Bulwer Treaty remained in force until the turn of the century, attempts to negotiate an end to it before that time having falled. In 1901 England finally consented to give up its claims to the U.S. and termnate the pact. In its place, the Hay-Pauncefote Treaty allowed the U.S. a free hand in building, controlling, and fortifying an isthmian canal.[14] This treaty of 1901 gave to the United States "the exclusive right of providing for the regulation and management of the canal" when completed and set certain guidelines for the canal's operation [15] (such as being "open to the vessels . . . of all nations," similar to the "free navigation" rule for the Suez Canal under the 1888 Constantinople Convention).[16] The Hay-Pauncefote Treaty is still operative today [17] and, hence, remains legally obligatory on both Britain and the U.S.[18] "the High Contracting Parties under the . . . Treaty." [19]

The emergence of the U.S. from the Spanish-American War as a power in the Caribbean and Pacific had generated new enthusiasm for an isthmian canal, since a water passage now seemed essential if America was to take full advantage of the trade opportunities that had opened up to it in the Pacific.[20] Thus it was that in the year after Hay-Pauncefote was ratified President Theodore Roosevelt, under authority provided by Congress through the Spooner Act, took steps to acquire from Colombia "perpetual" control of a strip of land at least six miles across the Isthmus of Panama, still a part of Colombia, in order to construct a canal. A Columbian representative, Herran, agreed in 1903 to give the U.S. a six-mile-wide zone for a $10 million dollar cash payment, plus another payment of $250,000 annually to Colombia. But the government at Bogata rejected the proposed treaty because it felt the money offered was insufficient and it feared the agreement would seriously impinge on Colombian sovereignty in the Province of Panama.[21]

Panama itself now saw an opportunity to attain its goal of independence which it had been unsuccessfully seeking ever since Colombia had revoked its autonomy.[22] The Panamanians had made 53 previous attempts to gain independence;[23] all failed. On several occasions the U.S. landed troops in Panama, in accord with the Bidlack Treaty, to help Colombia put down the revolts. But this time President Roosevelt was angered at the rejection of the canal treaty by Colombia, which the U.S had always supported in the past; he now referred to the Colombians as "the blackmailers of Bogota." So, when Panamanian nationalists again revolted in 1903, Roosevelt had the *U.S.S. Nashville* present in the Isthmus waters off Colon, Panama. This protective gunboat provided indirect encouragement to the Panamanian insurrectionists in that the show of force by the U.S. Navy kept Colombian troops and ships from suppressing the rebellion. It was a bloodless revolution in which Panama declared its independence and formed the Republic of Panama. The new government was quickly recognized by the U.S., which was also to protect the new country against its former master.[24]

Roosevelt was later to boast "I took Panama," [25] which is certainly more of an admission than a defense of his own action here. But Roosevelt did not foment the revolution,[26] the fervor for separation from Colombia having been deeply rooted in Panama. Nonetheless, this "gunboat" diplomacy of the U.S. did help Panama to become the independent nation it is today.[27]

Almost immediately after the establishment and recognition by the U.S. of Panama, negotiations began on a canal treaty between the two nations.[28] The Panamanian government authorized Phillipe Bunau-Varilla to act as its Ambassador Extraordinary and Plenipotentiary in negotiating the treaty.[29] The negotiations

concluded in the Hay/Bunau-Varilla Treaty to govern administration, operation, and control over the canal, and its zone,[30] a strip of land 10 miles long granted to the U.S. "in perpetuity" by Panama.[31] The treaty draft was signed on November 15, 1903,[32] at 7 o'clock p.m.—hardly "in the dead of night," as President Carter would have the American people believe.[33] Later, on December 4, 1903, the formal signing took place, with the three members of Panama's junta and six Panamanian cabinet members as signatories to the treaty.[34] The treaty was subsequently ratified by Panama in February of the following year,[35] and in May, after ratifications had been exchanged, the Foreign Minister of Panama notified our government that his country considered its jurisdiction over that area of land within the Canal Zone to have ceased.[36]

In exchange for the right to occupy this zone and build a canal therein, the U.S. initially paid Panama $10 million for this transfer of territory—a cost far exceeding the purchase price of the Louisiana District or Alaska, or, for that matter, any other such territorial acquisition. In addition, the U.S. acquired complete ownership of all parcels of privately-owned land within the Zone by paying every individual landowner or squatter for title to their land in fee simple; all dead instruments were received and became a part of official U.S. court records. Further, $40 million was paid to a defunct private French company for whatever rights they has to the ditch they had begun to dig in an earlier attempt (from 1881 to 1889) to build a canal; the tremendous cost of construction had forced the French company into bankruptcy which rendered it incapable of completing its project. The total acquisition costs at this point were over $54 million for the U.S.[37]

Further still, as an aid in the construction of the canal, the U.S. assumed a $250,000 annual obligation previously paid by a private railroad company for the right-of-way of a rail line it had built across the Isthmus. Out of agreement in the Hay/Bunau-Varilla Treaty arose the misconception that the U.S. was paying Panama for renting the Zone.[38] Indeed, in his television speech on the new Panama Canal treaties, President Carter claimed that the U.S. has to "pay rent" to Panama in order to "use their land."[39] Yet there is no specific language in Hay/Bunau-Varilla which even hints that the Canal Zone is a leasehold, and neither Panama nor the U.S. has accepted the idea that the annual annuity (since increased to $1,500,000) is an obligation on a lease for use.[40] Moreover, while the term "lease" is nowhere to be found in the treaty, the term "grant" is used no less than 14 times and, since the grant was "in perpetuity," there is no provision for renegotiation or termination as might be found in a lease agreement. The transfer of territory seems specific and absolute. The boundaries of the Canal Zone, in implementation of the treaty, were first defined through a provisional agreement, ratified by Panama's National Assembly; by that agreement Panama specifically "ceded" the land to the U.S., and the boundary lines were made permanent upon the completion of the canal.[41]

After ten years involving American financing, engineering, and other resources, the building of the Panama Canal had finally been accomplished by 1914 at an outlay of some $387 thousand tax monies.[42] In the early 1920s the U.S. finally reached an agreement with the disgruntled Colombian government to compensate it in the amount of $25 million for the loss of its Panamanian province; in return, Colombia officially recognized the independence of Panama and that the title to the Canal Zone rested "entirely and completely" with the U.S. Over the past seven decades the U.S. has invested almost $2 billion in the Canal Zone, including ridding this once mosquito-infested jungle of malaria.[43]

The foregoing historical summary of the Panama Canal and the original treaty with Panama has been necessary not only to understand the arguments made for turning the Canal over to Panama, but to refute those arguments as well. It has certainly shown that, in terms of Article II of the 1903 treaty, the U.S. clearly has "control" of the Canal Zone "in perpetuity."[44] The U.S. surely has ownership of the Canal Zone,[45] and the moral and legal right—the root of all property rights—of a creator in that which it has created: the Canal itself.[46]

Sovereignty, however, should not be confused with ownership. Sovereignty is supreme and independent authority; it is the right to make decisions not subject to the approval of others; hence, the ultimate exercise of power over a territory. As it pertains to the Panama Canal Zone, it would include the management, operation, and defense of the Canal.[47] Without such sovereignty, the U.S. would have no rights at all in the Canal Zone.[48] Of course, the U.S. does have sovereignty in the Zone, and the sovereign rights it has been exercising were received through the treaty of 1903,[49] to wit:

"The Republic of Panama grants to the United States all the rights, power and authority within the Zone * * * which the United States would possess and exer-

cise if it were the sovereign of the territory within which said lands and waters are located *to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.*[50] (Emphasis added.)

Of the two new treaties, the basic one surrenders all U.S. sovereign rights over the Canal Zone to Panama.[51] The preamble acknowledges "Panama's sovereignty" and Article I(a) abrogates the 1903 convention, which will be replaced by this new treaty six months after the exchange of ratification instruments by both nations. On that effective date of the treaty, Panama assumes general territorial jurisdiction over the Zone; and at noon on December 31, 1999, Panama further assumes control of Canal operations and defense as U.S. military presence ceases.[52] This negotiated transfer of sovereignty[53] repudiates a 75-year-old legal understanding.[54]

Although sovereignty cannot be transferred unless one exercises it to begin with,[55] proponents of the new treaties have advanced the claim that the U.S never had full sovereignty over the Canal Zone, but was merely given certain "rights" by the original 1903 treaty.[56] In so doing, the proponents have adopted an argument almost as old as the Hay/Bunau-Varilla Treaty itself. Some have always felt that the U.S. was never meant to be the ultimate sovereign, with titular, or residual, sovereignty retained by Panama. This question of who holds sovereignty revolves around Article III of the 1903 treaty, cited above. Those who adhere to the notion of titular sovereignty read the phrase "*if* it were sovereign" (emphasis added) as a qualification on the Article II grant. Yet when the final words of Article III denying Panama "the exercise * * * of any * * * sovereign that right, power or authority" are taken in the context of the entire article, it offers proof that the U.S. is sovereign in the Canal Zone. Still, the sovereignty debate goes on today.[57] Indeed, U.S. Ambassador At-Large Ellsworth Bunker (who helped negotiate the new agreements with Panama) spoke of Panama's "titular sovereignty over the Zone" in a speech to the World Affairs Council.[58] But John Hay, Secretary of State at the time the 1903 treaty was signed, dismissed the theory of titular sovereignty as a "barren scepter."[59]

The courts entered the sovereignty debate as early as 1907.[60] In that year the U.S. Supreme Court interpreted the Hay/Bunau-Varilla Treaty as "ceding the Canal Zone" to the U.S. in the case of *Wilson* v. *Shaw.*[61] Mr. Justice Brewer, speaking for a unanimous Court, refused to accept plaintiff's contention that the U.S. had not acquired title to and the exercise of sovereignty over the Canal Zone in the absence of described boundaries in the treaty; he forthrightly declared:

"It is hypercritical to contend that * * * the territory * * * does not belong to this nation, because of the omission of the technical terms used in the ordinary conveyance of real estate. * * *"[62]

And Justice Brewer stated further that disputes "as to the exact boundary on either side" were not infrequent in the "cessions of territory" and, thus, "immaterial," adding, by way of comparison, that——

Alaska was ceded to us 40 years ago, but the boundary between it and the English possessions were not settled until within the last two or three years. Yet no one ever doubted the title of this Republic to Alaska."[63]

The opinion in the Shaw decision is especially interesting in light of President Carter's assurances to the public in his fireside chat of February 1, 1978, that the Supreme Court has "repeatedly acknowledged the sovereignty of Panama over the Canal Zone" and that "(t)he Canal Zone cannot be compared with United States territory. We bought Alaska from the Russians. * * *"[64]

The Supreme Court again addressed the sovereignty issue in regard to Article III of Hay/Baunau-Varilla nine years after it had decided. *Shaw.* Here the plaintiffs sought an injunction to restrain the defendants from seizing plaintiffs' property in the Canal Zone for public use so as to prevent dispossession of the owners until they received the compensation required by the Panamanian constitution. The plaintiff's contended that inhabitants of the Canal Zone had not lost any of these constitutional guarantees under the 1903 treaty with the U.S. The Court, though, ruled, in affirming the Canal Zone District Court, "that where a government by treaty, parts with sovereignty of a part of its possessions, . . . the new sovereignty is equally empowered to legislate therefor without regard to pre-existing laws or conditions."[65]

To be sure, Congress had previously provided in the Panama Canal Act of 1912[66] that the Zone was to "be considered . . . an organized territory of the United States" for purposes of extradition.[67] Later in the *Luckenbach* case,[68] the Supreme Court determined that the Canal Zone was a "foreign port" as it related to the setting of rates of mail carriage—but, clearly, *only* for this purpose of mail transportation. The Court here cited the *Wilson* v. *Shaw* precedent and chose not to examine the sovereignty issue further.[69] When a defendant accused of committing a wrong in the Canal Zone subsequently sought in a New York case[70] to dismiss the complaint

on the ground that the Zone was, in reliance upon *Luckenbach,* a foreign country where that court had no jurisdiction, the court itself denied the motion to dismiss, noting that *Luckenbach* involved special circumstances: *i.e.,* ports relating to the mails; it did not involve places.[71] Moreover, a British court even took note of the special circumstances involved in the *Luckenbach* holding when it found the Canal Zone to be a U.S. possession and, consequently, the town of Cristobal within the Zone to be a U.S. port for the carriage of goods by sea.[72]

Divergent opinions on the sovereignty question are seen in a 1948 Supreme Court case. Mr. Justice Reed observed that the Canal Zone was a territory of the U.S., but then added, rather inconsistently, that it was "territory over which we do not have sovereignty."[73] Albeit dictum, Mr. Justice Jackson dissented from that dictum, saying:

"To such an extent, indeed, are we sovereign in the Canal Zone that Panama has been granted special commercial rights only by express and formal concession, and this Court has reviewed the history of the acquisition and concluded that the title of the United States is complete and perfect."[74]

The most recent Supreme Court decision on the status of the Panama Canal Zone was handed-down in 1972.[75] The Court upheld the ruling of the Fifth Circuit Court of Appeals which declared that "(t)he Canal Zone is an unincorporated territory of the United States over which Congress exercises 'complete and plenary authority'."[76] This case not only referred to the 1903 treaty but also to the treaty of 1936, which stated that the Canal Zone was a "territory of . . . Panama under the jurisdiction of United States * * *"[77] and which the State Department now claims recognized the sovereignty of Panama over the Zone.[78]

The treaty signed in 1936 (Hull-Alfaro), the first substantial revision of the 1903 treaty, took 40 months to ratify. Negotiated under the administration of President Franklin D. Roosevelt as a part of his "Good Neighbor" policy, the treaty made a number of concessions in order to improve relations with Panama. The annual annuity was raised to 430,000 devalued dollars, and the U.S. relinquished, at the request of Panama, its guarantee of the nation's independence, along with its right to intervene in Panama's affairs by maintaining order in those Panamanian cities located near the Atlantic and Pacific entrances of the Canal. More important, though, were the elimination of the United States' right under the original treaty to use any defense sites it required outside the Zone and a provision that the defense of the Canal would become the joint responsibility of the U.S. and Panama. The Army at first opposed the new pact. Given the growing effectiveness of the airplane, the defense of the Canal had to depend on fighter planes and bombers based outside the Zone, in addition to large fixed guns and a mobile Navy. There was also some fear of the expanding Japanese fleet. Finally, in 1939, three years after the treaty had been signed, the strongly Democrat-controlled Senate ratified it on a largely party-line vote—but not before there was included an exchange of notes making it clear that the U.S. had both the right to take unilateral steps to defend the Canal when a sudden crisis precluded joint consultation and to hold military maneuvers outside the Zone if such operations were warranted for the security of the waterway.[79]

Although both the Panamanian Foreign Minister and Ambassador told then-Undersecretary of State Sumner Welles that their country was so satisfied with what it had received from the 1936 treaty it would not request any further concessions, more concessions were later granted to Panama through another treaty revision in 1955 as a result of a prior meeting between President Eisenhower and President Remon of Panama at Washington. The new agreement, signed in Panama, again increased the annuity, this time to $1.9 million; it also sought to ameliorate inequities in wage rates for similar work performed by Americans and Panamanians alike in the Canal Zone. In return, Panama was to permit the U.S. to establish military bases, which the U.S. had paid Panama the price of about $1 billion to obtain during World War II to be evacuated within a year after the war ended. Panama had also wanted the U.S. to rescind the "perpetuity" clause of the 1903 treaty for a 99 year concession to the Canal Zone instead. However, this right the U.S. refused to relinquish.[80] As a matter of fact, the 1955 treaty reconfirmed our rights and sovereignty in the Zone.[81] Perhaps, the lesson of current events had not been lost here. In 1953 Egypt had unilaterally abrogated British rights to maintain a base at Suez and station troops along the canal route. The next year the United Kingdom itself renounced its treaty rights and promised to remove its armed forces within 20 months.[82] Then in 1956, a month after the British had withdrawn from the Suez Canal, Egypt nationalized the Suez Canal Company and kept the profits. It also kept the Canal closed to Israeli ships in spite of treaty commitments, an Anglo-French attack, and a U.S. condemnation.[83]

Although a decided shift in U.S. policy on the sovereignty of the Canal Zone can be clearly detected in the State Department since the Suez Crisis of 1956, one of the first symbolic actions occurred a decade earlier when Alger Hiss, a Communist agent at that time heading the Department's Office of Political Affairs, included the Canal Zone on a list of "U.S.-occupied territories" which he sent to the newly-created United Nations. His action was supported by Secretary of State Dean Acheson.[84]

From 1959 to 1964 the growing demand that the U.S. acknowledge Panama's claim of sovereignty over the Canal Zone, led to outbursts of violence. In 1959 a mob of several hundred student rioters attacked the U.S. Embassy in Panama City and ripped down our flag, then attempted to invade the Canal Zone, intent on planting the Panamanian flag at several locations in Zone territory. To placate the Panamanians, President Eisenhower reacted the following year by ordering that their flag be flown at the Shaler Triangle located within the Zone. The government of Panama took this action as symbolic recognition of its residual sovereignty over the Canal Zone, although Congress, by resolution, had advised Eisenhower that it opposed the flag concession. President Kennedy later authorized flying the Panamanian flag at 17 different locations in the Zone.[85]

A far more serious disturbance exploded early in 1964 when Panamanian street mobs, consisting of members of communistic parties in Panama and Cuba led by persons communist-trained in political action, rioted along the Canal Zone border. Four U.S. soldiers and over 20 Panamanians were killed in the bloodshed; 700 persons were wounded and more than 200 seriously injured; property damage was estimated to be over $2 million. The Panama National Guard took no steps whatever to stop the rioters—and, in fact, some guardsmen even took part in the riot themselves, using their weapons against American troops and sniping at targets in the Zone. As a result of this incident, and at the insistence of the State Department that the Canal Zone really was the sovereign territory of Panama, President Lyndon Johnson near the end of the year publicly committed the U.S. to negotiate a new, fixed-term canal treaty with Panama.[86] The terms of this treaty were to be similar to the subsequent statement of principles found in the Kissinger-Tack Agreement of 1974, which implied that the Canal Zone was Panamanian territory.[87] As a Congressman, Gerald Ford expressed concern over such a treaty, noting that "(w)ith Cuba under the control of the Soviets through its puppet Castro and with increased communistic subversion in South America, a communistic threat to the Panama Canal is clearly a grave danger. . . ." [88] Yet, as President, Ford endorsed the revision of U.S. sovereignty over the Canal Zone to Panama.[89]

The process of treaty negotiations started with Panama by President Johnson were concluded under President Carter.[90] The details of the treaties, written in secret, were kept secret from Congress and the American people until 24 hours before they were signed.[91] Mr. Carter staged the ceremonial signing of the the treaties with Panama's dictator, Omar Torrijos, at Washington on September 7, 1977. Whereupon Gov. Meldrim Thomson of New Hampshire declared September 7 to be a "Second Day of Infamy." [92] To be sure, the new Panama Canal treaties hold all the potential of a diplomatic Pearl Harbor.

The national defense is one of the legitimate purposes of government—and it is of the highest order when it comes to preserving freedom. Foremost to any defense policy is the capability to use and control the seas if a nation's freedom is challenged. That is surely vital to the security of the United States.[93] Especially critical to the defense interests of the U.S. is the Caribbean area.[94] Strategic control of the Caribbean in both war and peace has been essential to U.S. security ever since the Monroe Doctrine was enunciated. That security has already been weakened by the communization of Cuba, 90 miles off our shore. Abandoning sovereignty over the Panama Canal and its Zone will further threaten U.S. security.[95]

The Canal Zone has almost uniformly been included as a part of the U.S. in matters relating to the national defense and security,[96] and there can be no doubt that the Canal itself is quite necessary to U.S. security and defense.[97] Indeed, the Canal, as an inter-ocean waterway, has grown more important than ever to the U.S. today. Soviet sea power is expanding throughout the world, based on a naval doctrine of cutting-off U.S. lines of sea communication.[98] With the communists out to dominate or influence global maritime "choke points." [99] future control of the Panama Canal Zone is a real concern [100] since the Canal is one of those choke points.[101] Moreover, even as the Soviet Navy has expanded, the U.S. Navy is shrinking to the point where it is currently out-numbered in submarines and surface ships by the Soviets. This reduction in the size and power of the U.S. Navy's active fleet means that, while it may have a two-ocean responsibility, the U.S. does not really have a two-ocean Navy; it is a one-ocean Navy, at best one-and-a-half. Thus the

great need of the Panama Canal to the U.S. Navy is readily apparent. In order to compensate for the limited adequacy of its combat elements, the Navy must obtain maximum combat effectiveness. Moving naval ships, personnel, and supplies between the Pacific and Atlantic Oceans through a shorter route with greater speed and quicker response time enables the Navy, with a steady flow of logistic support, to meet a sudden crisis or conflict. For example, during the Cuban Missile Crisis, Marines and supplies from the West Coast were ferried through the Panama Canal.[102] Acknowledging the Canal as an essential defense link between the Atlantic and Pacific, General V. H. Krulac, U.S. Marine Corps (ret.), has said that "(i)t is only because of the waterway that we are able to risk having what amounts to a bare-bones, one-ocean Navy." [103]

In making for an effective U.S. Navy in both oceans, every naval vessel now on active duty (including nuclear-powered, ballistic-missile firing submarines, attack subs, combat surface ships, and support and supply ships for aircraft carriers) can transit the Panama Canal, save for 13 of our largest carriers—too large to pass through the present locks. However, the trend in naval shipbuilding is toward smaller, though more effective, ships; and well before the year 2000 these new, smaller-sized ships will have begun to replace those larger crafts.[104]

Although there is overwhelming agreement among the majority of high-ranking military experts on the strategic importance of the Canal to U.S. security, there is still disagreement over ratification of the new treaties.[105] The Joint Chiefs of Staff support for ratification is understandable. Secretary of Defense Harold Brown has stated that any of the Joint Chiefs who opposed the treaties should resign.[106] Obviously, any officer on active duty who does not wish to jeopardize his military career will simply adhere to the views of those over them.[107] However, retired Admiral Thomas H. Moorer told the Senate Foreign Relations Committee that "(a) large majority of our war and contingency plans are totally infeasible unless one assumes that full priority use of the Canal will be available." [108] And, appearing before the Senate Armed Services Committee to oppose the disposal of the Panama Canal by reason of the fact that its "defense and use . . . is wrapped unextricably with the overall global strategy of the United States," [109] Moorer concluded:

"* * * A maritime link between the Atlantic the Pacific is vital to the security of the United States and will always be so. * * * A permanent U.S. prescence will provide the best defense and the best insurance against a major conflict in the Caribbean area." [110]

Together with three other former Chiefs of Naval Operations (Admirals Arleigh Burke, Robert Carney, and George Armstrong), Moorer had earlier written to President Carter on the importance of "this interoceanic waterway." Drawing on their own experiences in active service, the admirals emphasized the strategic value of the Panama Canal. "As Commander-in-Chief," they informed Mr. Carter, "you will find the ownership and sovereign control of the Canal indespensable during periods of tension and conflict." The four also warned of an "existing military threat," noting the "close ties" the present regime in Panama had with Cuba, "which in turn is closely tied to the Soviet Union"; and they cautioned the President further that the loss of the Canal * * * a serious set-back in war, would contribute to the encirclement of the United States by hostile naval forces and threaten our ability to survive." [111]

Nevertheless, President Carter asked the Senate to approve the two new Panama Canal treaties that would relinquish U.S. control over this most strategic of waterways in the world to a pro-communist country. Upon implementation of the treaties only four of the 14 U.S. military bases presently in the Canal Zone will remain and these bases will come under the direct civil and political jurisdiction of Panama even before the U.S. is technically scheduled to leave in 1999, since sovereignty over the Zone passes to Panama with treaty ratification.[112] While paragraph 2 of Article IV in the basic Canal treaty grants to the U.S. the "primary responsibility" to protect and defend the Canal "(f) or the duration" of that treaty (or until December 31, 1999), it is contradicted by paragraph 1, which gives both the U.S. and Panama an *equal* role in the protection and defense of the Canal "from an armed attack or other actions which threaten * * * (its security * * * "; under those circumstances Panama could thwart any U.S. defense effort. After 1999, when the basic treaty expires and the U.S. no longer has any bases, troops, or other forms of military presence or power in the Isthmus to prevent a blocking of the Canal, only the second treaty, the so-called "Neutrality Treaty," will remain in effect. Just what defense role the U.S. will then have in upholding its interests in the Canal is unclear due to the vaguely-worded treaty itself, particularly Article IV.[113]

The language of Article IV of the Neutrality Treaty is as ambiguous as that of Article VI in the first treaty, posing problems of interpretation.[114] The possiblity of

differences or variations between the language used in the English and Spanish texts of the treaty could well alter the meaning of the provisions and create a controversy relating to the interpretation of key clauses in this document.[115] The controversy over Article IV is whether or not the U.S. has the right of intervention to protect the Canal's neutrality.[116] The Carter Administration claims that Article IV guarantees the U.S. permanent and unilateral legal right to re-intervene and take whatever steps it deems necessary in order to ensure the Canal's neutrality and open access if it is subject to an attack or closure by hostile forces—even if that threat comes internally from Panama. That explanation has been flatly rejected publicly by Torrijos and the Panamanian treaty negotiators, who assert that the U.S. has the right to defend the Canal only if it is threatened by a foreign power an Panama requests assistance against the aggression; the treaty does not say," in the words of Panama's chief negotiator, Dr. Romulo Escobar Bethancourt, "that it falls to the United States to decide when neutrality is violated or not." [117] What Article IV actually states is merely that the U.S. and Panama—

"agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral . . ."[118]

This is extremely ambiguous and imprecise. But it was deliberately intended to be so because neither U.S. nor Panamanian negotiators seemed willing to give up their respective positions on the right of intervention—although Escobar, in a speech to the Panamanian General Assembly on August 19, 1977, reported that the U.S. "gave up on the idea of its having a guarantee of neutrality over the Canal," just as Bunker insisted, "Our own military defense options are not restricted. We will be free to defend the canal's neutrality as now. . . ." It is all very confusing, to be sure.[119] In the case of disputes over treaty interpretation, reconciliation of differences is provided for through consultation or, perhaps, mediation—a tacit acknowledgement that both interpretations legally have the same weight or validity.[120]

At least one thing is clear about this neutrality treaty: it would force the U.S. to give free passage through the Canal to nations at war with it or its allies. Article II provides that in time of war the Canal "shall remain open to peaceful transit by vessels of all nations," and Article III, section 1(e), specifically adds that "vessels of war of all nations shall . . . be entitled to transit the Canal" without being required to submit to inspection, search, or surveillance. It is certainly not a reassuring thought to have the U.S. committed, for example, to allowing Soviet ships and submarines to peacefully pass through the Canal when we might be at war with Russia.[121]

In an attempt to eliminate the ambiguities over the right of the U.S. to defend the Panama Canal under the Neutrality Treaty, Torrijos met with Carter at the White House on October 15, 1977, and the two issued a joint "Statement of Understanding" on what Article IV was supposed to mean. The statement indicates that the U.S. has the right to act against any "threat directed against the Canal,"yet at the same time it does not permit the U.S. the right of intervention in the "internal affairs" of Panama, violating its territorial integrity. Thus, should the U.S. intervene to protect the Canal, which was then a part of Panama, it would have to intervene in Panama's internal affairs. So, the ambiguities persist [122] even though President Carter has proclaimed, on the basis of the statement of understanding, that the U.S. "can take whatever military action is necessary to make sure the Canal always remains open and safe."[123]

Still the Carter-Torrijos statement is nothing more than a personal interpretation on the part of these principals. It does not change the treaty language [124] nor the contractural relationship between parties to the treaty. As a statement of "understanding," it merely explains a position on a given matter in the treaty; it is only a tangent to the treaty's basic operation.[125] Because such a statement is not part of a treaty, it has no binding effect on the parties under international law.[126] The real understanding of a treaty will be limited to the very language in the treaty itself.[127] Hence, in the event the U.S. found it necessary to intervene for whatever reason, only the treaty language would count—and this particular treaty conveys no specific right of intervention to the U.S. at all.[128] Moreover, neither Carter nor Torrijos signed their statement of understanding (a fact Torrijos later boasted about) and it remains entirely informal.[129] While adding the substance of the understanding to the treaty *via* a Senate amendment makes it formal,[130] this only begs a fundamental question: if the Panama Canal is vital enough to the freedom and security of the American people that we want the right to send U.S. forces back there after it is turned over to Panama, then why shouldn't we hang on to it in the first place?

It has been said that approval of the treaties will remove an age-old irritat to U.S.-Panamanian relations and buy the goodwill of the people of Panama, thereby avoiding future violence.[131] Indeed, Defense Secretary Brown admitted to an audi-

ence in Phoenix, Arizona, that the treaties had to be accepted in order to keep Panama as a friend.[132] About this whole transaction there is an implication of blackmail diplomacy. Even though the opponents of the new Panama Canal treaties would like better relations with Panama, how absurd it would be strategically to surrender our rights to operate and defend the Canal into the hands of a potential enemy.[133] Making such a major concession as this will only compound the errors of our past policies.

If, after a series of defeats and retreats from the Bay of Pigs to Vietnam, there is somewhere the U.S. is going to stand steadfast and draw a line beyond which its adversaries, who, as Solyzhenitsyn warns, are out to destroy it, will not cross, then the Panama Canal must be that place.[134]

The Republic of Panama originally ceded to the United States by treaty territory running through the heart of that country for the purpose of constructing a canal, and within that territory the U.S. did, indeed, construct such a canal wholly at its own cost. Panama also conferred upon the U.S. the necessary sovereignty and jurisdiction over the Canal Zone occupied by this world canal enabling the U.S. to maintain, operate, and protect it. That the U.S. enjoys the absolute right of ownership and control of the Canal has been decided by the Supreme Court. This should satisfy those who feel that titular sovereignty is at least reserved to Panama. In conclusion, it is the view of this writer that the U.S. should not abandon the Panama Canal and give back the sovereignty over the Canal Zone to Panama.[135]

FOOTNOTES

[1] Adam Clymer, "Panama Canal Controversy and Its 75-Year History: Some Questions and Answers," New York Times (Feb. 9, 1978), at A14; Michael Mandelbaum, "Big Ditch Debate," N.Y. Times Book Review (Feb. 19, 1978), at 11.

[2] "Final Countdown on the Panama Canal—Him or Me?" American Legion National Security-Foreign Relations Bulletin, printed in Congressional Record (Jan. 19, 1978—daily ed.), at E27.

[3] "Historical Background on the Panama Canal," statement issued by Sen. Pearson, Feb. 3, 1977, printed in *Cong. Rec.* (Feb. 6, 1978—daily ed.), at S1253. Hereinafter cited as "Historical Background."

[4] Clymer, *loc. cit.*

[5] "The Panama Canal Issue," Senate Republican Policy Committee study printed in Cong. Rec. (Dec. 6, 1977—daily ed.), at S19335, S19340-1; Sen. Strom Thurmond, "Should Canal Treaties be Approved?—No," Chicago Tribune (Sept. 11, 1977), sec. 2, at 1.

[6] "Historical Background," *supra* note 3; Clymer, *loc. cit.*

[7] Statement of Jules Davids before the Senate Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978—daily ed.), at S169-70; statement of Cong. Eldon Rudd before Foreign Relations Committee, Jan. 25, 1978, in Cong. Rec. (Jan. 25, 1978—daily ed.), at S475.

[8] "Historical Background," *loc. cit.*

[9] Quoted in Davids, *supra* note 7, at S170.

[10] Daniel J. Flood, "Panama Canal Giveaway Treaty Crisis—A Challenge to the Congress," address at Wilkes-Barre, Pa., Nov. 21, 1977, printed in Cong. Rec. (Jan. 19, 1978—daily ed.), at H35.

[11] Davids, *loc. cit.*

[12] 9 Stat. 881, T.S. No. 54.

[13] Davids, *loc. cit.;* Flood, *supra* note 10.

[14] Davids, *ibid.;* statement by Richard W. Leopold before Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978—daily ed.), at S172; "Historical Background," *loc. cit.*

[15] Hanson W. Baldwin, "The Panama Canal: Sovereignty and Security," 44 AEI Defense Review 12 (1977), re-printed in Cong. Rec. (Sept. 16, 1977), at S15133.

[16] Treaty Between the United States and the United Kingdom to Facilitate the Construction of a Ship Canal of 1901, Article III.

[17] Baldwin, *loc. cit.*

[18] Statement by John Norton Moore before Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978—Daily ed.), at S180.

[19] *Supra* note 16, Art. IV.

[20] "Historical Background" *loc. cit.;* Leopold, *supra* note 14.

[21] Davids, *loc. cit.;* Rudd, *supra* note 7; Baldwin, *loc. cit.;* Clymer, *loc. cit.;* "Historical Background," *ibid.*

[22] Baldwin, *ibid.;* Davids, *id.*

[23] Rudd, *loc. cit.*

[24] Davids, *loc. cit.;* "Historical Background," *loc. cit.;* Baldwin, at S15133-4; Leopold, *loc. cit.;* Rudd, *loc. cit.* See also Theodore Roosevelt "Fear God and Take Your Own Part" (1914), ch. XI.

[25] H. S. Commager, "Presidential Power: The Issue Analyzed," N.Y. Times Magazine (Jan. 14, 1951), at 23.

[26] Rudd, *loc. cit.*

[27] Davids, *loc. cit.;* "The Panama Canal Issue," *supra* note 5, at S19335.

[28] Baldwin, at S15134; Leopold, *loc. cit.*

[29] Clymer, *loc. cit.;* Cong. Rec. (Feb. 2, 1978—daily ed.) at S1103.

[30] Baldwin, *loc. cit.*

[31] Convention for the Construction of a Ship Canal to Connect the Waters of the Atlantic and

Pacific Oceans, Nov. 18, 1903, U.S.-Panama, 33 Stat. 2234, T.S. No. 431, Art. II. In legal terms, "perpetuity" is defined as "endless duration; forever." Black's Law Dictionary (1951), at 899. Perhaps, it was defined more plainly by a constitutional law professor (Dr. L. A. Wehling of Valparaiso University) who once said perpetuity was "a hell of a long time."

[33] Leopold, *loc. cit.*

[33] Opening statement of John Nicholaides in debate at San Diego University, printed in Cong. Rec. (Jan. 25, 1978—daily ed.), at E149.

[34] Cong. Rec., *supra* note 29.

[35] "Historical Background," *loc. cit.*

[36] Baldwin, *loc. cit.*

[37] Rudd, at S745–6; *ibid.*, at S15133–4; "Historical Background," *loc. cit.;* "The Panama Canal Issue," *loc. cit.*

[38] Baldwin, at S15134; see also Cong. L. P. McDonald, "Giveaway," Review of the News (Jan. 25, 1978).

[39] N.Y. Times (Feb. 2, 1978), at A14.

[40] Martha Jane Shay, "The Panama Canal Zone: In Search of a Juridical Identity," 9 International Law and Politics 15 (Spring 1976), at 45, 48.

[41] Baldwin, *loc. cit.;* Rudd, at S475; Sen. Orrin G. Hatch, "Panama Canal Giveaway Violates Constitution," Conservative Digest (Sept. 1977) reprinted in Cong. Rec. (Sept. 7, 1977), at S14290.

[42] "The Panama Canal Issue," *loc. cit.*

[43] "Historical Background," *loc. cit.;* Baldwin, *loc. cit.;* Rudd, *loc. cit.; ibid.;* M. N. Buechner, "Why We Must Keep The Canal," Washington Report (Dec. 1977), reprinted in Cong. Rec. (Jan. 27, 1978—daily ed.), at S689.

[44] Baldwin, at S15134–5.

[45] Thurmond, *supra* note 5.

[46] Buechner, *supra* note 43.

[47] Thurmond, *loc. cit.*

[48] Rudd, at 476.

[49] Thurmond, *loc. cit.*

[50] *Supra* note 31. Art. III.

[51] Thurmond, at 2; Rudd, *loc. cit.*

[52] "The Panama Canal Treaties of 1977," 11 International lawyer 771 (Fall 1977), at 771; N.Y. Times (Sept. 7, 1977), at A16; Charles A. Wheeler, "What the Canal Treaties Mean," Chicago Sun-Times (Feb. 22, 1978), sec. 2, at 2; "New Panama Canal Agreement: Basic Elements," GIST (Aug. 1977).

[53] Baldwin, at S–15135.

[54] Rudd, *loc. cit.*

[55] Baldwin, *loc. cit.*

[56] "Why a New Panama Canal Treaty?", speech by Sol M. Linowitz, The Department of State (Aug. 19, 1977), at 3; Ellsworth Bunker, "Should Canal Treaties be Approved?—Yes," Chicago Tribune (Sept. 11, 1977), sec. 2 at 2; Hatch, *supra* 41.

[57] Shay, at 15–8, 21; "The Panama Canal Issue," at S19335, S19341.

[58] Congressional Digest (April 7, 1976), at 119.

[59] Letter to J. D. de Obaldia, 1 *For. Rel. U.S.* 613 (1904).

[60] Thurmond, at 1.

[61] 204 U.S. 24.

[62] *Ibid.*, at 33, 27 St. Ct. 233, at 235.

[63] *Id.*

[64] N.Y. Times (Feb. 2, 1978), at A14.

[65] *Dixon, et al.* v. *Goethals, et al.*, 242 U.S. 616 (1916).

[66] 37 Stat. 560.

[67] *Ibid.* S 12, ch. 390.

[68] *Luckenbach Steamship Co.* v. *U.S.*, 280 U.S. 173 (1929).

[69] *Ibid.*, at 181, 177–8. In case another case involving the Luckenbach Co., it was noted that Congress enacts laws for the Canal Zone because it has no local legislature. 196 F. Supp. 835 (D.C.C.Z. 1961), Aff'd 303 F. 2d 252 (5th Cir. 1962).

[70] *Taylor* v. *Insurance Co. of North America*, 9 F. Supp 574 (S.D. N.Y., 1934).

[71] *Ibid.*, at 575.

[72] *Stafford Allen and Sons Ltd.* v. *Pacific Steam Navigation Co.*, 2 All E.R. 716 (C.A., 1956), at 719.

[73] *Vermilya-Brown Co.* v. *Connell*, 335 U.S. 377 (1949), at 381.

[74] *Ibid.*, at 402.

[75] *U.S.* v. *Husband R.*, 453 F. 2d 1054 (5 Cri. 1971); *cert.* denied 406 U.S. 935 (1972). The defendant, Jonathan Howell R. (Roach) appealed his conviction of a misdemeanor for operating his bus in violation of Canal Zone regulations restricting non-franchised bus operations so that a franchised company would have exclusive access (or almost so) to several areas while still allowing any bus operator to carry on his business along otherwise prohibited routes by obtaining a permit.

[76] *Ibid.*, 453 F. 2d at 1057.

[77] General Treaty of Friendship and Co-operation, March 2, 1936, United States-Panama, 53 Stat. 1807, T.S. No. 945.

[78] Baldwin, at S15134.

[79] Davids, *loc cit.;* Leopard, at S173; *ibid.*

[80] Baldwin, *id.;* Leopold, *id.;* Davids, at S171; Agreement for the Lease of Defense Sites in the Republic of Panama, 1942, 57 Stat. 1232, Art. V; "Panama Canal: The New Treaties" (Dept. of State publication, 1977), at 5.

[81] Flood, *supra* note 10, at H36; Thurmond, *loc. cit.*

The 1955 treaty also provided for the disposition of some property in the Canal Zone to Panama, but required implementing legislation by Congress for the transfer in accord with the Federal Constitution. Article IV, Section 3, clause 2, of the Constitution empowers Congress "to dispose of . . . the Territory or other Property belonging to the United States." One of the Framers, Randolph of Virginia, stated that this was "a most express restriction" on the treaty-making authority, serving as a check against sacrificing the nation's property rights to a foreign power without consideration by both houses of Congress. In *Geofroy* v. *Riggs,* 133 U.S. 258 (1890), the Court said that "a treaty, which purported to exercise power exclusively granted to Congress would require implementing legislation." Courts have repeatedly ruled that the Article IV grant of authority to act on the disposal of public territory is an exclusive power of the full Congress to which all other power over property is subordinate in such cases as *Wisconsin Central R.R. Co.* v. *Price County,* 133 U.S. 496 (1890), and *Sioux Tribe* v. *U.S.,* 316 U.S. 317 (1942). Unfortunately, the basic new Panama Canal treaty conveys U.S. property to Panama *sans* any such joint congressional action, thus by-passing the constitutional role and right of the House of Representatives in disposing of federal property interests. Kenneth Merlin, "Panama—The Constitutional Question," printed in Cong. Rec. (Feb. 7, 1978), at E458, E457; remarks by Sen. Goldwater, Cong. Rec. (Feb. 23, 1978—daily ed.), at S2114–5, and (Mar. 3, 1978), at S2847–8; Hatch, at S14291; Raoul Berger, Memorandum Re. Panama Canal Treaty: Dean Louis Pollock's Reply, printed in Cong. Rec. (Feb. 7, 1978—daily ed.), at S1414–5; W. M. Whitman, "Panama Canal Treaty Problems," a study printed in Cong. Rec. (Feb. 6, 1978—daily ed.), at S1234.

[82] Leopold, *loc. cit.*

[83] Minority views of Sen. Robert P. Griffin in Foreign Relations Committee report on Panama Canal treaties, printed in Cong. Rec. (Feb. 6, 1978—daily ed.), at S1259.

[84] Baldwin, at S15139 fn 6, S15134; McDonald, *supra* note 38.

[85] Davids, *loc. cit.;* Baldwin at S15134; L. Ealy, "Yanqui Politics and the Isthmian Canal (1971), at 110, 112.

[86] Davids, *ibid.,* Mario Lazo, "Panama Canal Giveaway" (1971), at 12; Baldwin, "The Panama Canal Treaties: Are They Salvageable?", paper printed in Cong. Rec. (Feb. 1, 1978—daily ed.), at E331 (herein after cited as Baldwin, "The Panama Canal Treaties"); "Panama Canal: the New Treaties," *loc. cit.;* Shay, at 42.

[87] Baldwin, "The Panama Canal: Sovereignty and Security," *supra* note 15, at S15143 (hereinafter cited as Baldwin, "Sovereignty and Security"); Leopold, *loc. cit.;* Thurmond, *loc. cit.*

[88] Quoted in Lazo, *loc cit.*

[89] Baldwin, "Sovereignty and Security," *loc. cit.*

[90] Davids, *loc. cit.;* Clymer, *loc. cit.;* "Panama Canal: The New Treaties," *loc. cit.*

[91] Rudd, at S477–8.

[92] Nicolaides, *supra* note 33.

[93] Gen. Andrew J. Gatis, "The Canal's Vital Defense Role," article in Veterans of Foreign Wars magazine (Jan. 1978), reprinted in Cong. Rec. (Feb. 22, 1978—daily ed.), at E788–9.

[94] "The Panama Canal Issue," at S19342.

[95] Baldwin, "Sovereignty and Security," at S15131–2, S15138. Sen. Stennis has called the new Canal treaties "an unnecessary gamble with our national security interests." Cong. Rec. (Mar. 8 1978—daily ed.), at S3201.

[96] Shay, at 26.

[97] "Views of Hon. Robert J. Lagomarsino on the Issue of the Panama Canal," Cong. Rec. (Jan. 31, 1978—daily ed.), at E276; "The Panama Canal Issue," at S19341–2.

[98] Griffin, *supra* note 83, at S1254; Gatis, at 789; "The Panama Canal Issue," at S19342.

[99] Baldwin, "Sovereignty and Security," at S15138.

[100] Griffin, *loc. cit.*

[101] Paul B. Ryan, "The Panama Canal Controversy" (1977), at 50.

[102] Griffin, *loc. cit.;* Baldwin, "sovereignty and Security," at S15131; Gatis, *loc. cit.;* "The Panama Canal Issue," at S19341; statement by Adm. Thomas H. Moorer, U.S.N. (Ret.), before Senate Armed Services Committee, Jan. 31, 1978, printed in Cong. Rec. (Jan. 31, 1978), at S898. The U.S. Navy with 461 ships now, is at half the size it was a decade ago. Col. R. D. Heine, Jr., "Panama Canal Treaty Seen As Vital Issue for U.S.," Detroit News (Aug. 21, 1977), re-printed in Cong. Rec. (Mar. 7, 1977), at S3116.

[103] Quoted in Griffin and in Baldwin, *ibid.,* and in Rudd, at S476.

[104] Griffin, at S1255; Baldwin, *id.,* at S15131–2; "The Panama Canal Issue," *loc. cit.;* Rudd, *id.;* Lagomarsino, *supra* note 97.

[105] Griffin, at S1254; Rudd, id.

[106] Arizona Republic, Jan. 25, 1978.

[107] Gatis, *loc. cit.*

[108] Quoted in Griffin, *loc. cit.*

[109] Moorer, *supra* note 102, at S897.

[110] *Ibid.,* at 899.

[111] Ryan, at 142–4.

[112] "Do New Treaties Give U.S. Right to Defend Canal?" Human Events (Sept. 17, 1977), printed in Cong. Rec. (Sept. 19, 1977—daily ed.), at E5683–4. Hereinafter cited as "Right to Defend Canal?".

[113] "The Panama Canal Issue," at S19337, S19339–40; Griffin, at S1255–6; statement of Richard Falk before the Senate Foreign Relations Committee, Jan. 19, 1978, printed in Cong. Rec. (Jan. 20, 1978—daily ed.), at S174; Baldwin, "The Panama Canal Treaties," at E332; *ibid.,* at E5683.

[114] Whitman, *supra* note 81, at S1233.

[115] Sylvia Costellanos, analysis printed in Cong. Rec. (Jan. 25, 1978—daily ed.), at S469–70.

[116] "The Panama Canal Issue," at S19339.

[117] Griffin, at S1256–7; "Right to Defend Canal?" *supra* note 112; Rudd, at S477; "Panama Canal Treaty Problems," at S1233–4; Lagomarsino, at E275.

[118] "The Panama Canal Treaties of 1977," at 789; N.Y. Times (Sept. 7, 1977), at A17.

[119] "The Panama Canal Issue," *loc. cit.;* Rudd, *loc. cit.;* "Right to Defend Canal?" at E5683-4; Bunker, *supra* note 56.

[120] Costellanos, at S470.

[121] Thurmond, "The Case for Rejection," The Retired Officer (Dec. 1977), printed in Cong. Rec. (Jan 19, 1978—daily ed.), at S101; "The Panama Canal Treaty," a preliminary analysis printed in Cong. Rec. (Sept. 14, 1977—daily ed.), at E5570; Jenkins Lloyd Jones, "Panama Bug-Out," Los Angeles Times, printed in Cong. Rec. (Feb. 23, 1978—daily ed.), at S2229-30.

[122] Whitman, at S1234; Rudd, at S477; "The Panama Canal Issue," at S19340; "Right to Defend Canal?" at E5683; Baldwin, "The Panama Canal Treaties," *loc. cit.*

[123] N.Y. Times (Feb. 2, 1978), at A14.

[124] Whitman and Baldwin, *supra* note 122.

[125] "Understandings, Reservations, and Amendments to the International Treaties," report prepared by Library of Congress, printed in Cong. Rec. (Jan. 31, 1978—daily ed.), at S915-6.

[126] "The Panama Canal Issue," *loc. cit.*

[127] Costellanos, *loc. cit.*

[128] "The Panama Canal Issue," at S19339, Baldwin; "The Panama Canal Treaties," *loc. cit.*

[129] Rudd, at S477-8; Whitman, *loc. cit.* "The Panama Canal Issue," at S19340.

[130] Falk, *supra* note 113. The Senate did, in fact, overwhelmingly adopt an amendment of this nature. Washington Star (Mar. 11, 1978), at A-5.

[131] Thurmond, "Should Canal Treaties Be Approved?—No," supra note 5, at 1-2, Baldwin, "The Panama Canal Treaties," at E331 and "Sovereignty and Security," at S15138.

[132] *Supra,* note 106.

[133] Thurmond, *supra* note 131; Baldwin, "The Panama Canal Treaties," *loc. cit.;* Buechner, at S688; Rudd, at S476.

[134] Baldwin, "Sovereignty and Security," *loc. cit.;* "The Panama Canal Issue," at S19342; John Davis, "The Canal: A Rampart." N.Y. Times (Nov. 29, 1977), re-printed in Cong. Rec. (Mar. 8, 1978), at E1111.

[135] On March 16th, 1978 with only one vote to spare the Senate yesterday approved the first of two Panama Canal treaties, saving President Carter from a potentially devastating defeat. The vote, one of those few tallies likely to go down in the history books, was 68 to 32. Treaty opponents immediately vowed a full scale effort to defeat the other canal treaty, which provides for a gradual turnover of the canal to Panama during the next 22 years. The opponents professed optimism about their chances to kill the second treaty on which the Senate is expected to vote next month. Reaching into Shakespeare for allusions to Brutus and Cassius at the battle of Philippi, Senate Majority Leader Robert Byrd declared: "The Rubicon of decision on the treaty is now to be crossed."

[From the Congressional Record—Senate, Apr. 11, 1978]

The Panama Canal Treaty

CORRECTION OF ROLLCALL VOTE NO. 87 EXEC.—MOTION TO TABLE HATCH AMENDMENT NO. 38

In the Record of yesterday, April 10, at page S5169, rollcall vote No. 87 Exec. is incorrectly set forth, in that Mr. Baker, Mr. Robert C. Byrd, and Mr. Ford are shown as voting "yea." Mr. Baker, after having voted in the affirmative, withdrew his vote and announced a live pair with Mr. Thurmond; Mr. Robert C. Byrd, after having voted in the affirmative, withdrew his vote and announced a live pair with Mr. Harry F. Byrd, Jr.; and Mr. Ford, after having voted in the negative, withdrew his vote and announced a live pair with Mr. Hollings, all as shown in the first column.

In the permanent Record rollcall vote No. 87 Exec. will be printed as follows:

[Rollcall Vote No. 87 Exec.]

YEAS—54

Bayh	Hathaway	Muskie
Bellmon	Hayakawa	Nelson
Bentsen	Heinz	Nunn
Biden	Hodges	Packwood
Bumpers	Huddleston	Pearson
Case	Humphrey	Pell
Chiles	Inouye	Percy
Church	Jackson	Proxmire
Clark	Kennedy	Ribicoff
Cranston	Leahy	Riegle
Culver	Long	Sarbanes
Durkin	Magnuson	Sparkman
Glenn	Mathias	Stafford
Gravel	Matsunaga	Stevenson
Hart	Melcher	Stone
Haskell	Metzenbaum	Weicker
Hatfield, Mark O.	Morgan	Williams
Hatfield, Paul G.	Moynihan	Zorinsky

NAYS—29

Allen	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Helms	Scott
Cannon	Johnston	Stennis
Dole	Laxalt	Stevens
Domenici	Lugar	Talmadge
Eastland	McClure	Tower
Garn	Randolph	Wallop
Goldwater	Roth	Young
Griffin	Sasser	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—3

Robert C. Byrd, for.
Baker, for.
Ford, against.

NOT VOTING—14

Abourezk	Bartlett	Chafee
Anderson	Byrd, Harry F., Jr.	Curtis

Danforth	Hollings	McIntyre
DeConcini	Javits	Thurmond
Eagleton	McGovern	

So the motion to lay on the table was agreed to.

THE PANAMA CANAL TREATY

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, 1st Session, Calendar No. 2, which the clerk will state.

The second assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, the Panama Canal Treaty.

The Senate resumed the consideration of the treaty.

AMENDMENT NO. 100

The PRESIDING OFFICER. The pending question is the amendment by the distinguished Senator from North Carolina (Mr. Helms) which the clerk will state.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an amendment numbered 100.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Before the first sentence of paragraph 2, of article IV, insert the subparagraph designation "(a)".

(b)(1) When in the performance of official duties, the vessels and aircraft operated by or for the United States Forces may move freely through Panamanian air space and waters without impediment.

"(2) Similarly, the vehicles, equipment and personnel of the United States Forces may, when in the performance of official duties, move freely in the Republic of Panama without impediment.".

The PRESIDING OFFICER. Time for debate on this amendment is limited to 1 hour, to be divided equally between the distinguished Senator from North Carolina (Mr. Helms) and the distinguished Senator from Maryland (Mr. Sarbanes).

Who yields time?

Mr. HELMS. Mr. President, I yield myself such time as I may require.

(Mr. Haskell assumed the chair.)

Mr. HELMS. Mr. President, when one looks at the map of the proposed defense installations and canal installations that would be adopted under this treaty, the most striking feature is that the various installations are not contiguous. The appearance of the map has been described by some as resembling Swiss cheese; others have referred to it as "the Balkanization" of Panama. In any case, what you see are a series of separate compartments, dedicated to different uses, and having a different status.

We have, for example, some areas designated as "canal operating area," others as "canal operating areas which will revert to Panama during the life of the treaty," "areas subject to separate

bilateral agreement," "defense site," "military area of coordination which will revert to Panama during the life of the treaty," "military area of coordination during the life of the treaty," and "area of civil coordination (housing)."

Not only are all of these areas separate and distinct, but some of them are entirely surrounded by areas of Panamanian jurisdiction. It is evident that there will be many occasions when U.S. military vehicles and personnel must intrude on Panamanian territory simply to gain access to areas which are dedicated to our use during the life of the treaty. In case of an emergency, of course, we would have to take military action to defend these sites; but even if there were no military emergency, our military personnel would have to pass through areas of Panamanian jurisdiction simply in the performance of routine official duties.

In either case, an unfriendly Government of Panama, or leftist agitators could attempt to raise the issue of U.S. military forces supposedly violating the territorial integrity of Panama.

And why could they raise this issue? They could raise such an issue because incredibly the treaty itself does not provide any specific rights of access to our various civil and military installations on the isthmus. That is really extraordinary when you think about it. Here we have widely separate installations some of them of critical importance without any clear treaty right to have access to them.

Now what does the treaty provide?

The treaty provides first of all that the United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Is that a general writ of authority to move within Panamanian jurisdiction? Maybe yes, and maybe no, depending upon how you interpret it. There is no specificity as to how this commitment may be implemented.

Second, the treaty provides that each party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threatens the security of the Panama Canal or of ships transiting it. Is that a general writ of authority to move within Panamanian jurisdiction? No it is not, for it is operative only in times of a "threat," that is, times of emergency. What happens to the rest of the time? Suppose the United States determines through its constitutional processes that Panama is the threat to the security of the canal, and Panama, through its constitutional processes decides that the United States is the threat. What happens then? Either the United States violates Panamanian internal processes and affairs, or the United States gets out.

What else does the treaty provide? It also provides that, "for the duration of this treaty, the United States of America shall have primary responsibility to protect and defend the canal." But what is the canal? Does the term "canal" include the semaphore fields, isolated from canal operating areas and other defense sites? Does the term "canal" include electrical generation plants and potable water plants that are isolated from the canal operating areas? The treaty is silent.

Is there anything in the treaty that provides for access to our installations? The only hint of such rights is in the following sentence of article IV, paragraph 2:

> The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date.

This is the only sentence, Mr. President, the only sentence which even suggests that we have rights of access; but it does not specify what those rights are. There are no treaty guarantees, Mr. President.

Instead, we have to turn to the agreement in implementation of article IV. Now, when we turn to the implementation agreement, it takes a long time to find anything at all that might be interpreted as permitting access to United States and canal installations by U.S. military forces. Where is that section? It appears to be that it is in article XV of the implementation agreement, an article devoted to "Movement, Licenses and Registration of Vessels, Aircraft, and Vehicles." In short, it is an article devoted to such administrative technicalities as drivers' licenses, automobile license tags, pilots' licenses, and so forth.

Here is how our right of access across Panamanian territory is provided, if it is provided at all. Section (1)(a) of article XV says:

> When in the performance of official duties, the vessels and aircraft operated by or for the United States Forces may move freely through Panamanian air space and waters, without the obligation of payment of taxes, tolls, landing or pier charges or other charges to the Republic of Panama, and without any other impediment.

Now in this language, the operative verb, "move freely" is modified by the phrase "without the obligation of payment of taxes, tolls, landing or pier charges, and so forth." The whole context is one of taxes and licenses. The implication is that "freely" means "free of taxes" and other administrative regulations. It does not amount to a clear-cut grant of authority for the United States to move through Panamanian territory to have access to our bases.

Nor can we depend upon the tag-phrase "and without any other impediment." Clearly the context is still administrative regulation. It does not amount to a full-fledged treaty commitment to allow the United States to have access to our own bases. It has nothing to do with need for a fundamental right of access. Of course, there should be no administrative restrictions; but we need a fundamental right of access.

I hope I need not remind the Senate of the problems of access that we had in Berlin—problems that would have led to full-fledged warfare were it not for the nuclear superiority that we fortunately had at that time. We had fundamental rights of access to Berlin, rights which were denied by the Soviet occupying forces in East Germany. We stood up for our rights. We were prepared to send a convoy of tanks down the access highway to assert our treaty rights. But it was not necessary, because the Soviets knew that we did have the right, and that we were prepared to back it up.

But, Mr. President, the question is this: Could we have asserted our rights if those rights had been stated in the form that we did not need license plates on our tanks? Or that our military vehicles did not have to pay tolls on the autobahn? Mr. President, this

provision in the implementation agreement is trivial. It does not go to the real issue at all. It does not go to the fundamental rights of access.

Now the language relating to ships and aircraft that I have just quoted is paralleled in section (2) by similar language referring to "vehicles and equipment." They also may not be taxed and need not pay tolls. They are even exempt form mechanical inspection; they do not have to exhibit a 6-month inspection sticker on their windshields. But nowhere does it mention the rights of U.S. military personnel to move in Panamanian territory. What happens if we want to march the infantry from one installation to another "in the performance of official duties"? Does our right exist only in our unilateral interpretation of our "primary responsibility to protect and defend the canal" as in article IV of the treaty? Is that a clearcut right to defend all of our installations, or only the "canal"?

I need not remind the Senate that this treaty does not define the word "canal." The Neutrality Treaty, on the other hand, defines it as follows:

> "Canal" includes the existing Panama Canal, the entrances thereto and the territorial seas of the Republic of Panama adjacent thereto, as defined on the map annexed hereto (Annex B).

Annex B shows only the entrances and territorial seas of the canal, not the operating areas. So we really do not know whether or not we have the right to move U.S. military forces to protect installations that are not directly associated with the "canal."

Would Panama ever contest our right to move personnel, vehicles, and aircraft across Panamanian territory in the course of the performance of official duties? Obviously, Mr. President, I do not know, and no Member of the Senate can predict. But what happens if our right is contested? That is the question. We can do nothing if Panama contests a basic right, except to assert force against Panama's sovereignty.

Moreover, it is not at all unlikely that controversy would arise over the movement of military personnel and vehicles through Panamanian territory. The controversy, if fact, is bound to arise. In fact, it has already arisen with regard to the DeConcini reservation. In the documents circulated at the United Nations, the Panamanian ambassador to the U.N., and the communique from the Panamanian Foreign Minister takes particular exception to the interpretation of the distinguished Senator from Arizona that military operations may be necessary in the case of labor unrest and strikes, the actions of an unfriendly government, or political upheavals.

Suppose U.S. military forces are reinforced at the various installations operated by the United States in the case of domestic upheaval in Panama? Suppose, even, that no action is taken; just the movement of troops and military vehicles? Is that covered by the implementation agreement which says that they do not have to be licensed? If the Panamanians are already taking official action to protest the DeConcini reservation now, before the Panama Canal Treaty is passed, is it not likely that they will attempt to deny any interpretation of an executive agreement that gives U.S. military

forces the right to move freely without paying taxes as authority to conduct military operations or reinforcements?

If we are going to have military forces in Panama for 22 years, if our bases are going to have any value there whatsoever, we must have proper military logistics and communication among our bases, and clear authority to position military forces to protect all U.S. installations. That is all this amendment proposes.

If the Panamanians are really sincere that the United States will be available for protection of the canal, there is no possible way that they can deny the United States the treaty right to move freely in Panamanian territory among our installations. If they are going to object to this amendment, if they are going to reject these treaties over something so fundamental, so basic to the purpose of the treaties, then these treaties are not worth very much at all. In fact they are meaningless. They provide no protection.

I do not think that Dictator Torrijos would dare to raise objections to something that is so simple on the surface. It would undermine the validity of all their good intentions, and it would frustrate any workable relationship between our two countries.

Mr. President, I ask unanimous consent that the memorandum and annex of the Panamanian Ambassador to the United Nations, and the communique issued by the Ministry of Foreign Affairs on March 27 be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

IMPLEMENTATION OF THE DECLARATION ON THE STRENGTHENING OF INTERNATIONAL SECURITY

Letter dated 28 March 1978 from the Permanent Representative of Panama to the United Nations addressed to the Secretary-General:

I have the honor to send you herewith the note verbale from this mission dated 28 March 1978, together with the following documents:

(a) Resolution of ratification of the Treaty concerning the permanent neutrality of the Panama Canal, adopted by the United States Senate on 16 March 1978 (see appendix I):

(b) Statement by Senator Dennis DeConcini (see appendix III);

(c) Statement by Senator Edward Kennedy (see appendix III);

(d) Communique from the Ministry of Foreign Affairs of Panama, issued on 27 March 1978 (see appendix IV).

In compliance with instructions from my Government, I request you to have the note verbale and the above-mentioned documents distributed as documents of the General Assembly under item 50 of the preliminary list.

JORGE E. ILLUECA,
Ambassador, Permanent Representative.

ANNEX: NOTE VERBALE DATED 28 MARCH 1978 FROM THE PERMANENT REPRESENTATIVE OF PANAMA TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

The Permanent Representative of the Republic of Panama to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that His Excellency Brigadier General Omar Torrijos Herrera, Head of Government of the Republic of Panama, has addressed a letter to the Heads of State and Heads of Government of the States members of the international community.

General Torrijos's letter and the documents enclosed make reference to the vote which took place on 16 March 1978 at the United States Senate on the Resolution of Ratification of the Treaty concerning the Permanent Neutrality of the Panama Canal. In this resolution, approval to the ratification was granted subject to a number of amendments, conditions, reservations and understandings, inserting among them a pre-condition to American acceptance of the Neutralty Treaty,

known as the "DeConcini Amendment" (see clause (b)(1) in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3857-3858 (appendix I)).

According to its proponent, the "DeConcini Amendment" is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government", pretending that said amendment must be construed to permit the United States to intervene in Panama in the event of labour unrest, strikes, a slowdown, or under any other pretext labeled as interference with Canal operations (see text of Senator Dennis DeConcini's statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3817-3818 (appendix II)).

Not only does the amendment make no reference to the regime of neutrality, but, as stated by Senator Edward Kennedy, who opposed the DeConcini Amendment, "Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory." Now Panama is asked, in Kennedy's words, "to acept an amendment which has the ring of military interventionism—not just during this century, but for all time" (see text of Senator Edward Kennedys statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States Congressional Record, vol. 124, No. 38, p. S3824 (appendix III) and the attached text of the communique of the Panamanian Ministry of Foreign Relations, dated 27 March 1978 (appendix IV)).

Since the Treaty provides for accession by all States to the Protocol whereby the signatories would adhere to the objectives of the Neutrality Treaty and agree to respect the regime of neutrality, the Panamanian Head of Government has considered it his duty to address this letter to the Heads of State or Heads of Government of the States members of the international community that in so many instances have offered their solidarity and support to the Panamanian nation in its long struggle to reach a peaceful solution to the Panama Canal question based on the rcognition of her sovereignty over the totality of its national territory.

Appendix IC: Communique From the Ministry of Foreign Affairs of Panama, Issued on 27 March 1978

In our communique issued on 16 March, we expressed the decision of the Government not to issue any statement regarding what the Senate had agreed to in relation to the Treaty concerning the permanent neutrality and operation of the Panama Canal. We gave as the reason for such a decision the fact that the Panamanian people had approved two treaties, that is to say, the Neutrality Treaty and the Treaty on the Panama Canal. Until the Senate decides the fate of the latter, it will not have responded to the decolonization programme approved by the Panamanian people.

We also stated in the above-mentioned communique that the Government as a whole would study the conditions under which the Senate had given its advice and consent to the Neutrality Treaty and those that it might attach to a decision on the Treaty on the Panama Canal. We have begun that process. But inasmuch as the liberation process is a national undertaking and since, before taking any decision, each citizen must have full knowledge of all the understandings of the Senate regarding the treaties, the Ministry of Foreign Affairs has deemed it appropriate to publish the text of the Senate resolution concerning the Neutrality Treaty without waiting for the official text to be delivered to us through the usual channels.

We are living a crucial moment in our history. Now, more than ever, our country demands from its sons serenity, dignity and a sense of national unity.

Panama sees its future with the serenity of a country engaged in an irreversible process of decolonization.

We must remember that only the peoples that love freedom can be free. Panama has opted for its definitive freedom. In this process we have the decisive support of the peoples of the whole world, as was seen from the session of the Security Council held in Panama in March 1973. On that occasion the world, faced with the veto of the United States delegation, vetoed the United States for not removing the causes of the conflict engendered by the presence of a foreign Government within Panamanian territory.

We recommend to our fellow citizens to study objectively the documents published today in Spanish and English, so that they might assist the Government in taking the most patriotic decision which, as stated by General Omar Torrijos Herrera,

Head of the Government of Panama, will be taken within the framework of a great national consensus.

Mr. HELMS. Mr. President, I urge adoption of the amendment and I reserve the remainder of my time. I thank the Chair.

Mr. SARBANES. Mr. President, I rise in opposition to the amendment. This matter was among many other discussed with the Department of Defense in the course of the consideration of the treaty provisions in the hearings that were held by the Senate Committee on Foreign Relations. The Defense Department was of the conclusion, which I share with them, that the treaty and the agreement in implementation of article IV of the treaty and the annex thereto fully and adequately protect the rights.

In fact, it can be argued, I think cogently, that an effort to develop this right, as it were, within these documents really raises the concern or the danger of movement and access by U.S. forces of a derogation of rather broadly stated U.S. rights of use of defense sites and of movement with respect to such sites. That is an important sort of legal concept, but I think one that is a valid one. Lawyers may differ on its application, but I think the concept is a valid one. When you have broad statements and then you seek to make specific statements, you run the danger of derogation from the broad grant of authority that may be provided for.

The distinguished Senator from North Carolina quoted the language with respect to the rights of movement, concerning movement when in the performance of official duties with respect to vessels or aircraft, or without any other impediment, and also that dealt with air and water movements, and also vehicle and equipment movements, again in the performance of official duties.

There is no assertion of movement rights unrelated to official duties. It seems to me that is an obvious and appropriate limitation. So there is no assertion in that regard.

But in respect to the performance of the official duties, the right to undertake movement without the obligation, there is a specific provision with respect to the taxing and licensing and an additional provision that goes on to say, "without any other impediment."

Now, we are given the unconditional right to use the defense sites and, of course, appropriate use of this would require, when in pursuance of the performance of official duties, that we have the right of access to the defense sites.

The basic problem or difficulty I have with the Senator's amendment runs to this question of trying to specify certain rights which I think are fully and adequately covered in the agreement, raising a question that it constitutes a limitation with respect to the extended scope of the rights that we are given in the statement of implementation to implement the provisions of the treaty.

It might well be construed as supporting a more narrow interpretation of the U.S. rights in other portions of the agreement than would otherwise be the case.

Of course, most of what I have said has been developed in an exchange with the Department of Defense which, of course, has a very keen and vital interest in these treaties, both the Panama Canal Treaty which we are now considering and the Neutrality Treaty which we approved on March 16, by a vote of 68 to 32.

I think, as many people realize, the Department of Defense was very much involved in the negotiation process with respect to these treaties. In fact, a general officer representing the Department of Defense participated in full on the negotiating team, and General Dolvin was a very integral part of the American team of negotiators with respect to arriving at the provisions that we have been reviewing over these many weeks here in the Senate concerning the Panama Canal treaties.

Since there will be a continuing American military presence in Panama until the end of the century and then, of course, beyond that there will not be such a continuing military presence, although the United States and Panama joining together in that period after the end of the century have reached agreement that each of them shall be able to take action to maintain the regime of neutrality and to maintain the neutrality of the canal and the right of safe passage for ships through the canal. So, of course, the Department of Defense may have a continuing interest after the year 2000. They will not have a continuing presence in Panama after the year 2000.

Between now and the year 2000, their rights, of course, are spelled out in the Panama Canal Treaty and in the agreements which implement that treaty which of course, have been reached between the two parties and have been submitted to the Senate as documents associated with the Panama Canal treaties.

I have been quoting, to some extent, from those documents and also putting forth the position which the Department of Defense has reached concerning these provisions, concerning their rights under these provisions, and concerning the amendment which the distinguished Senator from North Carolina has presented to the Senate.

Implementation, of course, has been very carefully worked out as a matter of negotiations between the parties.

The question that was raised about noncontiguous military areas, bases and training areas, has been fully dealt with by the provision in terms of the operational elements that are necessary and, obviously, this is a matter to which the Department of Defense gave great and careful attention.

The question of operational element has been met by the provision that we are entitled to movement between such facilities when in the performance of official duties.

That applies, of course, both to vehicles and equipment; that is, land movement and also air and water movement, where it can take place without impediment in the furtherance of the performance of official duties.

Accordingly, I anticipate and, very frankly, Mr. President, see no problem in this area.

I think the matter which is raised by the distinguished Senator from North Carolina was given very careful and thorough attention by our negotiators, and particularly by those members of the negotiating team who represented the Department of Defense and the Joint Chiefs of Staff, and that the treaty and the associated documents with the treaty fully and satisfactorily deal with this matter.

Therefore, I oppose the amendment of the Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the Senator from Maryland for his comments on the amendment.

Inasmuch as the leadership has made clear that it will not permit any amendment to this treaty, I am not optimistic as to the pending amendment. I am, however, heartened by the statement of the Senator from Maryland, if I understood him, that he agrees with the thrust of the amendment, and that its intent is essential. The Senator further contends, if I understand him, that this matter is taken care of in the implementation agreement and in the treaty itself. I find no language that clearly does that, but I am heartened by the legislative history that the distinguished Senator made.

All that notwithstanding, this is such an important, fundamental right, that I wonder what the objection is to spelling it out? The Senator from North Carolina can think of no objection to doing that. In fact, it is essential.

This is the point the Senator from North Carolina would make to his friend from Maryland: We have noncontiguous installations and military bases; and insofar as I have been able to find, the only reference in the treaty text to this right comes under the section relating to whether we will have to put license plates on our tanks and trucks. Obviously, the treaty and the implementation agreement are not adequate in this regard.

I hope the Senate will approve the amendment, although I must say that I do not have a great deal of optimism on that score. However, in this instance, as in others, I feel that it is essential that the Senate confront this defect—and I perceive it to be a defect—in the treaty.

I say to the Senator from Maryland that it is now 12:31, and we have a 1-hour limitation. I would be glad to yield back the remainder of my time, if he is willing to do so, and we can have a note on the amendment.

Mr. SARBANES. Mr. President, I am quite happy to do that, but I think an order was entered that there would not be a vote until 2 o'clock. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. I assume, in view of that order, that some Members of the Senate have made commitments elsewhere.

Perhaps we could set this amendment aside and go on to the next amendment, if the Senator wants to do that.

Mr. HELMS. In that case, I ask unanimous consent, first, that it be in order for me to ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. The Senator has the right.

Mr. HELMS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. HELMS. Mr. President, I suggest the absence of a quorum, during which time I will see if we can round up some Senators to get the yeas and nays.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

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Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, is the Senator from North Carolina correct in his understanding that the pending amendment is now being laid aside, in order that I can call up a second amendment, or is unanimous consent in that regard necessary?

The PRESIDING OFFICER. A unanimous-consent order was entered yesterday to that effect, so the Senator's amendment could be set aside and other amendments taken up.

UP AMENDMENT NO. 20

Mr. HELMS. I thank the Chair. I send an unprinted amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an unprinted amendment numbered 20.

Mr. HELMS. Mr. President, I have unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of paragraph 3 of article IV, add the following undesignated paragraph:

"Nothing in this paragraph prevents the military forces of the Republic of Panama or of the United States of America from conducting such separate military planning, exercises, or operations as each Party deems necessary to protect and defend the Canal."

Mr. HELMS. I yield myself such time as I may require.

Mr. President, the central defense concept in the Panama Canal Treaty is the concept of "combined defense." Indeed, were it not for the concept of "combined defense" it is probable that the Department of Defense would never have agreed to the treaty.

It is a matter of historical record that the Joint Chiefs of Staff and the Department of Defense had continuously maintained that all the land in the Canal Zone was necessary to the defense of the canal; and that it would, indeed, be impossible to defend the canal under any new treaty unless the entire zone would be, in effect, a military reservation once the United States surrendered its sovereign rights.

This was the official DOD position until the fall of 1975. It is not difficult to understand why DOD maintained that position. It is only commonsense. One does not have to be a great military strategist or tactician to see that the most effective way to secure an installation is to secure all the components of the installation, as well as a reasonable buffer zone around each component. This was, in fact, the basic reasoning behind the creation of the Canal Zone in the first place. I doubt that any special studies or analyses were conducted to come to that conclusion; it was simply a deeply ingrained concept in defense that everyone took for granted. Once the decision had been made that a U.S. canal had to be fortified to protect its neutrality, the concept of a zone around it came naturally.

Until 1975, no one ever questioned the concept that if the United States were to defend the canal our military forces must have a reasonable area in which to exercise unilateral defense judgments.

It was the Department of State, however, that objected to the unitary zone defense concept. The State Department negotiators found that the treaty negotiations had virtually collapsed. The Panamanians, for reasons of excessive nationalistic pride, insisted on the elimination of the Canal Zone for domestic political reasons. Rather than press the Panamanians on a point that was critical to the United States. the negotiators developed the idea of "combined defense," wherein the Canal Zone would be eliminated and a fiction created that United States and Panamanian military forces would defend the canal together, with the zone itself under Panamanian control. So the State Department negotiators then began to negotiate with the Defense Department, rather than with the Panamanians.

In mid-1975, a position paper embodying a conceptual "combined defense" was prepared and presented to the Panamanians. As was inevitable, that paper was leaked in Panama. Later, the Senator from North Carolina made a lengthy analysis of its fallacies and reprinted the paper in the Congressional Record. For those who may be interested in that 1975 analysis, my statement was reprinted in the hearings of the Separation of Powers Subcommittee, page 197, which I believe is on every Senator's desk. I do not know for certain who was the author of the conceptual paper, but some who are close to the State Department have said that it was Mr. Morey Bell, who at that time was prominent on the U.S. negotiating team. At any rate, Ambassador Bunker later admitted to the press that the conceptual paper was authentic.

The fallacies of the combined defense concept are so obvious that it is hardly necessary to mention them; yet perhaps they should be laid on the record. First, there is absolutely no comparison between the force structure and training level of the United States and Panamanian military forces. Panama does not even have a navy or an air force. Of the 8,000 members of the National Guard, about 6,000 do not have professional military training. They serve as policemen, and not very well trained policemen at that.

Secondly, the Panamanian forces do not have sophisticated equipment, the training to use sophisticated equipment, or the budgetary resources to support sophisticated equipment. Any combined defense arrangements on that level would be ridiculous.

Thirdly, the only level where there could be true participation would be in the Combined Defense Board. But participation in the Board by Panamanians would turn the Board into a forum for anti-U.S. propaganda, into a device to put pressure on U.S. defense decisions, and into a medium for learning the details of secret U.S. defense plans. Although Panamanian military forces would be too weak to oppose United States military plans, it would be very easy to bring propaganda to bear, to mobilize civilians in demonstrations, or—to take the most adverse case—to call upon nations antagonistic to the United States to assist them in sabotage, military operations, or concerted international pressure.

Finally, the physical elimination of a zone defense around the canal would make it far more vulnerable to sabotage, terrorism,

and controversies over our rights of defense. We are buying trouble, Mr. President, unless we take note of this glaring defect in this treaty, and correct it.

As I understand the State Department's arguments at the time, if it is possible to understand the State Department's arguments at any time, the combined defense concept was necessary for political reasons; that is, as a concession to Panama to get the negotiations started again, and to involve Panama in the defense of the canal, giving the Government of Panama itself a stake in the defense problems. Indeed, it was argued that, in the event of guerrilla warfare, it was better to have the Panamanian National Guard shoot at Panamanian rioters or terrorists, than to have U.S. soldiers do the shooting. This argument, of course, is specious. There is no guarantee whatsoever that Panamanian troops ever would return the fire of Panamanian snipers or Panamanian terrorists. It is at best a pious hope.

What is clear, however, is that the change in defense concepts was not made for military reasons; it was made for political reasons, with the military requirements downgraded severely. The State Department's attempt to rationalize the use of Panamanian troops in hot engagements belongs more to sociological or psychological theory than to military strategy. As a result, our military intelligence could be opened to enemies or opponents, and the actual physical characteristics of defending the canal are severely hampered by loss of a territorial base for defense.

In October 1975, Deputy Secretary of Defense William P. Clements and General George Brown went to the Canal Zone and to Panama to review the situation. They met with General Torrijos. When they came back to the United States 2 days later, they announced that they had reversed their position, and now favored the treaty. After 11 years, the Pentagon had dropped its requirement for a unitary defense command and zone. Military spokesmen implied that the "combined defense" concept was invented on the spot by the Deputy Secretary and the Chairman of the Joint Chiefs; but in fact, it had already been conceived in the U.S. State Department and presented to the Panamanians.

Mr. President, the following is important:

When Secretary Clements came before the Armed Services Committee this year, he added a new dimension to the basis for his decision to reverse the Pentagon's position. He explained that the had negotiated a security clause with General Torrijos that gave the United States a unilateral right to take whatever military steps would be necessary to defend the canal. That language is now familiar to us all; the Senator from North Carolina offered it as an amendment to the Neutrality Treaty, although the Senate in its dubious wisdom on that subject turned it down.

Nevertheless, it is clear that Secretary Clements attempted to make a trade-off with the State Department. He abandoned the unitary zone defense concept not for military reasons—not on the basis of what's best for national defense—but for political reasons. In return, he tried to salvage the military situation by insisting upon a unilateral right of military operations.

But he lost it all because in this way, the Pentagon was mousetrapped by the State Department into abandoning what is best for

the defense of this Nation, which should be the foremost and primary concern of this Senate. To break loose the Pentagon roadblock, the State Department agreed to a security clause with the unilateral right of intervention; but some time after the Carter administration took over, the security clause was dropped, it was abandoned. It is not surprising, therefore, that when Secretary Clements learned of this double dealing, he immediately withdrew his support of the treaties, and he vigorously emphasized that in his appearance before the Armed Services Committee this year.

So now we are stuck with the combined defense concept. If one reads the text of article IV quite carefully, one finds that the treaty is silent on the right of the United States to do planning, training, or operations without the participation of Panama. The treaty does not say that we cannot do planning, training or conduct operations by ouselves; but neither does it say that we can. It speaks only of combined operations.

The Anglo-Saxon legal tradition is far more flexible than Latin American systems. Our judicial interpreters are accustomed to supplying whatever is necessary to understand the law; but Panama, like most other countries, depends upon code law. If a right is not stated positively in the law, it cannot be assumed.

Thus, in paragraph 1, we see that the United States and Panama commit themselves to protect and defend the canal. At best, it is ambivalent on the right of the United States to act without the participation and consent of Panama.

It says that each party shall act to meet the danger resulting from an armed attack; but it does not say that either can act independently.

In paragraph 2, it says that the United States shall have the primary responsibility to protect and defend the canal. But where there is a primary responsibility, there is also a secondary responsibility. If there is any implication in the phrase "primary responsibility" the implication is that the U.S. right is neither exclusive nor independent.

In paragraph 3, it says that both parties shall establish a combined Board comprised of an equal number of senior military representatives. This standard of equality is directly at odds with the delegation of "primary responsibility" to the United States.

These representatives shall be charged by their respective governments with consulting and cooperating on all—I repeat, all—matters pertaining to the protection and defense of the canal, and with planning for actions to be taken in concert for that purpose. The word "all" clearly demands that there be no defense matters over which there is not consultation and cooperation. Clearly, not even intelligence information or contingency defense plans could be kept secret legally from the Panamanians.

The absurdity of this situation cannot be explained away. If we knew, for example, that high officials of the National Guard were cooperating with terrorists, we would be legally obligated to inform those very officials. If we had plans for the defense of the canal under a scenario where the National Guard itself attacked the canal, we would be obliged to hand over those plans to the attackers. The language of the treaty demands that the representatives "shall" consult—not "may consult," but "shall consult"—on

actions to be taken in concert for that purpose. Is the phrase "to be taken in concert for that purpose" a limitation or a description? If it is a limitation, then there can be no other type of actions allowable, except actions taken in concert.

Now we come to another very interesting and ambiguous sentence:

Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or of the Republic of Panama.

What does this sentence mean? Does this sentence mean that the United States can conduct separate planning, exercises, or operations? I do not see how it can be given that interpretation. All that this sentence says is that the command structure shall not be merged into one unit. The command structures preserve their own identity, but the protection and defense arrangements are still "combined." There is no reference to any other kind of defense activity except combined activity.

Finally, it says that the Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties.

Again, this is a positive injunction that contingency plans are to be based upon cooperative effort.

(b) The planning and conduct of combined military exercise.

Once more, the Board is charged with both planning and conduct of combined military exercises; no other type is mentioned.

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

This clause is apparently the result of sloppy drafting, since it merely repeats the preceding clause (b), leaving out the "planning." Instead of mentioning "combined military exercises" it refers to "United States and Panamanian military operations." While there might be a slight distinction between "exercise" and "operations," if the word "operations" is taken in the sense of actual war as opposed to training, there still remains the confusion of "United States and Panamanian" being substituted for "combined." Are they the same thing? Or is there an attempt here to imply that there are two types of operations, namely, United States operations and Panamanian operations? If that is meant to imply separate operations, the implication fails, because everything mentioned here is under the control of the Combined Board.

So I think we are clearly faced with a serious ambiguity. If the treaty is silent on separate operations, does that mean that separate operations are allowed? Or does it mean that they are not allowed? We cannot afford to take the chance.

So the pending amendment is short and simple and, I hope, to the point:

Nothing in this paragraph prevents the military forces of the Republic of Panama or of the United States of America from conducting such separate military planning, exercises, or operations as each Party deems necessary to protect and defend the Canal.

How on Earth can anyone object to that, Mr. President? The single sentence of this amendment will clear up the ambiguity. It will give us the authority for all the routine, ordinary military exercises and planning that we must do, with or without the participation of Panama. And of course, if we do need to conduct actual operations without Panama's cooperation, we will be able to do so on sound legal grounds.

Mr. President, I urge the adoption of the amendment, and I reserve the remainder of my time.

Mr. Allen addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, the administration and the leadership in the Senate have had full control over these treaties and their wording ever since the negotiations were completed between the Panamanian negotiators and the U.S. negotiators.

Every single amendment that has been accepted, whether it be an amendment to the treaty or a reservation or a condition or what, has had the approval of the administration and the leadership. So if the wording of the DeConcini reservation or the amendment to the resolution of Ratification has caused consternation in Panama, then there is no one to blame except the administration and the leadership because they have had life and death control over every single amendment that has been offered here on the floor of the Senate.

They have had upward of 60 Senators who have supported them on practically every measure—I believe there were only 58 on one particular amendment—and they have had full control of what has gone into this treaty.

Mr. President, I am not going to speak in an attitude of "I told you so," but I believe the difficulties come about with respect to the Neutrality Treaty, or I prefer to call it the defense treaty, because it did give us and does give us certain defense rights in the canal after the year 2000. That treaty was considered first here in the Senate, even though the President had submitted them in the reverse order, which was the logical order.

I tried here on the floor of the Senate—other Senators tried—to get this order of consideration of these treaties reversed because we should have considered first the question of whether we should give the canal away before we considered how we should defend it starting in the year 2000.

Our pleas fell on deaf ears, and to raise the point before the Senate I made a motion to reverse the order of consideration, go back to the logical order of considering, first, whether we give the canal away before we worry about defending it in the year 2000.

That motion received only 30 votes of Senators, and has more or less constituted the hard core of those who are seeking to improve these treaties by amendment.

The leadership said "No, we want to consider the Neutrality Treaty first." I warned, and other Senators warned, that this order of consideration would cause many Senators, who wished to vote for the Neutrality Treaty or the defense treaty, to be unable to do so because in the order in which they were submitted they were parted and parcel of one big issue, the Panama Canal Treaty issue.

As a result, there were 32 votes cast against the Neutrality Treaty. I stated here on the floor that if the order were reversed, I would have looked for upward of 99 Senators to vote for the Neutrality Treaty, because the only difference was the extent to which we would be allowed to defend the canal. And I believe is true.

That being true, Mr. President, if we had considered the Panama Canal Treaty first, and had agreed to give the canal away, as that treaty provides, then there would have been no opposition whatsoever—or perhaps I had better say no opposition of any moment—because I would have looked for some 90 to 99 or perhaps even 100 Senators to have voted for the Neutrality Treaty after the basic issue had been determined. Then it would not have been necessary, Mr. President, to accept the DeConcini amendment in order to get Mr. DeConcini's vote. The treaty would have been approved wellnigh by acclamation.

But the leadership insisted on handling the defense treaty first, and look what has happened. They got up to the last day and they did not have enough votes to pass the Neutrality Treaty, and this provision, the DeConcini amendment, which says that notwithstanding any other provision of this or any other treaty—or that treaty; I believe it limited it to that one—the United States has a right to take whatever means might be necessary to keep the canal open, including military action.

Yes, that is a departure from the language of the leadership amendment, because the leadership amendment had three loopholes inserted by the dictator through the memorandum with the President which later became the leadership amendment, and that paragraph inserted by the dictator said that in our efforts to defend the canal we should not interfere with the internal affairs of Panama, we should not interfere with their territorial interests, and we should not interfere with the independence of Panama. It had those three conditions. The DeConcini amendment does not have those.

[Mr. Hodges assumed the chair.]

Mr. ALLEN. So, Mr. President, they have got themselves in somewhat of a bad box. They have got dictator Torrijos in an extremely bad box. It looks as though he is in bad shape either way he goes; not that I object to that, but that is the situation he finds himself in. He has the option, Mr. President, to accept these treaties on his own, as head of state, in which event I believe that the strong opposition in Panama to these treaties would result in dictator Torrijos being thrown out of office; or his other alternative is to submit the matter to a vote by the people of Panama, and in that event it is my judgment that the one-third of the Panamanians who voted against it when the matter was first submitted would swell to well over a majority vote against the treaties; and I believe that would probably result in Dictator Torrijos being deposed.

Mr. President, I see shades of 1903 in these treaties and the manner of procedure with respect to them. The treaty of 1903 that has been denounced on this floor so often—just the other day the distinguished Senator from Idaho (Mr. Church) dusted off the old contention that if the new government, the revolutionary government of Panama, had not signed that 1903 treaty with the United States, they would have faced a Colombian firing squad. But they

overlook the fact that in 1955 another treaty was entered into between Panama and the United States confirming these rights that the United States has.

But in 1903 the United States, dealt with a revolutionary government, not elected by the people. In 1978 we deal with a dictatorial government not elected by the people. The 1903 treaty was not approved by the people of Panama, and that has been a bone in their craw ever since, that they did not have an opportunity to pass upon the treaty; even though there seemed to be great joy and acclaim for the treaty when it was entered into, they kept making the contention that the treaty was not approved by the people, and we have now another situation where the treaty apparently is not to be approved by the people.

"Oh," they say, "they had a plebiscite." Yes, but we did not see the protests against the treaty as originally submitted. It has now been amended by the DeConcini amendment, so it is not the same treaty. The Panamanians say the Neutrality Treaty as it now stands, as it has already been approved, is an affront to their national dignity and sovereignty.

So that we will not have a repetition of the discord that has existed, the protesting against the treaty that has existed ever since 1903—do we want to go through that again? We are supposed to be in control of the canal for the next 22 years. If the people do not get an opportunity to vote on this new treaty, will they not protest that this treaty was rammed down their throats without their approval, and will not that be cause for protests, demonstrations, riots, and possibly sabotage of the canal?

If we are not to learn from the lessons of history, we are certainly destined to make the same mistakes again, and it looks as though we are going down that same road.

I suggested the other day, and I have submitted, an amendment that will be acted upon before the final vote on the resolution of ratification requiring that before these treaties go into effect they must be approved by the people of Panama in a plebiscite called for the purpose of ascertaining the national will with respect to the treaties.

That is necessary in my judgment, Mr. President, to lay the matter to rest. We see protestation down in Panama, including burning the President of the United States in effigy, all because they feel that we are ramming a treaty down their throats without any voice by them to pass upon the treaty as amended, without any voice on the part of the people to say whether they approve of this or not; and the leadership has expressed its opposition to letting the people of Panama speak on this subject.

Mr. President, I believe that is a very shortsighted policy indeed if we ram an unpopular treaty down the throats of the people of Panama without giving them an opportunity to say what their opinion is.

We are dealing with a dictator there and not the people of Panama. The only way we can find out their will with respect to this amended treaty is to ask them, and to ask them in the form of a plebiscite. We will forever rue the day that we do not ascertain the Panamanain national will.

By the way, I noticed the Dictator Torrijos declared an extended Easter holiday in the schools in Panama because he is afraid of student reaction to these treaties. There would be a reaction because they do not want this treaty as now written.

I am convinced that the people of the United States do not want the treaty. The people of Panama obviously do not want the treaty. Dictator Torrijos has written some 115 nations protesting what the Senate has done in the DeConcini amendment, laying the groundwork to cut the ground out from under the DeConcini amendment, to say that it is meaningless in international law.

What are we to do? We have full control over the treaties at this time. Why should we insist on the Panamanians taking something they do not want? They say we have to do something about the DeConcini amendment. How is it to be done? They say we are going to pass an amendment, a reservation, a resolution, or something, indicating that we do not mean what we said when we passed the DeConcini amendment.

Is that fair? Will anybody attach any credibility to a treaty of the United States again if we approve a treaty saying one thing and then in the insuing weeks pass something that cuts the ground out from under the meaning of the first treaty?

Also, Mr. President, there are some three votes in the Senate which were determined by the administration and the leadership taking the DeConcini amendment. Had they not taken the DeConcini amendment, had the leadership not given its blessing to the DeConcini amendment, this first treaty would have been defeated because it passed with only one vote to spare.

Mr. President, would it be fair to the Senators who voted for the treaty because the DeConcini amendment was adopted to try to say now, in the second treaty, that we did not mean what the DeConcini amendment says?

That amendment was studied by the President, by his attorneys, by the State Department, by their attorneys, by Mr. DeConcini, and by the Panamanians. Why was not a protest made then? I recognize that the dictator, on March 15, wrote the President. The letters have been put into the Record, both being dated March 15. The dictator in his letter expressed alarm at the reservations which he understood were on the way. The President reassured him on March 15 that they would not interfere with the spirit of the agreement that he and the dictator had entered into.

But that does not seem to be the case.

They regard this first treaty as an affront to their sovereignty because it gives the United States the unilateral right to take whatever action is necessary to keep the canal open. I favor the DeConcini amendment. That is the way it should be. I am not in favor of backing up on it.

Mr. President, those of us who sought to improve these treaties, if they are to be agreed to are not responsible for the administration being in the predicament that it is now in because, as I say, they have had full control over every single word that has gone into these treaties since they were first submitted to the Senate by the President.

So if they find themselves in an untenable position, a position of insisting that Panama take something it does not want, they have themselves to blame, not the opposition.

Mr. President, I do not believe it would be in the interest of good feelings here in the Senate if an effort is made by the administration and the leadership to dilute the provisions of the DeConcini amendment, to make it say less than what it now says. I know they can write an amendment they can get a majority of the Senate to support. But getting that done and then trying to get the treaty agreed to by two-thirds majority in the Senate is where the difficulty would come, in my judgment. It would make a mockery of the compact entered into between the President—all of this is common knowledge; I am not disclosing anything that is not known by every Senator and the public media—it would make a mockery of the agreement made by the President and Mr. DeConcini and two other Senators who agreed to support the first treaty if the DeConcini amendment was accepted.

The President agreed to accept it. The leadership agreed to accept it. The leadership gave its blessings to the DeConcini amendment. Now they come forward, as the distinguished Senator from Idaho (Mr. Church) said on yesterday, because something has to be done; we are not going to abandon our policy of nonintervention, no matter what the DeConcini amendment says.

How is that going to be done? Do we pass an amendment saying that the DeConcini amendment is not to be taken at face value, that it means something else?

Let us consider that. As I say, they can get a majority of the Senate to agree to any amendment that they say will extricate them from this difficult situation. I say the Senate has acted in good faith. The Senate has accepted the DeConcini amendment. We made our bed and we will sleep in it. Let us not try to toy with it. Let us not try to go back on an agreement which was made in order to get these treaties passed.

Let us consider the practical aspect. The DeConcini amendment actually goes into effect in the year 2000. It is a reservation to the neutrality treaty in article V, which starts in the year 2000:

Nothing in this treaty—

Which includes article V—

shall preclude Panama and the United States from making in accordance with their respective constitutional processes * * *

I believe that is the Nunn reservation, which has not been brought into this argument.

The DeConcini reservation reads like this—

subject to the condition, to be included in the instrument of ratification of the Treaty to be exchanged with the Republic of Panama, that notwithstanding the provisions of Article V—

That is the one that starts in the year 2000—

or any other provisions of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

That is the provision that Panama is objecting to, because they say that that interferes with their sovereignty, is a direct threat to their sovereignty. I can see their position, but I do not feel that they should be alarmed at that, because the United States does not want to take any steps that are not absolutely necessary to keep the canal open. I do not regard it as a threat to their sovereignty, but they do.

Unquestionably, it would give us the right to send military forces into Panama at such time as we deem it is necessary to keep the canal open, and we would have to interfere to some extent in their internal affairs and would have to land on Panamanian ground and operate from Panamanian ground. That would not have been permitted under the leadership amendment, but it is permitted under the DeConcini amendment, and that is what they do not like. It is quite obvious that opinion in Panama has shifted and that the people are opposed to the treaties.

The treaty we are debating now expires with this century. It expires at the close of December 31, 1999. From a practical point of view, if we wanted to go back on the pledge to take the DeConcini amendment as worded and get the first treaty passed, if we are willing to go back on that and try to water it down in this treaty, let us see how that is going to be done. This treaty expires with this century. The DeConcini amendment starts at the end of this century. So how in the world, in a treaty ending in this century, are we going to dilute the provisions of an amendment that does not even go into effect until next century? By the time that Neutrality Treaty goes into effect, the Panama Canal Treaty will be dead. It will be functus officio, it will have already performed its function. It will go out of existence.

Whatever we say in the Panama Canal Treaty cannot have any force and effect on a treaty or a provision of a treaty that does not go into effect until after the first treaty, the Panama Canal Treaty, goes out of effect. It would have no further effect. So even if the leadership is inclined to ram an amendment through—which I believe they can do. I am not discounting the power of the leadership. I think enough Senators would march to their drumbeat and pass any amendment that they say would extricate us from this difficulty.

But can it be done? Should it be done? Should we go back on the commitments on the first treaty to gain its passage? If we try to do that, Mr. President, I feel confident that there will be not two, not four, but more Senators who will desert the ranks of the supporters of these treaties and vote against the second treaty, which would also kill the first treaty that was acted upon.

Mr. President, I cannot fail to point out that the order in which the leadership required the Senate to consider these treaties is directly responsible for the necessity arising to accept the DeConcini amendment in order to pass the Neutrality Treaty. Had the Panama Canal Treaty been considered first, then there would have been no need of a trade with the distinguished Senator from Arizona (Mr. DeConcini). They would have had votes and votes to spare. It was this strategem that the leadership adopted that is directly responsible for the tremendous complication now arising from the DeConcini amendment.

All the opponents of the treaties have been able to do is seek to strengthen the treaties. If we are to have treaties, I would like to have them as strong as they can be in giving the U.S. defense rights in Panama and protecting the interests of the U.S. taxpayers.

In seeking to improve the treaty, I am not seeking to defeat the treaty by amendments, because I can think of only one amendment that I would be willing to support and thereafter support the treaty. I am not trying to kill the treaties by amendment. I just want to strengthen the treaties. If they are agreed to, let them protect our right to defend the canal. Let them protect the right of the taxpayers of the United States not to be saddled with hundreds of millions of dollars in payments in addition to giving the canal away.

Mr. President, I want to say again that much has been said about how the opposition to these treaties have spoken with regard to Panama and the right of the Panamanians. They have made it appear that they are the good guys in this effort and the opponents are maligning the Panamanians.

That is far from being the truth, far from being correct.

If any remarks have been leveled by the Senator from Alabama at any person in Panama, it has been at the dictator who has had his way with respect to these treaties up to the time of the DeConcini amendment then he was assured it was not going to interfere with the spirit of the agreement made between the president and the dictator.

I have leveled criticism at Dictator Torrijos' despotic regime and I have pointed out that this $100 million a year that he is going to receive under these treaties, he or his one-man government will receive under these treaties, will be enough to keep his despotic regime in business.

I have leveled criticism at Dictator Torrijos, but not to the Panamanian people. I have stood from the very start and I stand now and urge the leadership to get in line. I want to see the Panamanian people consent to this treaty. I do not want to see us negotiate just with the Panamanian dictator. I want to see a compact between the American people acting through their duly constituted representatives in the U.S. Senate. I want to see the American people have a compact with the Panamanian people.

Taking action short of that is going to leave the way open for controversy for the next 22 years because the Panamanian people are going to resent, and properly so, that we did not give them a right to say what was thought about the treaties as they were amended in the Senate.

That condition and that complaint is going to exist for the next 22 years. We could solve it very simply, Mr. President, by agreeing to the amendment that I plan to offer to require a plebiscite in Panama, to get their approval or their disapproval of these treaties. I am hopeful that enough Senators will recognize the need for that to agree to the amendment which I do plan to offer.

Mr. President, just because this treaty before us is defeated, which, of course, has the effect of defeating the Neutrality Treaty as well, does not mean that all negotiations with Panama have been broken off. Far from it.

It would merely pave the way for additional negotiations. Those negotiations would take place and, possibly, the negotiators would not make as many mistakes as they made before. Possibly, the leadership would not stonewall against amendments.

How much better it would have been, Mr. President, if we came in here and had the right to shape these treaties according to the wishes of the Senate and that the leadership had not stonewalled against these amendments and demanded that they be rubber stamped.

They made one fatal mistake in departing from that policy, and that is agreeing to the DeConcini reservation. They thought, Mr. President, and it is quite obvious that that is not working out that way, the leadership obviously thought, "Well, if we don't allow any amendments, we can get by by allowing reservations to the Resolution of Ratification." Reservations by way of amendment, not to the treaty, they did not permit that, but they thought they could permit amendments to the Resolution of Ratification and that the dictator could ratify those without ever submitting it to the people and there would be no problem.

But the leadership has had the policy for the last 2 months of not allowing any amendments to these treaties—other, of course, and this is understood, than the two leadership amendments that were agreed to and that Mr. Torrijos said he could accept.

The reason he could accept it is because this memorandum was written pretty well at his order, as I pointed out a minute ago, because it had three conditions attached to any intervention by us in defense of the canal: The fact we would not interfere with their internal affairs, we would not interfere with their territorial boundaries, and that we would not seek to end their independence.

So, Mr. President, I hope that this treaty will be defeated and thereby cause the defeat of the Neutrality Treaty so that we can get back to negotiating a treaty that will be acceptable to the people of the United States as well as being acceptable to the people of Panama.

The distinguished majority leader last evening was suggesting that no matter what amendments were adopted to the treaty, I still would not vote for the treaty. Well, I have stated here on the floor and I have stated throughout my State that I am not quibbling about the matter of raising the annuity that we pay Panama each year. It is frightfully low, it ought to be changed. If the treaties are defeated, this figure should be changed, because we pay Panama some $2.3 million a year.

I would be willing, Mr. President, to agree to an amendment and then vote for the treaty if it provided that the United States would retain our ownership of the canal and the property in the Panama Canal Zone, that we would continue in perpetuity to operate and maintain and defend the canal, but that we would, in view of Panama's great need for money, raise this annuity tenfold or even twentyfold.

I would not object to seeing Panama receive $50 million. That is not the point.

The point is our resistance to pressure around the world, our retreat around the world, our lack of will to survive as a great world power. That is what is involved in the Panama Canal Trea-

ties more than disposing of the property. It is the fact that it is a trend that exists in this country to give away our very substance and to retreat from any confrontation that we receive around the world.

I can confidently predict—confident to my way of thinking, at least—that Guantanamo, our great naval base in Cuba, will be the next thing to topple if we do agree to these treaties.

If we had the option of sending the treaty back to the Foreign Relations Committee for study, I would be willing to do that, though I do not know how much good a study by the Foreign Relations Committee would do, in all frankness, because the treaty was before the Foreign Relations Committee for months and they saw nothing in the treaty, apparently, that needed amending. At least they offered no committee amendment and did recommend, not as committee amendments, the leadership amendments that were floated around at that time.

Of course, the strategy there was not to have them come out as a committee amendment, but allow members on the floor to sign up as cosponsors. I was one of the Senators. I see the distinguished gentleman from North Carolina, and I believe he was one of the cosponsors of the leadership amendment.

It was stated that they were improvements over the treaty as regards the right to defend the canal and I thought they must be real fine amendments because for several weeks before the two leaders agreed that they were going to support the treaties, they said this amendment—I do not believe they called it the leadership amendment at that time. I may even have coined that phrase. At any rate, they did not have the leadership amendment when they agreed on that. They said, "This will solve the problem. We can vote for the treaty with the leadership amendment. We cannot vote for it without the leadership amendment."

They said, in effect, "The leadership amendment is so good that it makes the treaty so good that it should not be amended at all, and we are going to resist any further amendment."

That is the situation we have at this time. We have agreed to vote on the 18th of April, so I do not think that a motion to recommit the treaty to the Foreign Relations Committee would be in order. Possibly we can work that out by unanimous consent, because it occurs to me that the supporters of the treaty are in an untenable position. They have a treaty that apparently is not approved at either end of the line.

Mr. SARBANES. Mr. President, will the Senator yield for a moment?

Mr. ALLEN, I will yield for not to exceed 2 minutes.

Mr. SARBANES. Before the Senator spends a great deal of time and energy on working out a unanimous-consent request to recommit the treaties, I want to assure the Senator that I would be constrained to object to such a request. I know that it will come as a surprise to the Senator. But if he was seriously proposing to embark on devoting a lot of time and energy to investigating that possibility, I want to lay it at rest.

Mr. ALLEN. It would not take much time, I assure the Senator. I could draw up such a motion in 30 seconds.

Mr. SARBANES. I want to save even that 30 seconds for the Senator.

Mr. ALLEN. We have consumed even more than that in our brief colloquy.

I admire the distinguished Senator from Maryland very much for the fine job he has done in pushing these treaties up to the very point of a final vote on next Tuesday. He has been steadfast in his advocacy of the treaties. His study and his knowledge of the contents of the treaties and their implications are most impressive. I have enjoyed our exchanges from time to time and our friendly rivalry on the floor. I have great admiration for the distinguished Senator from Maryland (Mr. Sarbanes). He has shown great qualities of leadership and of study and analysis and resourcefulness.

I must say, Mr. President, that such qualities are much in need when it is necessary to espouse a treaty of this sort which, as I see it, is so much against the best interests of the people of the United States, from an economic standpoint and from a military standpoint.

Mr. President, one of the leading arguments that has been made with respect to these treaties is that they are absolutely necessary in order to avoid sabotage and to avoid demonstrations, to avoid riots in Panama. How does that argument tie up with the situation that we see existing in Panama at this time?

The President—excuse me—the dictator of Panama declared a lengthy Easter recess so the students would not be at their schools to protest against the approval by the U.S. Senate and the prospective approval by Panama of this treaty. Demonstrations are taking place in Panama. I do not know whether the dictator has them under control yet or not. But if they are demonstrating and are now burning the President of the United States in effigy, in Panama, think what they are going to do when the U.S. Senate releases all control over these treaties. So it is act now, Mr. President, or not at all.

It is a strange situation that the advent of the treaties that are scheduled to prevent rioting and demonstration has actually set off riots and demonstrations. Apparently, the only way we are going to please the Panamanians is to defeat these treaties and send them back to the negotiating table.

I hope that a monetary payment to Panama and leaving conditions as is with respect to the operation, defense, and maintenance of the canal would be a proper alternative to this treaty, under which we give away the canal, pay Panama to take it, and then end up—without the DeConcini amendment—with inadequate rights to defend the canal.

I hope that no effort will be made on the floor of the Senate to undercut in this treaty the DeConcini amendment to the other treaty. We realize what the leadership can do, if it wishes, under the rule. I hope this does not occur, and I do not believe it will occur. If they would wait until the time to go out of the Committee of the Whole, which is at the close of business Thursday, if they plan to proceed with an amendment to undercut the DeConcini amendment, I hope they will not wait until the last, when there

can be no debate on their "dilute DeConcini amendment," and I hope they will not wait until the last, when we get to the Resolution of Ratification, which is supposed to be voted on by 6 o'clock next Tuesday. But beyond that time, amendments will be in order, and they will be voted on without debate.

So I hope the leaders will not wait, if they plan to go this route, until all time for debate has ended; because I seriously doubt that they would want to face the other Senators on the floor with an amendment that would seek to undercut the DeConcini amendment. If they plan to go that route, I hope they will offer their amendment at such time as adequate debate can be held with respect to the amendment.

Mr. President, we are getting to the end of the road. We see the end in sight. I believe this debate has been constructive. It has been helpful. It has given an opportunity for various viewpoints to arise and for an opportunity to discuss them. It has been healthy that there has been a national debate and that National Public Radio has carried these debates throughout the country. They have rendered a fine service in this regard, and I certainly commend them for the fine results of their coverage.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I would like to yield time to the able Senator from Maryland (Mr. Sarbanes) to address the amendments that are now pending. He has had the benefit of hearing the entire discussion, and I think he is in the best position to oppose the amendments for the proponents of the treaty.

Mr. SARBANES. Mr. Presient, will the Senator yield?

Mr. CHURCH. I am happy to yield for that purpose.

Mr. SARBANES. Mr. President, first, I say to the distinguished Senator from Alabama that, as always, I have enjoyed listening to him; and I do try to listen carefully to his statements, as he fully appreciates, I think.

Usually, we save the peroration of flogging the leadership until the end of the day, when, with predictable regularity, it will in fact occur, and the leadership will be taken out to the woodshed and administered an appropriate spanking by the distinguished Senator from Alabama.

And as he has noted on occasions it has brought the majority leader from his office, where he is listening to this illuminating debate on the public radio, to respond. But I noticed today that we apparently now have moved from flogging the leadership only in the evening to also flogging them at noon, and I assume if se start to come in early we will begin to flog the leadership in the morning as well.

So I take it that the admonition which the leadership should draw from the distinguished Senator's comments is that they should perhaps begin to anticipate a flogging morning, noon, and night.

Second, the distinguished Senator from Alabama said that obviously the leadership had full control over everything that happened and wherever we may now be with respect to these treaties it is their responsibility and their responsibility alone.

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I would not want the distinguished Senator from Alabama to not have his share of the credit for the situation, and I think we would have to recognize that the influence which the able Senator from Alabama has been able to exercise in setting the boundaries within which this treaty can be considered has been very significant. The distinguished Senator has really set up the barriers, one might almost refer to them, Mr. President, as the stone walls surrounding the consideration of this treaty, and in a very skillful way—and I say that as a term of admiration for the Senator's skill—he keeps wanting to move in those stone walls, he keeps moving them in, the stone walls that he has erected around this treaty he keeps moving in so that eventually there will not be sufficient space enclosed within his stone walls so that there will be a sufficient basis for an agreement between us and the Republic of Panama so that at the end of this process the stone walls having been moved in closer and closer, the amount of space left is insufficient to provide the basis for a treaty agreement between the United States of America and the Republic of Panama.

And then, of course, if that were to happen the objective of the Senator from Alabama, which he has never in any way concealed, in fact which he has clearly laid out and which has been his position consistently, as I understand it, ever since he came to the Senate, at least since October of 1971, will have been reached which is that there should not be a new treaty, at least one that reaches in any substantive way to the matters considered here.

Finally, of course, the very distinguished Senator has expressed a considerable concern for the Panamanian people. It is his intention, as I understand it, to propose an amendment that would require Panama to hold a plebiscite.

By what right, reason, logic, or consideration for the sensibilities of others the U.S. Senate should impose and dictate to the Panamanian people that kind of condition or restriction escapes me. I should have thought that we have to do our responsibilities and it is up to Panama and the Panamanian people to carry forward their responsibilities.

It, of course, has been stated that there would be a reaction in Panama that the Panamanian people do not want this treaty. In fact, I daresay it has even been suggested in the course of the Senator's comments that they ought not to want this treaty and they ought to be upset about it. Of course, then the next step is if they do get upset about it then we ought not to have the treaty, because we do not want to approve a treaty about which the Panamanians are going to be angry. So 1 minute we say to the Panamanians over the radio:

> You ought to be angry about this treaty. You ought to look at this treaty and you ought to be angry.

That, in effect, is the advice which the distinguished Senator from Alabama gives to the Panamanian people. And then he turns to the Senate, having raised the ire and the anger of the Panamanian people and says to the Senate, "We cannot approve treaties about which the Panamanian people will be angry."

I admire the eternal consistency and logic of the Senator's statement. It is what is known as a self-fulfilling prophesy. It is the closed circle.

But before one ought to take it with great seriousness I think it ought to be underscored that the distinguished Senator from Alabama joined in sponsoring the resolution in the last Congress about which he had a colloquy with the majority leader last night, and the majority leader, of course, indicated that he does not any longer share the position in that resolution, but is my understanding that the distinguished Senator from Alabama continues to adhere to that resolution, which amongst other things states—this was the position embodied in the resolution and the one that I think it ought to be appreciated opponents of this treaty including the distinguished Senator from Alabama continue to adhere to—that—

> The Government of the United States should maintain its soverign rights and jurisdictions over the canal and zone and should in no way cede, dilute, forfeit, negotiate, or transfer any of these soverign rights.

As I recall in yesterday's debate the Senator from Alabama said something about as far as the Panamanian people are concerned, he wanted them to have their sovereignty back, but, of course, in this resolution which he has sponsored and supported and the positions he generally has taken on the floor, and which were just reiterated with respect to simply increasing the annuity payment, his position has been that there should be no ceding, diluting, forfeiting, negotiating or transferring of any of these sovereign rights.

So that on the question of sovereignty it is clear that the distinguished Senator from Alabama for all the concern that has been expressed with respect to the Panamanian people, as distinguished from the Panamanian Government, is not prepared to deal with that very fundamental, basic question of sovereignty that these treaties address themselves to.

Mr. President, I hope that there is an appreciation of the skill of the Senator from Alabama and of the fact of these stone walls, which he has erected around this treaty and which he seeks day-by-day to move in closer and closer and closer together, so that in the end there will not be contained within the stone walls, that he has erected, a sufficient basis for the agreement between the United States and Panama which is his objective. It is his stated objective.

The Senator has never concealed the fact that that is his stated objective, and the Senator's view of an arrangement that should be negotiated obviously does not even begin to deal with the very fundamental questions of sovereignty and jurisdiction which are so important in resolving the longstanding dispute between our country and the Republic of Panama.

Mr. CHURCH. Mr. President, I thank the able Senator from Maryland for his remarks.

The hour of 2 o'clock having arrived—

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, under the previous order, the question recurs on amendment No.

100 offered by the Senator from North Carolina (Mr. Helms). All time has expired.

Mr. Church addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho (Mr. Church).

Mr. CHURCH. I move to lay the amendment on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. Laxalt addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada (Mr. Laxalt).

Mr. LAXALT. Mr. President, I think it is agreeable to all concerned that we have back-to-back votes on each of the amendments under consideration.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. LAXALT. Surely.

Mr. SARBANES. Because of the way the debate developed we did not have time to respond at all to the second Helms amendment. I think we should do that briefly.

I would be prepared to enter into a unanimous-consent request that the vote with respect to the second Helms amendment occur at 2:30, with 15 minutes after the conclusion of this vote divided 5 minutes to the Senator from North Carolina and 10 minutes to this side. We would make our statement and he could respond, and I think that would accommodate us.

Mr. LAXALT. Mr. President, that is perfectly agreeable with us.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

The question is on agreeing to the motion of the Sentor from Idaho to lay on the table the amendment of the Senator from North Carolina. The clerk will call the roll on amendment No. 100.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. Anderson), the Senator from South Carolina (Mr. Hollings), the Senator from Minnesota (Mrs. Humphrey), the Senator from Maine (Mr. Muskie), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson), the Senator from Michigan (Mr. Riegle), and the Senator from Minnesota (Mrs. Humphrey) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett), the Senator from California (Mr. Hayakawa), and the Senator from Maryland (Mr. Mathias) are necessarily absent.

The result was announced—yeas 64, nays 28, as follows:

[Rollcall Vote No. 88 Exec.]

YEAS—64

Abourezk	Biden	Case
Baker	Bumpers	Chafee
Bayh	Burdick	Chiles
Bellmon	Byrd, Harry F., Jr.	Church
Bentsen	Byrd, Robert C.	Clark

Cranston	Javits	Percy
Culver	Kennedy	Proxmire
Danforth	Leahy	Randolph
DeConcini	Long	Ribicoff
Durkin	Magnuson	Sarbanes
Eagleton	Matsunaga	Sasser
Glenn	McGovern	Schmitt
Gravel	McIntyre	Sparkman
Hart	Melcher	Stafford
Haskell	Metzenbaum	Stevenson
Hatfield, Mark O.	Morgan	Stone
Hathaway	Moynihan	Talmadge
Heinz	Nelson	Weicker
Hodges	Nunn	Williams
Huddleston	Packwood	Zorinsky
Inouye	Pearson	
Jackson	Pell	

NAYS—28

Allen	Griffin	Schweiker
Brooke	Hansen	Scott
Cannon	Hatch	Stennis
Curtis	Hatfield, Paul G.	Stevens
Dole	Helms	Thurmond
Domenici	Johnston	Tower
Eastland	Laxalt	Wallop
Ford	Lugar	Young
Garn	McClure	
Goldwater	Roth	

NOT VOTING—8

Anderson	Hollings	Muskie
Bartlett	Humphrey	Riegle
Hayakawa	Mathias	

So the motion to lay Mr. Helm's amendment No. 100 on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The PRESIDING OFFICER. (Mr. Abourezk). The question is on agreeing to the motion to lay on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, for the information of Members of the Senate who are present, there will be another vote no later than 15 minutes from now, and hopefully somewhat sooner than that, on the second Helms amendment. There is a unanimous-consent agreement which was previously entered into. So that Members can plan their activities, I thought it would be helpful to let them know that.

Mr. President, I would like to address myself to the Helms amendment just briefly. I yield myself 5 minutes.

The PRESIDING OFFICER. Will the Senator suspend? The amendment has not yet been called up.

UP AMENDMENT NO. 20

The PRESIDING OFFICER. Under the previous order, unprinted amendment No. 20 is the pending amendment. There are 10 minutes allowed to the Senator from Idaho (Mr. Church), or his designee, and 5 minutes to the Senator from North Carolina (Mr. Helms). The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an unprinted amendment numbered 20.

At the end of paragraph 3 of article IV, add the following undesignated paragraph:

"Nothing in this paragraph prevents the military forces of the Republic of Panama or of the United States of America from conducting such separate military planning, exercises, or operations as each Party deems necessary to protect and defend the Canal."

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, the Helms amendment suggests there is some difficulty or ambiguity about our right to take separate action in carrying out the U.S. military duties with respect to defending the canal in the period between now and the end of the century, or the period specifically covered by the Panama Canal Treaty.

The treaty provisions in article IV are quite clear with respect to the American right and the Panamanian right, that each party shall act in accordance with its constitutional processes to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or ships transiting it.

That is the first point.

The second point is that the Neutrality Treaty, which we adopted 68 to 32, takes effect simultaneously with the Panama Canal Treaty. There is a misconception on the part of many that it only takes effect after the year 2000. It in fact takes effect simultaneously with the Panama Canal Treaty, namely, 6 months after the instruments of ratification are exchanged. It is only certain limited provisions in the Neutrality Treaty which take effect after the end of the century. So all of the provisions are there in terms of our right to take action to maintain the regime of neutrality, and specifically the provision embodied in the amendment offered by Senators Robert C. Byrd and Baker and an overwhelming majority of the Members of the body, which states:

Each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

That provision takes effect at the same time as the Panama Canal Treaty, not after the year 2000. It takes effect at the same time.

Second, the Panama Canal Treaty provides that for its duration the United States of America shall have primary responsibility to protect and defend the canal. We have the primary responsibility to protect and defend the canal.

In article IV it is provided that there shall be a combined board of United States and Panamanian representatives to facilitate the

participation and cooperation of the armed forces of both parties in the protection and defense of the canal.

But that article then goes on and in explicit terms states:

Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama.

So the identity of our lines of authority are in no way inhibited. Our primary responsibility to maintain the defense of the canal is clearly stated. The balance of the provisions of article IV spell out that what we are establishing is a cooperative arrangement, but that we are not losing, precluding, or compromising our own right to take the action we deem necessary in order to defend the canal.

General McAuliffe, who is the head of the Southern Command stationed in the Canal Zone currently, discussed this matter of the role of the combined board in testimony before the committee, of which the distinguished Senator from North Carolina is a member.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. SARBANES. I yield myself an additional 3 minutes.

Concerning the Senator's contention that somehow the combined board compromises either the integrity of the lines of authority of the American command or our ability to take action in order to meet our primary responsibility for the defense of the canal, General McAuliffe stated the following, on page 88 of the hearing record:

General MCAULIFFE. The Combined Board, Senator, is a coordinating and cooperative element, composed of an equal number of United States and Panamanian officers. Its purposes is to address the coordination of activities relating to the combined defense, to examine defense plans and the like and, of course, certain of the training aspects that are related to that.

The Board does not have any decision power; it is simply a forum for the exchange of proposals and the coordination of matters affecting these forces.

As I did indicate earlier today, Senator, this Board, in my mind, epitomizes the kind of cooperative relationship that we are trying to achieve with the Panamanian forces, to draw them closer together with the United States forces and so as to assure that by the end of the treaty period those forces are able to go off on their own and do a decent job in defending that canal.

On the other side of the coin, I must say that these cooperative arrangements are beneficial to us in that they are designed and, I believe, will help to improve our ability to defend the canal in the treaty years up to the year 2000. However, if for one reason or another that arrangement does not work, the United States still has the obligation of primary responsibility, that is to say, of defense of the canal, and would not be precluded from acting unilaterally in that period if necessary.

Mr. President, I submit that this spells out what is embodied clearly in the treaty arrangement. This is a cooperative arrangement. It is an effort to develop cooperation. But, nevertheless, the U.S. command authority is not impeded, not intruded upon. We have the primary responsibility to defend the canal. We have the right to take whatever action is necessary in order to accomplish that. Therefore, we would be able to respond as was deemed necessary. For those reasons, I oppose the amendment offered by the Senator from North Carolina.

Mr. President, I reserve the remainder of may time.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, may I ask the time situation?

The PRESIDING OFFICER. The Senator from North Carolina has 5 minutes; 2 minutes for the Senator from Maryland.

Mr. HELMS. I thank the Chair. I yield my remaining 5 minutes to the distinguished Senator from South Carolina.

Mr. THURMOND. Mr. President, I rise in support of the unprinted amendment No. 20, offered by the distinguished senior Senator from North Carolina (Mr. Helms).

This amendment is essential in that it provides that U.S. defense forces in the Republic of Panama for purposes of defending the canal may conduct military operations separately from those of the Republic of Panama if it deems necessary.

Under the pending treaty, a joint defense force is established and all military training, duties and exercises are to be conducted jointly.

This amendment would merely give U.S. forces the right to act independently in defense of the canal if we deem it necessary. There may be steps which our military leaders feel are needed that the Panamanians may find objectionable.

Mr. President, little notice has been taken in the Senate that the military forces of this country, once Panama becomes sovereign—6 months after ratification—are governed by a combined board.

This Board has an equal number of military representatives from the two countries and in the event of a disagreement, would be locked in a tie vote. These representatives are charged with consulting and cooperating on "all matters pertaining to the protection and defense of the canal."

This arrangement leads one to the understanding that all military actions taken in Panama once Panama becomes sovereign shall be taken only if agreed to by this Combined Board.

Mr. President, the Senate must not forget that if this treaty is approved, Panama will become sovereign in all parts of the old zone in 6 months. Once sovereign, Panama becomes the judge of all issues not explicity spelled out in the treaties.

If we are to avoid trouble and disputes, defend the canal as we deem proper, and create the relations the treaties attempt to achieve, this amendment should be approved by the Senate.

I thank the distinguished Senator.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, as the able Senator from Maryland explained, we oppose the amendment as being utterly unnecessary. There is nothing in paragraph 3 of article IV of the treaty which prevents the United States of America from conducting such separate military planning exercises or operations as the United States deems necessary. Both Panama and the United States could conduct such operations separately, or they could, if they chose, conduct those operations jointly, depending upon which better achieves the objective of adequately defending the canal.

The amendment is superfluous and utterly unnecessary. Any Senator with any question in his mind can ascertain that fact simply by reading the provisions of the treaty. On that basis, we oppose the amendment. I move to lay the amendment on the table and ask for the yeas and nays.

The PRESIDING OFFICER. The time has not expired yet.

Mr. CHURCH. I yield back the remainder of my time.

The PRESIDING OFFICER. Does the Senator from North Carolina yield back his time?

Mr. HELMS. Yes, Mr. President, I yield back my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. CHURCH. I move to lay the amendment on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment on the table. The clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Minnesota (Mr. Anderson), the Senator from South Carolina (Mr. Hollings), the Senator from Maine (Mr. Muskie), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson) and the Senator from Michigan (Mr. Riegle) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett), and the Senator from Maryland (Mr. Mathias) are necessarily absent.

The result was announced—yeas 66, nays 28, as follows:

[Rollcall Vote No. 89 Exec.]

YEAS—66

Abourezk	Haskell	Morgan
Baker	Hatfield, Mark O.	Moynihan
Bayh	Hatfield, Paul G.	Nelson
Bellmon	Hathaway	Nunn
Bentsen	Hayakawa	Packwood
Biden	Heinz	Pearson
Bumpers	Hodges	Pell
Burdick	Huddleston	Percy
Byrd, Robert C.	Humphrey	Proxmire
Case	Inouye	Randolph
Chafee	Jackson	Ribicoff
Chiles	Javits	Sarbanes
Church	Johnston	Sasser
Clark	Kennedy	Schweiker
Cranston	Leahy	Sparkman
Culver	Long	Stafford
Danforth	Magnuson	Stevenson
Durkin	Matsunaga	Stone
Eagleton	McGovern	Talmadge
Glenn	McIntyre	Weicker
Gravel	Melcher	Williams
Hart	Metzenbaum	Zorinsky

NAYS—28

Allen	Garn	Schmitt
Brooke	Goldwater	Scott
Byrd, Harry F., Jr.	Griffin	Stennis
Cannon	Hansen	Stevens
Curtis	Hatch	Thurmond
DeConcini	Helms	Tower
Dole	Laxalt	Wallop
Domenici	Lugar	Young
Eastland	McClure	
Ford	Roth	

NOT VOTING—6

Anderson	Hollings	Muskie
Barlett	Mathias	Riegle

So the motion to lay Mr. Helm's amendment No. 20 on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 21

Mr. HELMS. Mr. President, I send to the desk an unprinted amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an unprinted amendment numbered 21.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of article IV, add the following:

"6. Any nuclear armament of the United States of America which is mobile or tactical in nature, or which is installed on a military aircraft or vessel of war of the United States of America, and which armament is transported through the former Canal Zone, shall not be considered as emplaced in the territory of the Republic of Panama in violation of the obligations of the United States of America under Article 2 of the Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America or of the obligations of the Republic of Panama under such Treaty.".

Mr. HELMS. Mr. President, so that we might consider a time agreement on this amendment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, I ask unanimous consent that there be a time limitation on this amendment of 40 minutes, equally divided, with Mr. Church in charge of the time in opposition to the amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Who yields time?

Mr. HELMS. I yield myself 10 minutes.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, a number of our distinguished colleagues have made an analogy between treaties and contracts.

That is a reasonable analogy. A treaty is like a contract; and like a contract, you have to read the fine print.

In paragraph of article IV, the treaty says that the use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the agreement in implementation of article IV. So if you want to find out what our rights really are, you have to turn to the implementation agreement. Unfortunately, there has been little debate about the implementation agreements because they are not before the Senate.

However, if you look in article VI of the implementation agreement—not to be confused with article IV of the treaty itself—there is an astonishing paragraph. Paragraph 6 says:

> Since the Republic of Panama is a signatory to the Latin American Denuclearization Treaty . . ., the United States shall emplace no type of nuclear armament on Panamanian territory.

This is interesting for several reasons. First of all, it is interesting for sloppy drafting. There is no such thing as "the Latin American Denuclearization Treaty." The correct title is the "Treaty for the Prohibition of Nuclear Weapons in Latin America." Perhaps the wrong title is given so that anyone who is trying to find out what that treaty is will not be able to find it and give up.

However, I did find it; and I also found out that the word "emplace," as used in paragraph 6, does not appear anywhere in the Treaty for the Prohibition of Nuclear Weapons in Latin America. That treaty speaks of "the receipt, storage, installation, deployment, and any form of possession of any nuclear weapons." But it does not use the word "emplace," and we have no way of telling what the word "emplace" means under the treaty. So the corollary is that we do not know what "emplace" means in paragraph 6, either.

Second, paragraph 6 is interesting in that it goes directly counter to the thrust and intent of the Treaty for the Prohibition of Nuclear Weapons in Latin America. For that treaty only prohibits Panama from having nuclear weapons in Panamanian territory; it does not prohibit the United States from having nuclear weapons in Panamanian territory. In fact, the intent of that treaty, as explained to the Senate by the President of the United States, the Secretary of State, and the chairman of the Foreign Relations Committee was to allow nonnuclear states to give permission to nuclear states for the transit and shipment of nuclear weapons through nonnuclear territory.

The treaty was signed by Panama and other Latin American countries on April 1, 1968. Only Latin American countries, all of which were nonnuclear, were permitted to sign. Nuclear states, however, were permitted to sign the protocols.

The United States is an adherent to Protocol II. It was transmitted to the Senate by President Nixon on August 13, 1970. He said at that time:

> I recommend that the Senate give early and favorable consideration to Additional Protocol II and give its advice and consent to ratification, subject to the statement which accompanies the report of the Secretary of State. That statement, which is similar to the one made by the United States at the time of our signature, expresses our understanding concerning territories and territorial status, transit and trans-

port privileges, non-use of nuclear weapons, and the definition of "nuclear weapons."

The President's reference to "our understanding concerning territories" is very important in the present case, because "territory" as used in that treaty includes "territorial seas," and Panama claims everything within 200 miles of her shores as her "territorial seas." Thus even if we had nuclear submarines within 200 miles of Panama, Panama could charge us with violations, holding canal operations as hostage.

The letter of Secretary of State Rogers said:

The negotiating history of the Treaty makes it clear that these prohibitions do not affect transit and transport privileges of non-Contracting Parties. This fact is reflected in the statement which accompanied United States signature of Protocol II, and which, it is proposed, should accompany our ratification thereof. In that statement, the United States takes note of the Preparatory Commission's interpretation of the Treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the Treaty, to grant or deny non-Contracting parties transit and transport privileges.

The Foreign Relations Committee voted 13 to 0 to order the protocol reported with additional understandings developed by the committee. In his report, the then chairman of that committee, Mr. Fulbright, said:

In the course of the Committee's hearings executive branch witnesses proposed another modification of the statement to present a more explicit formulation of the U.S. understanding of the basis for territorial claims. The principal provisions of the revised statement, which is incorporated in the form of a declaration in the resolution of advice and consent, are as follows:

(1) U.S. ratification cannot be construed as an acceptance by the United States of the unilaterally asserted boundary claims of the parties to the treaty (e.g., territorial seas).

(2) U.S. military transit and transport privileges will not be affected by ratification.

(3) The pledge not to use nuclear weapons against a contracting party would not prohibit a U.S. nuclear response in the event of an armed attack by a party with the assistance of a nuclear-weapon state.

Mr. President, it is perfectly clear from these documents that there is nothing in the so-called Denuclearization Treaty that would prevent Panama from giving permission to the United States to transport nuclear weapons in Panamanian territory or territorial seas. Yet, paragraph 6 uses the word "since":

Since the Republic of Panama is a signatory to the Latin American Denuclearization Treaty, the United States shall emplace no type of nulcear armament on Panamanian territory.

Plainly, there is no causal relation whatsoever to Panama's being a signatory. Panama is free to allow or to disallow the right of transit or transport to the United States. The Denuclearization Treaty is no restraint on Panama at all. I think Panama should take positive steps to grant us such permission.

Now what does the word "emplace" mean? Is it the same as "deploy"? Does it mean a permanent installation, or does it mean any temporary placement?

Of course, it is true that the Neutrality Treaty entitles vessels of war and auxiliary vessels to transit the canal irrespective of armament. But does the general principle override the specific exception

in paragraph 6 of the implementation agreement's article IV? Or is it the other way around?

Moreover, it is not just a question of transit through the canal. There is the question of transit through Panamanian waters as I have said earlier, waters which may reach as far as 200 miles and which may not be included in the definition of "canal" in the Neutrality Treaty.

Moreover, there is the problem of the status of nuclear armament on U.S. bases in Panama. If tactical nuclear weapons are aboard U.S. military aircraft that land at Howard Air force Base, are they considered to be "emplaced"? Suppose they are brought to Howard in one aircraft and transferred to another; is that "emplaced"? Suppose they are stored at U.S. bases; is that "emplaced"? How long can they be stored before they are "emplaced"?

Since it is our obligation to assume "primary responsibility" to defend the Panama Canal, we ought to see to it that we have authority to transport any type of nuclear armament on any vehicle or launch platform—through the canal, the territorial seas adjacent thereto, or on our military bases in Panama. Panama has full authority to give us that permission, and we should insist that she give us that authority.

So, Mr. President, the pending amendment would add a new paragraph, also No. 6, to the end of article IV of the treaty.

Mr. PRESIDING OFFICER (Mr. McGovern). The Senator's 10 minutes have expired.

Mr. HELMS. I yield myself 3 more minutes, Mr. President, and I thank the Chair. Paragraph 6 reads as follows:

6. Any nuclear armament of the United States of America which is mobile or tactical in nature, or which is installed on a military aircraft or vessel of war of the United States of America, and which armament is transported through the former Canal Zone, shall not be considered as emplaced in the territory of the Republic of Panama in violation of the obligations of the United States of America under Article 2 of the Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America or of the obligations of the Republic of Panama under such Treaty.

Mr. President, I ask unanimous consent that the complete texts of the letter of President Nixon and of Secretary Rogers, and the report of Senator Fulbright, along with the resolution of ratification of Protocol II of the Treaty for the Prohibition of Nuclear Weapons in Latin America, be printed in the Record at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

ADDITIONAL PROTOCOL II TO THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

LETTER OF TRANSMITTAL

THE WHITE HOUSE,
August 13, 1970.

To the Senate of the United States:

I transmit herewith Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, with a view to receiving the advice and consent of the Senate to its ratification. The Additional Protocol was signed on behalf of the United States on April 1, 1968.

For the information of the Senate, I transmit also the report by the Secretary of State with respect to the Protocol and a copy of the Treaty to which it relates.

The Treaty for the Prohibition of Nuclear Weapons in Latin America, done at Mexico City February 14, 1967, is the first successful attempt to create a nuclear free zone in a populated region of the world. The Treaty is limited to states located in the Latin American region and is already in force among 16 Latin American nations.

Additional Protocol II is designed for nuclear-weapon states, which are not eligible to sign the Treaty itself. It calls upon them to respect the denuclearized status of Latin America, not to contribute to violation of the Treaty, and not to use or threaten to use nuclear weapons against the Treaty parties.

It is in the best interests of the United States to assume these obligations toward the Latin American countries bound by the Treaty. By creating this nuclear-free zone the nations of Latin America have made an important contribution to peace and security in the Western Hemisphere. Ratification by the United States of Additional Protocol II would not only indicate our support for the Latin American nuclear-free zone but would reinforce our other arms control efforts such as the Non-Proliferation Treaty.

I recommend that the Senate give early and favorable consideration to Additional Protocol II and give its advice and consent to ratification, subject to the statement which accompanies the report of the Secretary of State. That statement, which is similar to the one made by the United States at the time of signature, expresses our understanding concerning territories and territorial claims, transit and transport privileges, non-use of nuclear weapons, and the definition of "nuclear weapon". The statement also reaffirms our willingness to make available nuclear explosion services for peaceful purposes on a nondiscriminatory basis under appropriate international arrangements.

RICHARD NIXON.

Letter of Submittal

DEPARTMENT OF STATE,
Washington, July 16, 1970.

THE PRESIDENT,
The White House

THE PRESIDENT: I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to ratification, Additional Protocol II, signed on April 1, 1968 on behalf of the United States of America, to the Treaty for the Prohibition of Nuclear Weapons in Latin America. The Treaty itself is not open for signature to states that are located outside Latin America, and such states are not eligible for membership in, or bound by the decisions of, the regional organization established to implement the Treaty.

Additional Protocol II to the Treaty is specifically designed for adherence by nuclear-weapon states that are willing to undertake to respect the express aims and provisions of the Treaty, not to contribute to its violation in the territories to which it applies, and not to use or threaten to use nuclear weapons against the states parties to the Treaty. The United Kingdom has signed and ratified the Protocol. The obligations which states assume upon ratification of the Protocol derive from both the provisions of the Protocol and the provisions of the Treaty itself.

The Treaty for the Prohibition of Nuclear Weapons in Latin America is the culmination of a regional effort to keep Latin America free of nuclear weapons. A Joint Declaration on the subject was issued by Bolivia, Brazil, Chile, Ecuador, and Mexico on April 29, 1963. This effort was welcomed and encouraged by a resolution adopted by the United Nations General Assembly on November 27, 1963. After several years of international negotiations, including consideration of comments by the United States, the Treaty was opened for signature on February 14, 1967. The United States has expressed its support for the Treaty not only by signing Additional Protocol II, but also in public statements made by President Johnson and Vice President Humphrey, by our representatives in the Eighteen Nation Disarmament Committee and the United Nations General Assembly, and by United States votes for resolutions of the General Assembly in 1967 and 1968 commending the Treaty and calling upon those eligible to sign and ratify Protocol II to do so.

The Treaty has been signed by all Latin American states except Cuba (whose present government has indicated that it does not intend to sign) and Guyana (whose eligibility to sign is in dispute). It is currently in force for 16 of these states, and a new regional organization has been established to implement it.

The basic understanding of the Contracting Parties (defined in Article 2 as the states for which the Treaty is in force) are set forth in Article 1. They are (a) to use exclusively for peaceful purposes the nuclear material and facilities which are

under their jurisdiction; (b) to prohibit and prevent in their respective territories the testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons; (c) to prohibit and prevent in their respective territories the receipt, storage, installation, deployment and any form of possession of nuclear weapons by the Contracting Parties themselves, by anyone on their behalf, or in any other way; and (d) to refrain from engaging in, encouraging or authorizing directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.

The negotiating history of the Treaty makes it clear that these prohibitions do not affect transit and transport privileges of non-Contracting Parties. This fact is reflected in the statement which accompanied United States signature of Protocol II and which, it is proposed, should accompany our ratification thereof. In that statement the United States "takes note of the Preparatory Commission's interpretation of the Treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the Treaty, to grant or deny non-Contracting Parties transit and transport privileges."

The United States statement makes clear also that, as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Treaty parties, this country would have to consider that an armed attack by a Contracting Party to the Treaty, in which it was assisted by a nuclear-weapon state, would be incompatible with that Party's corresponding obligations under Article 1 of the Treaty.

Article 3 of the Treaty defines "territory" to include the territorial sea, air space and any other space over which the state exercises sovereignity in accordance with its own legislation. the statement of the United States makes clear our understanding that the Treaty and its protocols have no effect upon the international status of territorial claims.

Article 4 of the Treaty defines the zone of application of the Treaty as "the whole of the territories for which the Treaty is in force". The article also makes provision for a broader zone of application within the Western Hemisphere, including international waters, upon the fulfillment of *all* of a number of conditions, one of which is United States ratification of Protocol I to the Treaty. Protocol I calls upon states to apply the status of denuclearization in territories for which they are internationally responsible within the Treaty zone. The United States has not signed Protocol I, and the United Kingdom is the only nuclear-weapon state that has to date become a party to this Protocol.

Article 5 of the Treaty defines nuclear weapons. It excludes an instrument that may be used for the transport or propulsion of a nuclear explosive device if it is separable from the device itself and not an indivisible part thereof. But it includes any device which is capable of releasing nuclear energy in an uncontrolled manner and which has a group of characteristics that are appropriate for use for warlike purposes. This definition is particularly significant in connection with Article 18 of the Treaty, which deals with peaceful uses of nuclear explosions. Paragraph 1 of that article provides that the Contracting Parties may carry out explosions of nuclear devices for peaceful purposes, or collaborate with third parties for the same purposes, *provided* they do so in accordance with the provisions of Article 18 and the other articles of the Treaty, particularly Articles 1 and 5. Paragraph 4 of Article 18 specifically permits the Contracting Parties to accept the collaboration of third parties for such purposes.

The statement which accompanied signature by the United States of Additional Protocol II, made the following comments on the definition of "nuclear weapon" in Article 5:

"The United States wishes to point out again the fact that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons and the fact that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore we understand the definition contained in Article 5 of the Treaty as necessarily encompassing all nuclear explosive devices. It is our understanding that Articles 1 and 5 restrict accordingly the activities of the Contracting Parties under paragraph 1 of Article 18.

"The United States further notes that paragraph 4 of Article 18 of the treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with Contracting Parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with our

policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States reaffirms its willingness to make available nuclear explosion services for peaceful purposes on a nondiscriminatory basis under appropriate international arrangements and to join other nuclear weapon States in a commitment to do so."

Subsequent to the making of this statement, the United States in fact joined in such a commitment in the Nuclear Non-Proliferation Treaty, which entered into force on March 5, 1970. Accordingly, it is proposed that when used in connection with our ratification of Additional Protocol II the last sentence of this statement be updated to read as follows:

"In this connection, the United States calls attention to Article V of the Nuclear Non-Proliferation Treaty, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclearweapon states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive devices."

Neither the Treaty nor our adherence to Additional Protocol II would present any bar to the use by the United States of nuclear explosions for excavation of a new Atlantic-Pacific interoceanic canal with the consent of the party in whose territory such excavation took place, although it would have to be consistent with other treaty obligations, including the Limited Test Ban Treaty. But the Treaty for the Prohibition of Nuclear Weapons in Latin America would require certain procedures to be followed in connection with such a project. These include (a) advance notification to the International Atomic Energy Agency, containing the information specified in paragraph 2 of Article 18, and (b) observation as provided in paragraph 3 of that article, by representatives of the International Atomic Energy Agency and of the new regional organization established to implement the Treaty.

Article 6-11 of the Treaty are not of direct interest to the United States, since they relate to meetings of the signatories and the organization and procedures of the regional "Agency for the Prohibition of Nuclear Weapons in Latin America" (the Spanish acronym for which is OPANAL). The first meeting of this organization was held in Mexico City, September 2-9, 1969, and was attended by a United States observer. Article 7 of the Treaty provides that "Only the Contracting Parties shall be affected by its decisions."

Articles 12-16 of the Treaty establish a control system for the purpose of verifying compliance with the obligations entered into by the Contracting Parties in accordance with Article 1. Article 13 requires the Contracting Parties to enter into agreements with the International Atomic Energy Agency for the application for its safeguards to their nuclear activities.

I enclose a copy of the Treaty and Additional Protocol I, which I suggest be transmitted to the Senate for its information in connection with consideration of Protocol II. Also enclosed is a copy of the statement which I propose be made an integral part of United States ratification of Protocol II.

I believe that ratification of Additional Protocol II to the Latin American Nuclear Free Zone Treaty would complement our other efforts to prevent the proliferation of nuclear weapons.

Respectfully submitted.

WILLIAM P. ROGERS.

ADDITIONAL PROTOCOL II

The undersigned Plenipotentiaries, furnished with full powers by their respective Governments.

Convinced that the Treaty for the Prohibition of Nuclear Weapons in Latin America, negotiated and signed in accordance with the recommendations of the General Assembly of the United Nations in Resolution 1911 (XVIII) of 27 November 1963, represents an important step towards ensuring the non-proliferation of nuclear weapons.

Aware that the non-proliferation of nuclear weapons is not an end in itself but, rather, a means of achieving general and complete disarmament at a later stage, and

Desiring to contribute, so far as lies in their power, towards ending the armaments race, especially in the field of nuclear weapons, and towards promoting and strengthening a world at peace, based on mutual respect and sovereign equality of States.

Have agreed as follows:

Article 1. The statute of denuclearization of Latin America in respect of warlike purposes, as defined, delimited and set forth in the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this instrument is an annex, shall be fully respected by the Parties to this Protocol in all its express aims and provisions.

Article 2. The Governments represented by the undersigned Plenipotentiaries undertake, therefore, not to contribute in any way to the performance of acts involving a violation of the obligations of article 1 of the Treaty in the territories to which the Treaty applies in accordance with article 4 thereof.

Article 3. The Governments represented by the undersigned Plenipotentiaries also undertake not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty for the Prohibition of Nuclear Weapons in Latin America.

Article 4. The duration of this Protocol shall be the same as that of the Treaty for the Prohibition of Nuclear Weapons in Latin America of which this Protocol is an annex, and the definitions of territory and nuclear weapons set forth in articles 3 and 5 of the Treaty shall be applicable to this Protocol, as well as the provisions regarding ratification, reservations, denunciation, authentic texts and registration contained in articles 26, 27, 30 and 31 of the Treaty.

Article 5. This Protocol shall enter into force, for the States which have ratified it, on the date of the deposit of their respective instruments of ratification.

In witness whereof, the undersigned Plenipotentiaries, having deposited their full powers, found to be in good and due form, hereby sign this Additional Protocol on behalf of their respective Governments.

PROPOSED STATEMENT ON RATIFICATION BY THE UNITED STATES OF AMERICA OF ADDITIONAL PROTOCOL II TO THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA

I

The United States understands that the Treaty and its Protocols have no effect upon the international status of territorial claims.

The United States takes note of the Preparatory Commission's interpretation of the Treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the Contracting Parties retains exclusive power and legal competence, unaffected by the terms of the Treaty, to grant or deny non-Contracting Parties transit and transport privileges.

As regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article 1 of the Treaty.

II

The United States wishes to point out again the fact that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons and the fact that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore we understand the definition contained in Article 5 of the Treaty as necessarily encompassing all nuclear explosive devices. It is our understanding that Articles 1 and 5 restrict accordingly the activities of the Contracting Parties under paragraph 1 of Article 18.

The United States further notes that paragraph 4 of Article 18 of the Treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with Contracting Parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with our policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States calls attention to Article V of the Nuclear Non-Proliferation Treaty, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclear-weapon states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive device.

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III

The United States also wishes to state that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of Article 4 of the Treaty in the same manner as Protocol II requires it to act with respect to the territories of Contracting Parties.

ADDITIONAL PROTOCOL II TO THE LATIN AMERICAN NUCLEAR FREE ZONE TREATY

Mr. Fulbright, from the Committee on Foreign Relations, submitted the following report (To accompany Ex. H., 91st Cong., second sess.).

The Committee on Foreign Relations, to which was referred the Additional Protocol II to the Treaty for the Prohibition of Nuclear Weapons in Latin America, signed at Mexico City on April 1, 1968, having considered the same, reports favorably thereon with understandings and declarations and recommends that the Senate give its advice and consent to ratification thereof with the understandings and declarations in the resolution of ratification which is printed at the conclusion of this report.

BACKGROUND

This protocol and the treaty to which it pertains, the Treaty for the Prohibition of Nuclear Weapons in Latin America (described briefly in the last paragraph of this section), are the result of the work of the "Preparatory Commission for the Denuclearization of Latin America" which met in Mexico City between March, 1965 and February, 1967. The United States was not a member of the Commission but sent observers to all but one of its sessions. On February 14, 1967 the treaty and its two protocols were open for signature. The United States signed Additional Protocol II with an accompanying statement on April 1, 1968, at Mexico City. (The United States has not signed and does not presently plan to sign Protocol I.) More than two years later, on August 13, 1970, it was submitted to the Senate for advice and consent to ratification.

According to the executive branch, the delay in signature and submission of the protocol to the Senate was occasioned by a desire to see whether the treaty would be "widely accepted by the parties" and by a desire to test the United States interpretation of the treaty and the protocol in actual practice with the parties over an extended period. An initial hearing on the protocol was held by the Committee on September 22, 1970, and a second, and final hearing on February 23, 1971.

PURPOSE

Protocol II was designed expressly for signature by states possessing nuclear weapons and wishing to associate themselves with the objectives of the treaty. By adhering to this protocol the United States commits itself, subject to its clarifying interpretations, to respect the aims and provisions of the treaty, not to contribute to its violation, and not to use or threaten to use nuclear weapons against the Latin American states for which the treaty is in force.

The treaty itself, which only Latin American nations may sign, commits the contracting parties to use nuclear materials and facilities under their jurisdiction only for peaceful purposes. It prohibits contracting parties from producing, testing, or possessing nuclear weapons in their territories. In addition it forbids the receipt, deployment or installation of any nuclear weapons in the territories of the parties. Compliance with the treaty is to be assured through the International Atomic Energy Agency safeguards system and by special inspections conducted by the "Agency for the Prohibition of Nuclear Weapons in Latin America," an international body established under the provisions of the treaty.

MAIN PROVISIONS OF PROTOCOL

Articles 1 and 2 of Additional Protocol II obligate the United States to respect the express aims and provisions of the treaty, and not to contribute in any way to the performance of acts involving a violation of the obligations of Article I of the treaty in the territories to which the treaty applies in accordance with Article 4 thereof.

Article 3 contains an undertaking "not to use or threaten to use nuclear weapons against the Contracting Parties of the Treaty." The treaty defines contracting parties as "those for whom the Treaty is in force" and thus the term does not include parties to either of the protocols.

Article 4 of the protocol incorporates a number of the provisions of the treaty by reference. It provides that the duration of the protocol shall be the same as that of the treaty, and that the provisions of Article 30 on denunciation shall be applicable to the protocol. Article 30 of the treaty provides that it may be denounced "if, in the opinion of the denouncing state, there have arisen or may arise circumstances connected with the content of this Treaty or of the annexed Additional Protocols I and II which affect its supreme interests or the peace and security of one or more Contracting Parties," and goes on to provide that denunciation shall take effect 3 months after notification. Article 4 of the protocol also provides that the definitions of "territory" and "nuclear weapons" as set forth in Articles 3 and 5 of the treaty shall be applicable to this protocol. In addition, Article 4 of the protocol states that the "provisions regarding ratification, reservations, * * * authentic texts and registration contained in * * * the treaty" should be applicable to the protocol.

Article 5 of the Protocol II provides that the protocol shall enter into force for each adherent on the date it deposits its instrument of ratification.

UNDERSTANDING AND DECLARATIONS

In his letter of transmittal the President requested that the Senate give its advice and consent to ratification, subject to certain understanding set forth in a statement accompanying the report of the Secretary of State. This statement was similar to that which accompanied the United States signature of the protocol but contained revised language reflecting the entry in force of the Nuclear Non-Proliferation Treaty which occured subsequent to U.S. signature of the protocol. In the course of the Committee's hearings executive branch witnesses proposed another modification of the statement to present a more explicit formulation of the U.S. understanding of the basis for territorial claims. The principal provisions of the revised statement, which is incorporated in the form of a declaration in the resolution of advice and consent, are as follows:

(1) U.S. ratification cannot be construed as an acceptance by the United States of the unilaterally asserted territorial boundary claims of the parties to the treaty (e.g., territorial seas).

(2) U.S. military transit and transport privileges will not be affected by ratification.

(3) The pledge not to use nuclear weapons against a contracting party would not prohibit a U.S. nuclear response in the event of an armed attack by a party with the assistance of a nuclear weapon state.

(4) Contracting parties are prohibited from acquiring nuclear explosives for peaceful purposes, but the United States could carry out nuclear explosions for peaceful purposes on their behalf and reaffirms its willingness to do so on the same terms as under the Nuclear Non-Proliferation Treaty.

(5) The United States will act with respect to Latin American territories of Protocol I adherents just as Protocol II would require us to act with regard to contracting parties.

COMMITTEE ACTION AND RECOMMENDATIONS

The Committee on Foreign Relations held public hearings on the protocol on September 22, 1970. At that time, testimony was heard from Mr. Charles A. Meyers, Assistant Secretary of State for Inter-American Affairs, Mr. James F. Leonard, Assistant Director, U.S. Arms Control and Disarmament Agency, Mr. Charles Van Doren, Deputy General Counsel, U.S. Arms Control and Disarmament Agency, and Rear Admiral William E. Lemos, Director, Policy Plans, Office of the Assistant Secretary of Defense. Completion of the hearings was then delayed pending the appearance before the Committee of Admiral Thomas E. Moorer, Chairman of the Joint Chiefs of Staff. On February 23, 1971, Admiral Moorer testified in support of the protocol. The record of these two hearings has been published as a separate document for the information of the Senate. On March 30, 1971, the Committee, by a vote of 13–0, ordered the protocol reported favorably to the Senate subject to the understanding discussed above. Those members voting in the affirmative were Senators Fulbright, Sparkman, Church, Symington, Pell, McGee, Muskie, Spong, Aiken, Cooper, Javits, Scott, and Pearson.

The Committee is not aware of any opposition to the protocol.

TEXT OF RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of Additional Protocol II to the Treaty for the

Prohibition of Nuclear Weapons in Latin America, signed at Mexico City on April 1, 1968 (Ex. H, 91-2), with the following understandings and declarations:

I

That the United States Government understands the reference in Article 3 of the treaty to "its own legislation" to relate only to such legislation as is compatible with the rules of international law and as involves an exercise of sovereignty consistent with those rules, and accordingly that ratification of Additional Protocol II by the United States Government could not be regarded as implying recognitions, for the purpose of this treaty and its protocols, or for any other purpose, of any legislation which did not, in the view of the United States, comply with the relevant rules of international law.

That the United States Government takes note of the Preparatory Commission's interpretation of the treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the contracting parties retains exclusive power and legal competence, unaffected by the terms of the treaty, to grant or deny noncontracting parties transit and transport privileges.

That as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States Government would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article 1 of the treaty.

II

That the United States Government considers that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons, and that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore the United States Government understands the definition contained in Article 5 of the treaty as necessarily encompassing all nuclear explosive devices. It is also understood that Articles 1 and 5 restrict accordingly the activities of the contracting parties under paragraph 1 of Article 18.

That the United States Government understands that paragraph 4 of Article 18 of the treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with contracting parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with a policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States Government notes Article V of the Treaty on the Non-Proliferation of Nuclear Weapons, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made available to non-nuclear-weapon states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive device.

III

That the United States Government also declares that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of Article 4 of the treaty in the same manner as Protocol II requires it to act with respect to the territories of contracting parties.

Mr. HELMS. Mr. President, I reserve the remainder of my time.

Mr. Church addressed the Chair.

The PRESIDING OFFICER (Mr. Hodges). The Senator from Idaho (Mr. Church).

Mr. CHURCH. Mr. President, this amendment addresses itself to a problem which does not exist.

Every treaty of this character needs implementing agreements between the parties. The implementing agreement entered into by the United States and the Republic of Panama which backs up the Panama Canal Treaty takes the form of an executive agreement,

the full text of which already has been provided to the Senate and is public information.

Article IV of this executive agreement implementing the Panama Canal Treaty deals with American use of defense sites in Panama during the life of the treaty. Section 6 of article IV of the executive agreement reads as follows:

> Since the Republic of Panama is a signatory to the Latin American denuclearization treaty the United States shall emplace no type of nuclear armament on Panamanian territory.

In the first place, Mr. President, it should be pointed out that our existing national policy is against the emplacement of nuclear weapons on Panamanian territory. The United States desires to do all it can to support the Latin American denuclearization treaty. It is manifestly in the U.S. national interest to support a treaty whereby other countries in this hemisphere agree to refrain from building or emplacing nuclear weapons on their territory.

Do we want this hemisphere filled with nuclear weapons harbored in every Latin American country? Obviously not.

For this reason, we have sought to do all we can not only to discourage Latin American governments from building lethal nuclear arsenals of their own, but also to discourage them from permitting any other nuclear power from emplacing nuclear weapons in their territory.

Are our memories so short that we already have forgotten the crisis that brought us to the brink of nuclear war when the Soviet Union placed nuclear weapons in Cuba?

So this provision merely reiterates existing national policy. As we do not wish Latin countries either to manufacture nuclear weapons or to permit other countries to emplace nuclear weapons in their territory, so we have refrained from emplacing American nuclear weapons in any part of Panama's territory.

That is one thing. I do not know who could argue with that proposition.

But that has nothing whatever to do with our right to move nuclear weapons through the canal. The provisions of the Neutrality Treaty, already ratified by the Senate, explicitly state the following, and I read from article VI, section 1, of the Neutrality Treaty:

> In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

So this is an amendment without a reason. How could language possibly make it clear? We retain the right to send nuclear-powered naval vessels and auxiliary ships or conventional powered naval vessels and auxiliary ships which may carry nuclear weapons through the canal. The treaty guarantees us that right.

Therefore, the amendment offered by the distinguished Senator from North Carolina is needless. Its only possible purpose would be to force some change in the text of the treaty which, in turn, could place the treaty in jeopardy, either by making it necessary to

return again to the negotiating table or by necessitating another plebiscite in Panama.

So, Mr. President, no case has been made for this amendment to the treaty. There is no need for it. The adoption of the amendment could only have a mischievous effect upon the treaty itself, while the right of the United States to transit nuclear-powered vessels or vessels containing nuclear armaments through the canal is expressly preserved in the text of the Neutrality Treaty already approved by the Senate.

Furthermore, by agreeing in this enabling legislation not to emplace nuclear weapons in Panama, the United States is simply carrying out an existing policy which manifestly serves the interests of protecting the lives of the people of the United States and, indeed, the survival of this Republic by helping to prevent the Western Hemisphere from becoming one gigantic arsenal of nuclear weapons.

For all of these reasons I hope that the Senate will resoundingly reject the amendment offered by the Senator from North Carolina.

Mr. President, I reserve the remainder of my time.

Mr. HELMS. Mr. President, will the Chair state the time situation, please?

The PRESIDING OFFICER (Mr. McGovern). The Senator from North Carolina has 9 minutes remaining; the Senator from Idaho has 10 minutes.

Mr. HELMS. Mr. President, I do not propose to use much of the remaining 9 minutes, and I will then be perfectly willing to yield back the remainder of my time when the able Senator from Idaho has made his further remarks, if any.

I would just point out the Senator is arguing against his own position in 1971. He saw the need in 1971 to reserve our rights of transit, as did the President of the United States, and the Secretary of State and, indeed, the then chairman of the Committee on Foreign Relations of that day, the distinguished Senator from Arkansas, Mr. Fulbright. Why should we foreclose that option today by a gratuitous paragraph in the implementation agreement?

We are talking about something very vital here. We are not talking about proliferation of nuclear weapons. I am sure the Senator from Idaho knows better than that. Nobody proposes that. The United States will continue to have control of any weapons we may wish to have in Panama. But regardless of any rhetoric against this amendment, the Senator from North Carolina contends it is absolutely essential if we are serious about protecting our rights and defending the Panama Canal—a responsibility we will be accepting until the year 2000 under the terms of this treaty; so I must reject most respectfully, but most emphatically, the contentions of the Senator from Idaho. If he will read his own position of 1971 he is bound to acknowledge that the Senator from North Carolina is correct. He thought we should reserve the right to have nuclear weapons in transit through nonnuclear territory in 1971; the Senator from North Carolina sees no reason why we should not reserve that right today.

Mr. CHURCH. Mr. President, nothing I have said today in any way contradicts any position I took in 1971, notwithstanding the assertions of the Senator from North Carolina to the contrary.

At that time the U.S. Senate was considering a treaty whereby the countries of Latin America agreed not to permit the emplacement of nuclear weapons on their territory. This was an objective devoutly sought by the United States.

The understanding of the Senate, which was attached to the instrument of ratification, merely made it clear that the provisions of the treaty did not in any way prohibit the United States from moving nuclear weapons through Panama or through any other country signing the treaty. Simply, we could move nuclear-powered vessels of the U.S. Navy or other vessels which might contain nuclear weapons through the Panama Canal.

Well, as I previously pointed out, the Neutrality Treaty that the Senate just recently ratified expressly gives the United States the right to move nuclear weapons or nuclear-powered vessels through the canal. So what is this amendment all about? There is nothing in it that the treaty does not already expressly provide.

Therefore, I can only conclude its objective is mischievous. I hope the Senate rejects it by an overwhelming vote.

Mr. President, I am now prepared to yield back the remainder of my time if the Senator from North Carolina will do likewise.

Mr. HELMS. Mr. President, I suggest the absence of a quorum, with the time equally divided or charged against me, either one.

Mr. CHURCH. If the Senator will withhold momentarily I withhold momentarily until the Senator from North Carolina decides whether he wishes to speak.

Mr. HELMS. I think we have discussed it adequately, Mr. President. I am prepared to yield back the remainder of my time.

Mr. CHURCH. I yield back the remainder of my time.

I move to table the amendment, and I call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I ask for the yeas and nays on the motion to lay on the table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment (UP No. 21) of the Senator from North Carolina (Mr. Helms). The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MELCHER (after having voted in the negative). Mr. President, on this vote I have a pair with the Senator from Michigan (Mr. Riegle). If he were present and voting, he would vote "yea." If I were at liberty to vote, I would vote "nay." Therefore, I withdraw my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the

Senator from South Carolina (Mr. Hollings), the Senator from Maine (Mr. Muskie), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett), the Senator from Arizona (Mr. Goldwater), and the Senator from Maryland (Mr. Mathias) are necessarily absent.

The result was announced—yeas 59, nays 32, as follows:

[Rollcall Vote No. 90 Exec.]

YEAS—59

Baker	Haskell	Metzenbaum
Bayh	Hatfield, Mark O.	Morgan
Bentsen	Hatfield, Paul G.	Moynihan
Biden	Hathaway	Nelson
Bumpers	Hayakawa	Pearson
Burdick	Heinz	Pell
Byrd, Robert C.	Hodges	Percy
Case	Huddleston	Proxmire
Chafee	Humphrey	Randolph
Chiles	Inouye	Ribicoff
Church	Jackson	Sarbanes
Clark	Javits	Sparkman
Cranston	Johnston	Stafford
Culver	Kennedy	Stevenson
Danforth	Leahy	Stone
Durkin	Long	Talmadge
Eagleton	Magnuson	Wallop
Glenn	Matsunaga	Weicker
Gravel	McGovern	Williams
Hart	McIntyre	

NAYS—32

Allen	Garn	Sasser
Bellmon	Griffin	Schmitt
Brooke	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
Cannon	Helms	Stennis
Curtis	Laxalt	Stevens
DeConcini	Lugar	Thurmond
Dole	McClure	Tower
Domenici	Nunn	Young
Eastland	Packwood	Zorinsky
Ford	Roth	

PRESENT AND GIVING A LIVE PAIR, AS PREVIOUSLY RECORDED—1

Melcher, against

NOT VOTING—8

Abourezk	Goldwater	Muskie
Anderson	Hollings	Riegle
Bartlett	Mathias	

So the motion to lay Mr. Helms' UP amendment No. 21 on the table was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SARBANES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

AMENDMENT NO. 23

Mr. CANNON. Mr. President, I call up my amendment No. 23 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Nevada (Mr. Cannon) proposes amendment numbered 23.

In the second sentence of paragaph 5 of Article III, strike out "ten million United States dollars ($10,000,000)" and insert in lieu thereof "five million United States dollars ($5,000,000)."

Mr. CANNON. Mr. President, I was privileged recently to chair the hearing in the Senate Armed Services Committee on the financial aspects of the proposed treaty. One of the aspects that struck me as being inequitable to the United States was the proposal to pay the Panamanians $10 million annually for services such as police and fire protction, street maintenance, lighting, cleaning, and garbage collection. What makes it inequitable is that the reimbursement is figured at U.S. pay scales rather than Panamanian rates which are less. In fact, it will cost the Panamanians, according to testimony that we received, less than $5 million a year for the first few years. So I have cut the assessment in half. I see no justification for paying more. A $5 million payment over expenses in unjustified.

I recognize that the treaty provides that every 3 years from the date that the treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors. This reexamination would eventually bring the cost in line with expenditures but would do nothing for the first 3 or more years after the treaty's ratification. This time period would witness the payment of a bonus of $15 million to Panama for no specific reason, under the treaty as it now reads.

In discussing this issue at the Armed Services hearing, the Comptroller General, Mr. Elmer Staats, said the Panama Canal Company estimated the cost to Panama woud be $4.4 million. This is only one item of several excessive concessions. Much is made of the fact that it will come out of canal revenues and not U.S. appropriated funds. But these are dollars that in past years have been put back into canal maintenance and improvement or into the U.S. Treasury. So giving this amount to Panama will presumably increase U.S. financial support of canal operations and decrease input to the Treasury.

Apparently, some feel that the increased compensation is due Panama for indignities suffered and damage done to its sovereignty since 1903 and because its past annuities have been so small. If so, this view overlooks the fact that Panama will immediately receive about 65 percent of the land and water areas now comprising the Canal Zone and will later receive the canal itself and the entire physical plant it contains. Further, during the 22 years when increased compensation will be received, Panama will continue to

enjoy the input to its economy of the millions of dollars flowing from the U.S. presence. In fact, Panama has profited outstandingly from the U.S. effort in the Canal Zone over the years, so anything suggestive of reparations is unwarranted. In my view, the United States is being very generous by turning over the Canal Zone initially and the entire canal later in the year 2000. I do believe we are too conciliatory at the negotiating table.

I think it might help to put the issue into focus by reviewing the other monetary considerations. Panama will receive 30 cents per ton transiting the canal; also, a fixed sum of $10 million per annum and an additional $10 million per year if canal traffic revenue permits. In addition, the U.S. pledges to arrange for an economic program of loans under existing statutory programs: up to $200 million in Export-Import Bank credits; up to $75 million in AID housing guarantees; and $200 million in Overseas Private Investment Corporation loan guarantees. This totals over $800 million. Also, Panama will receive up to $50 million in foreign military sales credits over a period of 10 years to assist in the canal's defense. The current annual payments by the Untied States to Panama is $2.3 million.

Now to discuss specifics.

General Parfitt, Governor of the Panama Canal Zone, warned that the canal operation may not be self-sustaining after 1984 under the terms of the treaties being considered. He said, in answer to questions from committee members, that the United States would be obliged to turn over the canal to Panama in the year 2000 free of liens and debts.

If there are outstanding debts, the U.S. Government will have to pay them when the canal passes into Panama's hands. The Governor said that after 1984, canal revenue probably will not support the operation of the canal or meet the U.S. obligation to pay Panama large sums of money from toll revenues.

In his estimation, this means there is a high probability that the United States will have to make up the differences between 1984 and 2000 from appropriated funds. And since the treaties require that the canal pass to Panama debt free, his testimony means that the United States would have to write off the millions of dollars owed to it by the Panama Canal Commission.

Accordingly, I feel the time to practice economy is now. Let us pay our fair share but not one cent more. Agreeing to a $5 million overpayment will not enhance our relations with Panama.

Mr. President, I refer the Members to the hearings before the Committee on Armed Services on page 331, where Senator Thurmond questioned General Parfitt concerning this payment by the Panama Canal Commission. The general stated as follows:

Governor PARFITT. That is intended to pay Panama for services provided in the canal operating area and in the coordinated housing areas. The specific services involved are police protection, fire protection, road and street maintenance, street lighting, garbage collection, traffic management, and street cleaning. These are essentially the services that are to be provided.

Senator THURMOND. Now what will be the actual payments to the public service workers?

Governor PARFITT. You mean what will Panama actually pay?

Senator THURMOND. Is it less than $10 million, the actual payments to the public service workers?

Governor PARFITT. We tried to——

Senator THURMOND. Panamanians don't make as much as U.S. employees in Panama so as not to disrupt their economic system.

Governor PARFITT. We tried to estimate what it would cost us in fiscal year 1979 to perform the services and we estimated about $10 million. We tried to estimate what the cost to Panama would be for similar services, and it is slightly less than half of that, primarily because of the rates they pay to their employees, particularly in the field of police protection, which is the biggest cost differential.

Again, Mr. President, Mr. Staats, who was requested on behalf of the Senate to review this matter with respect to costs, stated as follows:

Article III, Section 5 of the treaty provides that the Commission would pay the Republic of Panama $10 million a year for the costs involved in providing the following public services in the Canal operating and housing areas: police; fire protection; street maintenance, lighting and cleaning; traffic management and garbage collection.

The Panama Canal Company has estimated that it would cost the Republic of Panama about $4.4 million to provide the specified public services. If the Commission continued to provide these services, its estimated costs would be approximately $9.9 million. The difference is attributed to a lower cost of police services, if provided by Panama.

Mr. President, the treaty also provides that the costs involved in furnishing the services shall be re-examined after the first 3 years of the treaty and thereafter, the payment should be based on Panama's actual costs.

It is my contention, Mr. President, that that cost ought to be based on what it costs Panama the first 3 years, as well as the period after the first 3 years. That is precisely what this amendment would do.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Chair advises the Senator from Nevada that there is no time limit on this amendment.

The Senator from Idaho is recognized.

Mr. CHURCH. Mr. President, this is a matter about which reasonable men and women might differ. I think that the distinguished Senator from Nevada has made a good argument, based upon testimony taken in the Armed Services Committee. On the other hand, I think an equally good argument can be made for the $10 million figure.

The able Senator from Nevada gave us an accurate account of the oral testimony received by the Armed Services Committee on this question. Later, however, a series of written questions were propounded in an effort to get more detailed figures. One of those written questions, which appears at page 365 of the Committee on Armed Services hearings and to which the able Senator referred, reads as follows:

What is the estimated cost to the Panamanian government of providing the services designated in Article III, paragraph 5, for which the U.S. is to pay the annual fee of $10 million? As compared with Panama Canal Company cost?

In the first place, these costs are presently paid by the Panama Canal Company, an instumentality of the United States. It is costing us approximately $10.2 million a year to provide services which, under the terms of the treaty, the Government of Panama will assume and provide to the United States at a cost of $10 million a year.

So on the face of it, quite apart from the argument presented by the able Senator from Nevada, there is a modest saving to the

United States. The terms of the treaty comtemplate only a $10 million annual payment to Panama for the first 3 years. In other words, over that 3-year period we would be paying $600,000 less to the Government of Panama than it would cost us to provide the same services, based on our present costs.

Second, in response to this written question, let me read the following footnote:

[2] We expect that cost to Panama of public services will be something less than those paid by the Canal Zone Government and Panama Canal Company for the same services. This is primarily because labor costs in the Republic of Panama are less than those of the Canal Zone.

This is a fact that has been alluded to by the able Senator from Nevada. However, the footnote continues:

Other requirements such as maintenance, overhead and capital may be more expensive for Panama. Art. III of the treaty provides that the payment for these services will be readjusted for inflation and other relevant factors which, we would expect, would reflect the actual cost of services provided by Panama.

So I think it is fair to say that although certain costs will be less, other costs may be more when the services are furnished by the Government of Panama.

Having said that, let me add that when I visited Panama with other members of the Foreign Relations Committee, I discussed with General Torrijos the special concern that many American citizens living in the zone and working for the Panama Canal Company expressed to me. What would happen when the Panamanian Government took over the policing of the zone and police protection was no longer afforded them by Americans?

I could understand that this would be a very sensitive matter and so I pursued it in my discussions with General Torrijos.

He said he was aware of the sensitivities associated with transferring police jurisdiction from the United States to Panama as a part of restoring Panamanian jurisdiction over the zone. He emphasized that in order to make that transition as easy as possible he was going to insist upon special training for police officers hired by the Panamanian Government to work within the zone. That special training among other things would consist of language training in English and other courses to fully acquaint the police officers with the special conditions of life within the zone so that this transfer of authority would occasion a minimum of friction.

Mr. President, all of this will entail extra costs.

The startup costs for the Panamanian Government have not been considered in the argument presented by the Senator from Nevada. This is still another reason why I think it would be unwise to cut back the $10 million figure to $5 million.

With typical fairness, the Senator from Nevada acknowledged that after 3 years we will have sufficient experience to know what the actual costs are to the Panamanian Government to furnish these services. Then the treaty provides that adjustments will be made to reflect those actual costs, so no permanent subsidy will be written into this provision of the treaty.

All factors taken into account, it seems to me that the $10 million figure is not excessive. Some allowance must be made for the additional costs entailed in the start-up of these services and the special consideration that must be given to the adequate train-

ing of personnel by the Panamanian Government to avoid the human relations problems that might otherwise occur.

I think that the $10 million figure, therefore, serves the best interests of the Americans living in the Panama Canal Zone, is a reasonable figure given the circumstances, and that, in any case, it will be reviewed at the end of the 3-year period.

For these reasons, I think that it would be unwise to adopt the amendment offered by the Senator from Nevada, even though he has presented a perfectly good argument in support of it.

When we balance the arguments in favor against those opposed, it seems that the scales weigh in favor of making no change in the text of the treaty.

I hope, therefore, that the Senate will see fit to table this amendment.

Mr. President, I have no further argument to make. I would be happy to withhold my motion so that the Senator from Nevada may complete his argument.

Mr. CANNON. I thank the Senator.

Mr. President, I would like to refer again to General Staats' testimony, and he was asked to review this. As a matter of fact the Comptroller General has had the responsibility for reviewing the situation of the Panama Canal Company for years on behalf of the Congress and reporting thereon.

He has made a very comprehensive review. As a matter of fact, he makes a lot of suggestions that have not been carried out yet, because General Staats said:

> We believe that the treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission. Although this legislative package has not been presented, we will discuss some of the issues which should be considered with this legislation.

Then he goes on to outline a number of questions that have been and should have been raised.

Further on in his testimony, on page 371, he states as follows:

> The treaty also does not contain specific provisions concerning the quality * * * $10 million a year or require a determination of the actual costs incurred by the Republic of Panama. After 3 years the treaty appears to relate payments to costs. "The costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services."
>
> The Department of State has said that an annual $10 million is reasonable compensation to Panama for the first 3 years of the treaty; but that, thereafter, the payment should be based on Panama's actual costs. The treaty documents, however, are silent on how these costs are to be calculated.

I point out, furthermore, that I do not believe that it is clear in the treaty that the cost would go back to the actual costs at the end of the 3-year period.

I read, accordingly from article III, subparagraph 5:

> The Panama Canal Commission shall pay the Republic of Panama the sum of 10 million United States dollars per annum for the foregoing services.

They say "per annum."

> It is agreed that every 3 years from the date this treaty enters into force, the costs involved in furnishing such services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

That indicates that the costs probably could only go up about the $10 million, because there is a commitment to pay the $10 million annually and only the obligation to review, to determine whether adjustment should be made because of inflation. Inflation normally does not take a reverse position. It is going to remain constant or increase.

So it appears to me that we are going to be obligated, without any change, for at least $10 million, unless we get back to the actual cost of the operation from the beginning.

Therefore, I hope the Senate will support this amendment. I think it would eliminate any possible misunderstanding later on; and we are likely to have all the factors as to how much costs are to be verified, as stated by Attorney General Staats, particularly when he says:

> The treaty is not clear as to whether payments for the first 3 years are a flat of services to be provided by Panama. The implementing agreement for Article III of the treaty, however, does provide for the establishment of a United States-Panamanian Coordinating Committee for consultation and coordination on matters concerning the housing areas. This committee could possibly serve as a forum for resolution of any problems concerning the quality of public services. We believe that to avoid misunderstanding it is essential to establish standards for these services before they are assumed by Panama.

I think it is also important that we determine at this time in the treaty that the payments are to be for the actual costs of the service and not for a wind-fall.

Mr. President, I hope the Senate will support the amendment.

Mr. CHURCH. Mr. President, I wish to correct a statement I made earlier. I believe I said that it presently costs the United States $10.2 million a year for these services. I misread the figure.

Mr. CANNON. The amount is $9.9 million.

Mr. CHURCH. Yes, $9.9 million.

The Senator from Hawaii says he recalls my having said that, but I believe I was mistaken.

The fact is that it presently costs the United States nearly $10 million to provide these services, with existing trained personnel and equipment on hand. It seems to me, therefore, not unreasonable to assume that it may very well cost the Panamanian Government at least as much, given the startup costs, the training costs, and other special costs associated with the commencement of these services for the first time.

In his argument, the Senator refers to the provisions of section 5 of article III of the treaty, relating to canal operation and management. He read from that section the following language:

> The Panama Canal Commission shall pay the Republic of Panama the sum of 10 million United States dollars per annum for the foregoing services.

Those are as follows: fire protection, street maintenance, street lighting, street cleaning, traffic management, and garbage collection.

> It is agreed that every 3 years from the date that this treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

The distinguished Senator from Nevada has read that sentence to mean that the costs can only go up. I must say that has been our

general experience with the cost of services. But that sentence does not simply say that adjustments will be made because of inflation. It says the adjustments will be made because of inflation and "other relevant factors affecting the cost."

One of those relevant factors, of course, would be the general wage level paid by the Panamanian Government. If, in this case, the general wage level paid by the Panamanians is sufficiently less than the wage level paid by the American company, it may be true that costs to the Panamanian Government will be less than the costs to our own company. Then the language clearly provides for a downward adjustment, as well as an upward adjustment.

That being so, Mr. President, and since we are starting off by paying the Panamanians roughly what it costs us to furnish the same services, I think the provision in the treaty is reasonable and should not be changed. For this reason, I move to lay this amendment on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. Culver). Is there a sufficient second? There is a suffcient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Nevada. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the Senator from South Carolina (Mr. Hollings), the Senator from Maine (Mr. Muskie), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson), and the Senator from Michigan (Mr. Riegle) would each vote "yea."

[Rollcall Vote No. 91 Exec.]

YEAS—52

Baker	Gravel	Matsunaga
Bayh	Hart	McGovern
Bellmon	Haskell	Melcher
Bentsen	Hatfield, Mark O.	Metzenbaum
Biden	Hathaway	Morgan
Bumpers	Hayakawa	Moynihan
Byrd, Robert C.	Heinz	Nelson
Case	Hodges	Pearson
Chaffee	Huddleston	Pell
Chiles	Humphrey	Percy
Church	Inouye	Ribicoff
Clark	Jackson	Sarbanes
Cranston	Javits	Sparkman
Culver	Kennedy	Stafford
Danforth	Leahy	Stevenson
Durkin	Long	Weicker
Eagleton	Mathias	Williams
Glenn		

NAYS—42

Allen	Byrd, Harry F., Jr.	Curtis
Brooke	Cannon	DeConcini
Burdick		Dole

Domenici	Lugar	Schweiker
Eastland	Magnuson	Scott
Ford	McClure	Stennis
Garn	McIntyre	Stevens
Goldwater	Nunn	Stone
Griffin	Packwood	Talmadge
Hansen	Proxmire	Thurmond
Hatch	Randolph	Tower
Hatfield, Paul G.	Roth	Wallop
Helms	Sasser	Young
Johnston	Schmitt	Zorinsky
Laxalt		

NOT VOTING—6

Abourezk	Bartlett	Muskie
Anderson	Hollings	Riegle

So the motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to article IV?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend until the Senate is in order. The Senator will kindly suspend until the Senate is in order.

Are there further amendments to article IV?

ARTICLE V—PRINCIPLE OF NONINTERVENTION

The clerk will report article V.

The second assistant legislative clerk proceeded to read article V.

Mr. CHURCH. Mr. President, I move that further reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE V

PRINCIPLE OF NONINTERVENTION

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama. The United States of America shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

Mr. CHURCH. Mr. President, I understand it is possible to obtain a unanimous-consent agreement to the next amendment, and I defer to the Senator from Utah.

Mr. HATCH. Mr. President, I would be happy to agree——

The PRESIDING OFFICER. Will the Senator kindly suspend. The Senate is not in order.

Mr. HATCH. On my unprinted amendment I would be happy to stipulate to a 20-minute time agreement equally divided between both sides.

UNANIMOUS-CONSENT AGREEMENT ON HATCH AMENDMENT

Mr. CHURCH. Mr. President, I propose a unanimous-consent agreement that there be a 20-minute time limit on the amendment offered by the Senator from Utah, the time to be equally divided between the Senator from Utah, the proponent of the amendment, and myself.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

UP AMENDMENT NO. 22

Mr. HATCH. Mr. President, I call up my unprinted amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from Utah (Mr. Hatch) proposes an unprinted amendment numbered 22:

At the end of the last sentence of Article V, add the following new paragraph: "The Republic of Panama shall respect Freedom of Speech and Press, for both electronic and printed media, and shall abstain from any activity incompatible with the spirit of Freedom of Speech and Press. The Republic of Panama shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.".

Mr. HATCH. Mr. President, the treaties now before us imply far more than the abandonment of an internationally vital waterway. For we are contracting an agreement, if it can be called that, considering the fact that neither party seems to be able to reach a consensus as to what the documents actually mean, with a government which seized power in Panama in 1968 and has yet to fulfill its 10-year promise to hold free elections.

The United States has been negotiating with a leader whose power rests upon his control of the Panamian National Guard; a man who cannot afford to make any but the vaguest gestures toward restoring a semblance of the constitutional democracy he overthrew; a man whose promises of democratization, intended to placate Members of this body, have been nothing more than that—empty promises.

The amendment I am offering today addresses itself to a key element of this already amply documented issue of human rights violations in Panama, namely, freedom of the press. In a one-sided article (No. 5), which requires employees of the Panama Canal Commission to refrain from any activities that might be construed as interfering in the internal affairs of Panama, my amendment simply seeks to require that Panama reciprocate respect for the "the spirit of this treaty" by taking measures to insure the freedom of speech and press.

Since 1968, Mr. President, the Inter-American Press Association's annual report on freedom of the press in individual Western Hemisphere countries has found that in Panama "There is no freedom of the press." Although a modicum of press freedom was allowed long enough to give the appearance of authenticity to the plebiscite on

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the canal treaties, it is well established that both the press and radio are controlled in Panama by the Torrijos government. Media expressing independent views are faced with the prospects of censorship or confiscation, and prominent news personnel can receive harsh sanctions.

Five radio stations have been confiscated by the Government since the 1968 coup. Three of the country's five newspapers are under absolute Government control. The other two—La Estrella de Panama and the Star and Herald—are strictly self-censored by their editor, the Minister of Housing. In 1975, 111 Panamanians courageously signed a statement saying that without freedom of speech and assembly to discuss the canal treaty, the plebiscite on the pact "will be neither legitimate nor authentic." Since then, at least 15 of those who signed the statement have been expatriated, others have been incarcerated, and all of them have been slandered by the press and harassed by the Government. (See testimony of Mr. Winston Robles, Panamian Committee for Human Rights, before a subcomittee of the Committee on Appropriations, House of Representatives, March 30, 1977.)

According to information complied by the Panamanian Committee for Human Rights, General Torrijos has, on two different occasions, promised to rescind law 343 which contains the restrictions imposed on the Panamanian press. The committee reports that "on December 20, 1977, the Panama newspaper La Republica published the text of the proposed new law which would rescind Law 343. The draft of the new law addresses itself to the regulation of insult and slander" and "makes these acts criminal offenses," setting a range of prison terms and fines, and increasing the penalties if the slandered person is a public official. The committee additionally reports that the foreign press is also liable under the proposed new law, a law which apparently was drafted in response to the demands that freedom of press be restored. How can such a response, Mr. President, possibly be construed as an indication that General Torrijos is following through on his promises to lift the restrictions that govern his country's press? What evidence, Mr. President, does this body have which in any way supports the claims General Torrijos has made to Senators visiting in Panama that he will be taking steps to correct what remains a deplorable human rights situation?

The Panamanian Committee for Human Rights' analysis of the unfulfilled promises made by Torrijos was circulated by my distinguished colleague from Florida, Senator Stone. In his cover letter, Senator Stone states, "We have a priceless opportunity, while the ratification debates continue, to gain progress for human rights in Panama," and goes on to suggest that every Member of the Senate write to General Torrijos asking him to implement the promises he has made regarding those human rights. I agree with my distinguished colleague. The Senate does, at this very moment, have a priceless opportunity to gain progress for human rights in Panama. But I ask my friend from Florida, and I ask every Member of this body, does not the opportunity to amend the treaty itself constitute a far more concrete way to begin to correct the human rights situation in Panama? Writing letters is important, Mr. President, but would it not be far more effective to incorporate amendments

which substantiate Torrijos' promise to restore the freedoms that are now denied every Panamanian? A reluctance to incorporate such amendments suggests to me that General Torrijos' promises were nothing more than a ploy to convince Senators to vote for these treaties, and that the Senate's desire to encourage reform in Panama is just as casual. My amendment specifically addresses itself to one facet of the human rights picture in Panama.

From the U.S. point of view, what will the absence of a free press in Panama mean to U.S. interests during the life of the treaty between now and the year 2000? Panama will be assuming responsibility for the maintenance and operation of an undeniably essential waterway, the continued use of which is of vital interest to all the nations of the world. It is crucial that the world community be kept informed of Panama's success in her greatly expanded role.

It is imperative that newsmen have full access to sources of information in the Canal Zone dealing with the implementation of the treaty. It is equally as important that the press be able to gather information relating directly to the implementation of the treaty without fear of reprisal from the Panamanian Government. These points can be guaranteed in only one way—through an agreement now between the United States and Panama that freedom of the press will be observed during the life of the treaty.

Such an amendment to the treaty now before the Senate is, granted, unusual. But the treaty itself is unusual, as it cedes a vital waterway and extremely valuable property to another country over the next 22 years. Unusually significant American and international interests are at stake. One way to determine if those interests are being protected, and the treaty's provisions honored, is to guarantee freedom of press in the Republic of Panama.

The treaty's provisions call for an intricate network of new relationships between the United States and Panama. The U.S. role in this new relationship is strictly governed by the terms of the treaty, but as can be seen in article 5, no demands are placed on Panama. The admonition to respect "the spirit of this treaty" is applied only to U.S. citizens. I would submit, Mr. President, that the observance of the spirit of the treaty applies to both of the contracting parties, and the adoption of this amendment would be a step toward restoring the mutuality of this agreement.

The language of the amendment reads as follows:

> The Republic of Panama shall respect Freedom of Speech and Press, for both electronic and printed media, and shall abstain from any activity incompatible with the spirit of Freedom of Speech and Press. The Republic of Panama shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

The language is simple and straightforward, Mr. President. It contains no veiled intentions. Treaty proponents will probably claim that this amendment attempts to interfere with the internal affairs of Panama. I would suggest, however, that the internal affairs of Panama—that specter raised at every attempt to make this treaty a binding and meaningful document—cannot and must not be used as an excuse to exempt Panama from her expanded responsibilities with respect to the continued safe and efficient operation of the canal.

Events of recent days have revealed an increasing sensitivity on the part of Members of this body to criticism of the character of the Government in Panama. But how effective can these treaties be if promises regarding human rights made by the leader of that Government are conveniently forgotten? If the relationship between the United States and Panama is so tenuous as to forbid the guarantee of what can only be regarded as a fundamental freedom, then I have very little hope for the successful implementation of these agreements.

Mr. President, I urge the adoption of this amendment, and ask unanimous consent that the annual reports of the Inter-American Press Association be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HATCH. I reserve the remainder of my time.

EXHIBIT 1

ANNUAL REPORTS OF THE INTER-AMERICAN PRESS ASSOCIATION (IAPA)

(Omar Torrijos Seized Power on October 11, 1968)

1969

Panama

There is no freedom of the press.

The condition under which Panamanian government operates privately owned newspapers remains unchanged.

Costa Rican newspapers are not allowed to circulate in Panama and several editions of U.S. newspapers have been censored and kept out of circulation in the recent past.

The newspaper El Mundo of Panama City suspended publications and has stated that it was doing so because it was not willing to subject itself to censorship.

Sr. Altamirano Duque, member of the family that owns La Estrella, of Panama City, has been incarcerated since Dec. 28.

Dr. Gilberto Arias, publisher of several of the newspapers owned by the Arias family, now operated by government appointed editors, is in exile, now living in Puerto Rico.

1970

There is no freedom of the press.

Following the completion of the XI Central American and Caribbean Games staged here in Panama, Gen. Omar Torrijos, Commander of the National Guard, held a press conference on March 14 for the beneft of those correspondents visiting here. At this conference he made it clear that press restrictions in Panama "had been eased." This statement is self-explanatory and reveals openly that press freedom is not yet a reality in the Republic of Panama.

Here is a resume of existing conditions regarding constitutional rights:

On Nov. 5, the Revolutionary Government Junta announced the restoration of constitutional guarantees which had been suspended since the ouster of the Arnulfo Arias regime on Oct. 11, 1968 in a military coup.

Formal announcement of the decree restoring civil liberties was made by the Minister of the Presidency Juan Materno Vasquez. This was done following the television and radio broadcast of the mid-week National Lottery drawing, held for the first time in the City of Colon. The occasion marked the last activity into week-long commemoration of Panama's Independence Day.

The Minister who hails from the Province of Colon, said the action had been approved at the cabinet meeting of Oct. 31. He listed as being restored the constitutional provisions: safeguarding freedom from arrest of search without warrant, the right of habeas corpus, freedom of movement and of speech and the right to injunction.

Also restored was the right of peaceful and unarmed assembly, except in the two major cities of Panama and Colon.

Simultaneously, the government issued two stringent decrees governing press freedom and subversion—Decrees 342 and 343.

The decree dealing with public order defines subversion as:

Inciting to violence against the government by spoken or written word, including cartoons;

Engaging in or causing disturbances or damage to property at public meetings;

Inciting or organizing labor, student or general strikes which hamper public security services or cause damage to public or private property;

Taking up arms, singly or in groups, to carry out guerrilla warfare, or manufacturing or exploding bombs or petards, or setting fire to property, or contracting mercenaries, or introducing firearms into the country, or financing or organizing guerrilla uprisings;

Insulting or offending government officials, ranging from night Judge to the President and including the chiefs and staff officers of the National Guard;

Propagating, either orally or in writing, false reports in or outside the country aimed at "destroying" the government or disturbing public order or national security;

Engaging in propaganda in behalf of doctrines advocating crime or violence to achieve political, economic or social reforms;

Punishment for subversion is imprisonment ranging from one month to 15 years; plus confiscation of any land, air or water craft used by the offender. In cases involving damage to property, payment of indemnity also will be part of the penalty. Foreigners are subject to immediate deportation after serving their sentence.

The press decree requires the registration of owners of publishing, radio and television companies. It stiffens punishment for libel and slander providing for imprisonment ranging from $500 to $5,000 upon conviction.

The press decree stipulates that every newspaper must have a responsible party as editor, that he should not be protected by immunity, should be an adult Panamanian and that he should enjoy full civil and political rights.

Under the new press decree, sending of libelous and slanderous material to foreign newspapers, radio and television stations will be subject to prosecution here in Panama, if the newspaper circulates locally or the broadcast or telecast is heard in Panama.

The Decree forbids publication of false news, or confidential documents, of slanted headlines, or private activities of individuals that may cause him moral damage, of references to physical or moral defects or domestic problems of individuals, of court records involving cases under investigation, of stories involving minors under 18 years of age.

Punishment for violations of any of those provisions ranges from imprisonment of 3 to 6 months or a fine of from $50.00 to $500.00 or both.

The press decree provides that the authors, editors, managers and owners at printing plants, publications, radio and television stations all will be liable to prosecution for any of the violations spelled out in the decree.

1971

There is no freedom of the press. Conditions have grown worse since our last meeting in Santo Domingo. There is no newspaper which deviates from governmental opinion, and the information media are dominated by the Government.

1972

There is no freedom of the press.

1973

There is no freedom of the press in Panama.

1974

There is no freedom of the press. Among the newspapers published there, there is none that deviates from the official political line.

Mr. Luis Teófilo Núnez of "El Universal," Caracas, recalled that the newspapers belonging to the Arias family are still confiscated and that some members of the family remain in exile.

1975

There is no freedom of the press.

High government officials have repeatedly stated in the press that in Panama there is freedom of expression. This has been done in order to disprove the claims made by various sectors of public opinion to the effort that Panama is in need of a

climate of public and individual liberties which will permit the unbiased discussion of the problems which affect the country, and, particularly of those related to the negotiations carried out between Panama and the United States regarding the signing of a new treaty.

This new instrument would subrogate the treaty of 1903, and would eliminate once and for all the perennial grounds of conflict between Panama and the United States that have existed since the Hay-Bunau Varilla treaty was signed.

The Centro de Estudios Nacionales, under the impression that official statements on the existence of freedom of the press in Panama were to be taken literally, decided to publish La Opinión Pública, a weekly publication. To this effect, it previously notified, as required by legal provisions in force, not only the Ministry of Government and Justice but the Municipality of the district of Panama as well. Such notification was made on the special form prepared by the respective authorities for this purpose, which covers all data to be furnished to these authorities in accordance with applicable legislation.

The first edition of La Opinión Pública was scheduled to appear on March 7 of this year. However, on the eve of publication, Mr. Lorenzo Sanchez Galan, a high official of the Ministry of Government and Justice, called the offices of Editorial Verdad—printers engaged by the Centro de Estudios Nacionales to do the printing of the weekly—and without any explanation of his actions, except that he acted "on direct instructions of the Ministry of Government and Justice," confiscated all the material already prepared for publication of La Opinión Pública.

Following the confiscation, Dr. Tomás H. Herrera, D.M., appointed director of the weekly, was called to the Ministry and informed of Resolution #099 of March 5, 1975, through which the Ministry cancelled publication of La Opinión Publica alleging, without any legal basis, that the Centro de Estudios Nacionales had failed to accredit its legal status. Dr. Herrera was not informed of this resolution until March 10, 1975.

The resolution does not provide for or mention the confiscation of the weekly's material, which leads one to believe that it was the only and most expeditious way—although illegal as well—to prevent publication of the weekly. The legal regulations which cover the required notification to be made to the authorities in the case of the publication of newspapers, do not contain any provision establishing accreditation of the legal status of an association as one of the requisites of that notification whenever such notification is made by a juridical person.

The only legal provision in existence, relating to prove the existence of such organization is Art. 296 of the Commercial Code according to which, it is necessary to prevent proof of the existence of an association, whenever the subject under discussion, in any business or controversy is the existence of the association per se. Regarding the scope of the aforementioned article in the sense referred to—the Third Chamber of Administrative and Contentious Matters of the Supreme Court has already rendered its decision—it is evident that a simple notification proceeding such as the one under discussion, is not a business and even less a controversy requiring accreditation of the legal status of the Centro de Estudios Nacionales.

On the other hand, aside from the fact that the pretext adduced in the resolution of the Ministry of Government and Justice, in order to stop publication of La Opinión Pública has no legal basis, neither does, that same measure, that is, the stopping of the publication have any legal basis as well. Even if at the time the publication notification was made, one of the requirements specified by the law was in effect lacking—which was not the case in this instance neither the measure adopted by the resolution in question, authorized by a legal provision. In such case the only thing the law calls for is the imposition of a fine on the persons responsible for the omission but not stoppage of publication. Neither is the confiscation of a publication's material authorized by legal provisions, because the owner of that publication, a juridical person, failed to accredit its existence before the Ministry of Government and Justice.

The director of La Opinión Pública has made use of the resources offered by our juridical system. Without affecting those recourses and in order to settle the matter, thus avoiding the alternative that once those recourses are exhausted publication of the daily be postponed indefinitely, a certificate has been requested from the Public Registry, accrediting the existence of the Center. However, there are indications that since that registry is an agency of the Ministry of Government and Justice, it will not issue the certificate, thus making it impossible to fulfill the requirements set forth in the resolution in question.

The tale does not end there. The Bureau of Commerce of the Ministry of Commerce and Industry, through resolution No. 13 of March 10, 1975, and at the request

of the Under Secretary of Government and Justice, on March 7 cancelled the commercial license which permitted the operation of Editorial Verdad.

The request of the aforementioned Under Secretary, according to the resolution of the Bureau of Commerce, is based on "the proven fact that that association has repeatedly published subversive material" (the underscoring is ours). An attorney who is a member of the Centro de Estudios Nacionales called at the Ministry of Commerce and Industry accompanied by the legal representative of Editorial Verdad with the purpose of looking at the dossier relating to the resolution in question. They were able to find out that such a dossier does not exist, or rather, that it consists of only two pages. One: the official communication from the Under Secretary of Government and Justice requesting cancellation of Editorial Verdad's commercial license. Two: the resolution ordering such cancellation.

Everything seems to indicate, if the truth does not contradict that possibility, that a subversion proceeding has been instituted in the Ministry of Government and Justice against the aforementioned publishing firm, and that such proceeding has already culminated, without the interested parties being aware of it, in a condemnatory resolution, which is being carried out at the request of the Under Secretary of Government and Justice. In the light of these occurrences one cannot but reach the conclusion that the cancellation of the license of Editorial Verdad is a reprisal on the part of the government for having agreed to publish La Opinión Pública. Further, this reprisal can be considered an official warning to other publishing firms that then aware of the risks they run if they engage in similar activities.

It could be that, the Centro de Estudios Nacionales could tomorrow obtain the lifting of the restriction which prevents the publication of La Opinión Pública. However, it could hardly do this since it is extremely difficult that any publishing firm would run the risk of being shut down.

From the foregoing it is evident that the actions of the government as regards La Opinión Pública, contradict most eloquently the statements made by high officials of the national government to the effect that there is freedom of the press in Panama.

Last year, the daily Quibo was also arbitrarily closed by the National Guard of Panama, and his own, Ramón Jiménez, arrested by that body. Several weeks ago the government closed down a radio of Colón, managed by Mr. Navas. At present, Panamanian journalists who have not been "absorbed" by the government are fearful of publishing news which may embarrass the administration. However, even more fearful than the journalists, are the owners of social information media because if they should publish something that may be strong enough to be considered a criticism against the government, their publishing firms may be closed down.

In conclusion, if one is to judge from the fact that the government did not allow publication of the newspapers Quibo in January 1974 and of La Opinión Pública on March 7, and by the case of the radio station of Colón, it can easily be inferred that Panama does not enjoy freedom of the press.

1976

(Williamsburg Conference)

There is no freedom of the press. Newspapers continue to operate under the direct or indirect control of the Government or under strict supervision.

There is no freedom of the press.

(Aruba Conference)

All the newspapers function under the direct control of the government or the strict supervision of the authorities.

A letter addressed by the directors of the Federation of the Chambers of Commerce of Central America to the President of Panama, Mr. Demetrio Lakas, was not published in any of the news media. The letter requested the government to repatriate seventeen businessmen and impresarios who were deported without explanation or just cause.

1977

(Cartagena Conference)

The situation of Panama's press has changed little in the last six months. Three of the five newspapers continue under absolute government control, published by "Editora Renovación S.A." The other two newspapers "La Estrella de Panamá" and "The Star and Herald", belonging to the Duque family, are subject to strict self-censorship by their editor, the Minister of Housing. The only change that has taken

place in "Editora Renovación" is the disappearance of "El Panáma América" and "The Panáma American", which were replaced by a bilingual newspaper "La República".

(Santo Domingo Conference)

Freedom of expression has not existed in Panama since 1968.

Expression of dissident opinions is considered a misdemeanor under decrees 342 and 343.

No independent publication has been permitted to be published. The newspapers "Quibo" in 1974 and "Opinión Pública" in 1975 were prohibited from publication even before the first edition reached the streets.

Since 1968, many journalists have been imprisoned and deported. A special mention should be made of the Leopoldo Aragon case, in which a Panamanian journalist was imprisoned and tortured for an entire year and then deported to Sweden. There he immolated himself a month ago as a protest against the violation of human rights in Panama and against the signing of the canal treaty.

Recently in Panama a certain degree of freedom of the press has been permitted, carefully given out in small doses, to give the appearance of authenticity to the plebescite on the Panama Canal treaties.

Mr. CHURCH. Mr. President, this is the kind of amendment that could only be offered in the Senate of the United States. It undertakes to prescribe for Panama the law that shall apply there with respect to freedom of speech and freedom of the press.

Mr. President, what would we think if the Republic of Panama sought to amend this treaty to prescribe that we in the United States must free the Wilmington 10? Or what would we think if Panama undertook to amend the treaty to insist that we ratify the equal rights amendment? Or what would we think if Panama required that the U.S. Senate approve the Genocide Treaty? And that treaty, incidentally, was first proposed by the United States and has since been approved by more than 80 other sovereign governments, while the Senate has refused even to reach a vote on consenting to that treaty.

Or what would we think if the Panamanians attached a condition that we first must conclude an agreement with the Soviet Union on nuclear arms control? Clearly the survival of the entire human race may depend upon progress in that field; and the human race, of course, includes the Panamanians as well as citizens of the United States.

Such proposals as those would be scoffed at and scorned in the U.S. Senate as an arrogant infringement of our right to govern ourselves.

Yet we seem to have no compunction whatever to impose our terms on other countries. How long can we live so blindly by the double standard? When do we begin to show some sensitivity toward the legitimate feelings of people who live in other lands?

Mr. President, I wish that the world had been made safe for democracy as a result of the First World War, but it was not.

I wish that most nations in the world were free and the people within them enjoying free speech and freedom of the press, the great blessings which we enjoy in this Republic. But the truth of the matter is that most people in most places most of the time, from the beginning of recorded history, have lived under some form of tryranny.

We have to live in the world as we find it because it is within our power neither to control the internal laws of other countries, nor to establish the system under which other people live. We have

problems enough keeping America free without undertaking to prescribe the conditions of freedom for other nations.

Mr. HATCH. Will the Senator yield?

Mr. CHURCH. No, I will not yield at this time. If I have time when I have completed my remarks, I will yield.

Now let us suppose, Mr. President, that we were to take this amendment, which the Senator from Utah says we should impose upon the people of Panama, and apply it to other governments in the world with which we are closely allied.

Take Taiwan, for example. We have a formal defense treaty with Taiwan. Does anyone believe that freedom of speech and freedom of the press exist in Taiwan? Has anyone ever suggested that we impose that condition upon Taiwan as a quid pro quo in connection with the mutual security treaty we have with that country?

Take South Korea, which we are formally pledged to defend and in which we keep a substantial American Army. Is there anyone who would seriously contend that there is freedom of speech or freedom of the press in South Korea. Is there anyone who would seek to attach such a condition to the present American treaty with that country?

Take the Rio Pact in this hemisphere, if we want to come closer to home. Under the terms of the Rio Pact the United States has assumed a mutual defense obligation with all of the countries of Latin America. Is there freedom of speech and freedom of the press in Brazil, in Argentina, in Paraguay, in Chile? Is there freedom of the press and freedom of speech in Nicaragua, in El Salvador, in Honduras?

Would the Senator from Utah suggest that as a condition to our security arrangements with these countries we impose a requirement that they establish freedom of speech and freedom of the press as we know it in the United States?

Obviously, Mr. President, this is an impossible amendment. I wish that the world were a different place in which everyone could enjoy the freedoms we know in this country. But that is not the world we live in and we must deal with the world as we find it.

On that basic, Mr. President, I am prepared to move to table the amendment.

Mr. HATCH. Mr. President, how much time have I remaining?

The PRESIDING OFFICER. The Senator from Utah has 3 minutes remaining.

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from Texas.

Mr. TOWER. I thank my distinguished friend from Utah.

The Senator from Idaho has raised some specific questions. What if the Panamanians were to impose certain conditions on the requirement for freedom, for example, the passage of the ERA, the conclusion of the SALT agreement? Then I think we should say to the Panamanians they can take the treaty and do with it what they will. In fact, we are in Panama by right. Not because we are being compelled to do so but out of the goodness of our hearts, we are surrendering the Panama Canal to them. I think under those circumstances we enjoy a peculiar right to impose certain conditions that we would not accept under other circumstances if,

indeed, the treaty to be concluded were of no benefit to us but only to the benefit of the other party to the treaty.

We are not doing this to benefit the United States. We are not doing it even to benefit all of the major maritime nations of the world. We are doing it because we have some naive notion that we should feel some sense of guilt or self-recrimination over having liberated that country at one time and exacted a very small price of a Canal Zone through which we have operated a canal to their benefit and to the benefit of every maritime nation in the world. The notion that somehow this will automatically create a generation of good will in this hemisphere will not come to pass.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Utah has 1 minute remaining.

Mr. HATCH. Mr. President, I ask unanimous consent that there be an additional 2 minutes granted both sides.

The PRESIDING OFFICER. Is there objection?

Mr. MCCLURE. Reserving the right to object, there are a number of us who are supposed to be at the White House at 5 o'clock.

Mr. HATCH. I will withdraw my request.

Mr. President, I never thought I would see the distinguished Senator from Idaho arguing that freedom of the press would be scoffed at in Panama or throughout the world, or that this would be such a terrible thing to ask of our Panamanian friends, especially since Mr. Torrijos promised it and said he would do it. What is wrong with freedom of the press? I could hardly believe it when the distinguished Senator from Idaho stood here and said that we would never interfere with any other nation, why were we doing it here? What about South Africa? What about Rhodesia? What about the human rights policy of this administration, which is supposed to be so good?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHURCH. Mr. President, how much time remains to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho has 6 minutes remaining.

Mr. CHURCH. Mr. President, these treaties are based upon principles of justice for both sides. So I have hopes that the approval of these treaties may lead to an era of better understanding and of friendlier relations between the United States and Panama. And if that is the case, we may see the growth of freedom in Panama again. Already there have been moves in this direction, which I applaud.

The suggestion that I might see something wrong with free speech or freedom of the press is simply too silly to warrant a response.

The only way that freedom will grow in Panama is through the efforts of Panamanians. There is no way we can confer freedom on them. That is something they must win for themselves. If good relations between the United States and Panama exist between now and the end of the century, based upon a treaty that both sides regard as just, then the influence of the United States in the direction of greater freedom in Panama will be felt and will prove effective. The worst way for anyone seriously interested in advanc-

ing the cause of freedom in a foreign land is to impose that as a condition in this treaty, for it would have just the opposite effect.

I move to lay the amendment on the table. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to lay the amendment on the table. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the Senator from Kentucky (Mr. Ford), the Senator from South Carolina (Mr. Hollings), the Senator from Louisiana (Mr. Johnston), the Senator from New York (Mr. Moynihan), the Senator from Maine (Mr. Muskie), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. Riegle), and the Senator from Minnesota (Mr. Anderson), would each vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett) is necessarily absent.

The result was announced—yeas 62, nays 29, as follows:

[Rollcall Vote No. 92 Exec.]

YEAS—62

Baker	Gravel	McIntyre
Bayh	Hart	Melcher
Bellmon	Haskell	Metzenbaum
Bentsen	Hatfield, Mark O.	Morgan
Biden	Hatfield, Paul G.	Nelson
Bumpers	Hathaway	Nunn
Burdick	Hayakawa	Packwood
Byrd, Harry F., Jr.	Heinz	Pearson
Byrd, Robert C.	Hodges	Pell
Case	Huddleston	Percy
Chafee	Humphrey	Proxmire
Chiles	Inouye	Ribicoff
Church	Jackson	Sarbanes
Clark	Javits	Sparkman
Cranston	Kennedy	Stafford
Culver	Leahy	Stevenson
Danforth	Long	Talmadge
Durkin	Magnuson	Wallop
Eagleton	Mathias	Weicker
Glenn	Matsunaga	Williams
Goldwater	McGovern	

NAYS—29

Allen	Hansen	Schweiker
Brooke	Hatch	Scott
Cannon	Helms	Stennis
Curtis	Laxalt	Stevens
DeConcini	Lugar	Stone
Dole	McClure	Thurmond
Domenici	Randolph	Tower
Eastland	Roth	Young
Garn	Sasser	Zorinsky
Griffin	Schmitt	

NOT VOTING—9

Abourezk	Ford	Moynihan
Anderson	Hollings	Muskie
Bartlett	Johnston	Riegle

So the motion to lay Mr. Hatch's Up amendment No. 22 on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Metzenbaum). Are there further amendments to article V?

Mr. Helms addressed the Chair.

The PRESIDING OFFICER. The Senators from North Carolina.

Mr. HELMS. I thank the Chair.

UP AMENDMENT NO. 23 (SUBSEQUENTLY NUMBERED AMENDMENT NO. 102)

Mr. HELMS. Mr. President, I send to the desk an unprinted amendment and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

Mr. HELMS. May we have order in the Senate, Mr. President?

The PRESIDING OFFICER. The Senator will suspend until such time as there is order in the Senate. Members of the Senate will return to their seats.

Would Members of the Senate be kind enough to terminate their conversations on the floor of the Senate?

Will Members of the Senate be good enough to make it possible for the clerk to state the Senator from North Carolina's amendment?

The clerk will state the amendment.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes an unprinted amendment number 23.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the amendment be dispersed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Amend article V to read as follows:

"ARTICLE V

"Guarantee of Civil Rights

"1. The Republic of Panama agrees that any person born before the date of entry into force of this Treaty in the Canal Zone who is a citizen of the United States of America under the immigration and nationality laws of the United States of America is not a national or citizen of the Republic of Panama.

"2. Employees of the Panama Canal Commission and their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, and members of United States Armed Forces or of the civilian component thereof, and their dependents, and designated contractors of the United States Armed Forces, who are nationals of the United States of America,

shall respect the laws of the Republic of Panama and shall have their civil and human rights respected by the Republic of Panama.

"3. Such employees, dependents, contractors, and members who have resided continuously in the former Canal Zone for a period of five years before the date of entry into force of this Treaty shall be considered for purposes of the immigration and nationality laws of the United States of America, as having been lawfully admitted for permanent residence to the United States of America at the beginning of such period.

"4. Such employees, dependents, contractors, and members who are citizens of the United States of America or are permanent residents of the United States of America under paragraph 3 and are prosecuted by authorities of the Republic of Panama shall be entitled to the following procedural guarantees:

"(a) To a prompt and speedy trial.

"(b) To be informed, in advance of trial, of the specific charge or charges made against him.

"(c) To be confronted with and to be allowed to cross-examine the witnesses against him.

"(d) To have evidence and witnesses in his favor presented. The authorities shall submit such evidence and call the witnesses if they are within the Republic of Panama.

"(e) To have legal representation of his own choice for his defense during all investigative and judicial phases from the time of submission to questioning and throughout the entire proceedings; or, if he indicates he lacks funds for his defense, to be defended by the appropriate public defender.

"(f) To have the services of a competent interpreter if he considers it necessary.

"(g) To communicate with a representative of the Government of the United States and to have such a representative present, as an observer, at his trial.

"(h) Not to be held guilty on account of any act or omission which did not constitute a criminal offense under the law of the Republic of Panama at the time it was committed.

"(i) To be present at his trial which shall be public. However, without prejudice to the procedural guarantees in this Article, persons whose presence is not necessary may be excluded, if the court so decides for reasons of public orders or morality.

"(j) In his proceedings to have the total burden of proof laden upon the Public Prosecutor or the prosecution.

"(k) To have the court consider only voluntary confessions and evidence properly obtained in accordance with the requirements of the law.

"(l) Not to be compelled to testify against or otherwise incriminate himself.

"(m) Not to be required to stand trial if he is not physically or mentally fit to stand trial and participate in his defense.

"(n) Not to be tried or punished more than once for the same offense.

"(o) To have the right to appeal a conviction or sentence.

"(p) To have credited to any sentence for confinement his entire period of pretrial custody.

"(g) Not to be subject to the application of martial law or trial by military courts or special tribunals.

"(r) To enjoy all other guarantees and rights provided for in the Constitution, Judicial Code and other laws of the Republic of Panama.".

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. HELMS. I yield.

Mr. ROBERT C. BYRD. Will the Senator agree that no vote occur in relation to the pending amendment prior to 6:15 p.m. today? That is approximately 1 hour from now.

I ask this because there are Members on both sides of the aisle who are conferring on the energy package at this moment; and if a vote were to occur within the next hour, it would be inconvenient for them.

Mr. HELMS. I understand, I would be perfectly willing to set a time definite, at any time that is convenient to the majority leader and other Senators. So if the majority leader wants to specify a time for a vote, that will be satisfactory to me.

Mr. ROBERT C. BYRD. The Senator's courtesy is characteristic of him. I think if we simply agree that there will be no vote on this

amendment or in relation to it before 6:15 p.m. today, this will relieve our situation, and at that point we can decide.

Mr. HELMS. That is perfectly agreeable to me.

Mr. ROBERT C. BYRD. I thank the Senator.

ARTICLE V—"GUARANTEE OF CIVIL RIGHTS"

Mr. HELMS. Mr. President, the Canal Zone is not a mere strip of land between the Atlantic and the Pacific; nor is the Panama Canal simply an engineering and technological toy. At the heart of the canal operation is people—many of whom have dedicated their lives and careers to the proper functioning of the canal. Therefore, when the Senate talks about turning over the Panama Canal to Panama, we must not forget that the canal in itself is just a hunk of concrete and machinery. That is all that would be turned over. But in point of fact, the canal, as we know it today, is in reality a living organism, a superbly functioning operation that involved the intimate cooperation of two nations and literally thousands of people.

Nor do the canal operations involve only the transit of ships. The transit of ships is the ultimate purpose; but these transits are in turn supported by a wide variety of auxiliary operations essential to the proper functioning of the transit purpose. These support operations range from continuous overhaul of locks machinery, to constrant dredging operations, to scrupulous sanitation procedures, to support facilities for vessels in transit and waiting for transit, to support facilities for the employees themselves.

The operation of the canal has always been planned on the basis of cooperation between the United States and Panama. Without the assistance of thousands of Panamanians, the canal could not exist, could not function continuously, could not maintain itself and its procedures in proper order. On the other hand it was always the United States policy to maintain U.S. citizens in key technical, management, and security positions so that the United States would always have the latent capability to operate the canal in an emergency situation.

I think that it is to the credit of the Panamanian employees that they have always shown a loyalty to the canal operation, and a dedication that transcends national interest. During the 1964 riots, for example, many of them stayed on the job for the duration, sleeping on cots in the Canal Zone. Nevertheless, no man can be expected to owe ultimate allegiance to a foreign nation; it is not fair to make such a demand. Therefore, the U.S. citizen force served not only to supply technical and management expertise not available in the Panamanian population; it also served to ensure that the United States would retain control of the canal in case of the development of adverse circumstances.

The control of the canal, therefore, is very closely related to the level of the U.S. presence in the canal operation. Obviously, not all of the U.S. citizen employees are vital to the canal's mission; it is probably not even possible to state precisely what level constitutes control. The fact is that today the Canal Company has a contingency plan to operate the canal without Panamanians if that were necessary. It is a plan that doubtless involves many emergency-

type assignments, overtime, long hours, and perhaps even some impairment of service. Human beings can bear up under such circumstances for a while. The smaller the number of reinforcements available, the shorter the time that emergency procedures can be followed without breakdown. Somewhere in the psychological makeup of human communities there exists a "tipping point" where the vitality of the community seems to ebb and for reasons that go beyond mere numbers, the community begins to disintegrate.

Mr. President, the U.S. citizen employees in the Canal Zone come from all walks of life. They are a cross section of the American population. They are in many ways extraordinary Americans—extraordinary for their dedication and their sense of duty; but in their origins and occupations they are like ordinary Americans everywhere. You do not find the snobbery of the Foreign Service, or the elitist preoccupations of the academic crowd among them. What you find is good, old-fashioned American patriotism, and pride in a job well done.

Mr. President, I shall put in the Record at this time a breakdown of the occupations of U.S. citizen employees of the Canal Zone.

This, in essence, states that the blue collar occupations are 638; technical and administration, 1,565; top management, 12; special categories, 1,180, including 507 teachers, 208 canal pilots, and 202 police officers.

By law, certain of these positions are designated as "security positions." This term means that the occupants must be persons who owe allegiance to the United States. The law does not by any means imply that Panamanians are disloyal or untrustworthy. It is simply a statement of fact that U.S. control of the canal depends upon having U.S. citizens in key jobs. At the present time, there are 567 security positions, broken down as follows:

Positions designated by law, 6; access to classified defense information, 137; certain police and fire positions, 158; essential to ensure operations continuity, 266, for a total of 567.

As a matter of practical fact, however, the United States must have a far greater number of U.S. citizen employees than merely the 567 in security positions if the United States is to control the canal in any practical manner. The proposed Panama Canal Commission has a Board which the United States will control by a 5–4 majority; but the United States can never be sure that the policies laid down by the Board will be carried out unless we have sufficient managerial control and technical expertise to carry them out to our satisfaction. Unless we have, for example, canal pilots and lock technicians loyal to the United States, we do not have control of the canal.

THE REORGANIZATION OF THE CANAL AGENCY

In this regard, it is important to understand what will happen to the canal agency as a result of the changes imposed upon it by the treaty. As a result of the divestiture of many employee and canal user support functions, the size of the agency will be drastically reduced. These changes will come about the first year; by the end of the third year, the United States will no longer have practical

control of day-to-day operations, if the estimates of the Panama Canal Company are correct.

Most people have the idea that the departure of U.S. citizens, by attrition, will make more jobs available for Panamanians. This has been advertised widely in Panama by Mr. Torrijos. Unfortunately, that idea is totally incorrect. The Panama Canal Company has prepared a treaty implementation plan studying every job in the agency, and evaluating whether or not that job will be eliminated by treaty. The results will surprise many.

I have distributed to every Senator's desk a color chart which graphically illustrates the force structure of the canal organization as proposed under the 1979 budget of the Panama Canal Company—without the treaty—and as compared with the planned force structure imposed by treaty changes in fiscal year 1979 and the 3 subsequent fiscal years.

In so far as the treaty requires the canal agency to divest itself of operations which are auxiliary to actual canal transit, a smaller work force is required. Because there will be fewer operations under control of U.S. agencies, our ability to maintain overall quality control of operations will be greatly lessened. The number of U.S. citizen employees will be reduced both numerically and proportionately in the smaller canal agency; functionally, therefore, it is doubtful that the United States could retain operational control in the face of a Panamanian walk-out.

PANAMANIAN EMPLOYEES—CUT 41.1 PERCENT

Mr. President, the myth, and I emphasize the word "myth," that Panamanians will have more jobs when the U.S. citizens leave does not accord with reality. Of the 10,574 Panamanians planned to be employed under the 1979 budget—without treaty—4,379 will be separated from the canal agency, a reduction of 41.1 percent the first year. In 1980, the Panamanian force level of 6,195 will decline slightly to 6,075, at which point it levels out to the year 1982. It is impossible to make accurate projections after 1982.

Of the 4,379 Panamanian employees to be separated, the vast majority face an uncertain future, to say the least. The Governor of the Canal Zone, Governor Parfitt, has testified before this Congress that about 1,500 Panamanians will have their jobs discontinued without any assurance that a similar job will be created in the private sector. Some estimates of unemployment in the cities of Panama run as high as 20 percent, I might say parenthetically.

Approximately 1,900 job slots will be transferred to Government of Panama agencies. Under article X of the treaty, Panama will retain the present incumbents of those slots only "to the maximum extent feasible." In a government where cronyism and patronage are endemic, the present incumbents of those jobs read that phrase as a threat to their jobs, which pay about three times as much as similar jobs in Panama.

Moreover, it will be difficult for the Government of Panama to maintain a pay scale in those agencies which is so far out of line with the pay scale in other Panamanian Government agencies. In any case, the United States would have no way to enforce a gener-

ous interpretation of article X's provisions on behalf of the Panamanian employees of a Panamanian Government agency.

Another 1,450 Panamanians will be transferred to other U.S. Government agencies in Panama; but those jobs, mainly in schools and hospitals, are dependent upon the presence of large numbers of U.S. citizens and military. They would be endangered by any large-scale pullout of U.S. employees or troops.

U.S. CITIZEN EMPLOYEES—CUT 74.6 PERCENT

Although the provision of article X which requires a cutback in the level of U.S. citizen employees by 20 percent within 5 years has been criticized by some as excessive, the chart on Senators' desks at this moment shows that the requirement considerably understates the planned cutbacks. The canal agency will reduce U.S. citizen employees from 3,994 to 2,270 in fiscal year 1979, a reduction of 43.7 percent the first year. By 1982, the U.S. citizen force will be reduced to 1,982, a reduction of 49.6 percent. But Governor Parfitt has testified before the Armed Services Committee that he expects fully half of the U.S. citizen employees whose jobs are not abolished to choose early retirement or voluntary separation within 3 years. If this happens, then the present U.S. citizen work force will be reduced—and this is a disturbing figure—74.6 percent within 3 years.

Three hundreds and fifty others will have no job whatsoever—a figure, incidentally, of nearly 10 percent—while 250 others will be required to leave Panama to be transferred to other U.S. Government agencies in the continental United States. Altogether, there will be about 1,600 fewer U.S. citizens in Panama, the majority of them essential to the canal operations. This is what amounts to a "control gap" of enormous proportions.

In addition, another 1,050 Canal Company employees will be transferred to Department of Defense installations in Panama, mainly to schools and hospitals. Of course, the need for these jobs will also decrease as the main U.S. citizen work force declines.

Mr. President, at the risk of belaboring the statistics of this matter—and the statistics cannot logically or properly be ignored—if the statistics for both Panamanian and U.S. citizen employees are combined, the overall reduction in the size of the canal agency which is painfully obvious. Under the 1979 budget—without the treaty—there are 14,518 employees of both nationalities. By 1982, 6,463 employees will have been separated, for a force level of 8,055. This will be a total reduction of 44.5 percent by 1982.

Mr. President, I ask unanimous consent that three tables I have prepared, summarizing these statistics, showing the major job categories of reductions. as well as the official Panama Canal Company figures, be printed in the Record at this point.

There being no objection, the tables were ordered to be printed in the Record, as follows:

TABLE I.—MAJOR CATEGORIES OF JOB REDUCTIONS FOR PANAMANIANS

Major reductions	1979 budget	1979 treaties	Reduction
General repair, storehouse, engineering and maintenance	1,417	1,285	132
Marine terminals	1,500	.....	1,500
Retail	1,235	.....	1,225
Railroad	134	.....	134
Motor transport	426	345	81
Grounds, custodial	726	444	282
Education	282	4	278
Hospitals	892	.....	892
Public health	176	112	64
Total jobs eliminated			4,599
New jobs created (estimated)			220
Net jobs lost			4,379

TABLE II.—MAJOR CATEGORIES OF JOB REDUCTIONS FOR U.S. CITIZENS

Major reductions	1979 budget	1979 treaties	Reduction
General repair, storehouse, engineering, and maintenance	398	347	51
Marine terminals	64	.....	64
Retail and food	118	.....	118
Railroad	43	.....	43
Customs and immigration	65	7	58
Postal	69	3	63
Police	245	177	68
Education	734	4	730
Hospitals	396	.....	396
Miscellaneous	83	.....	83
Total jobs eliminated			1,674

PANAMA CANAL, SUMMARY STATEMENT OF FORCE

	President's budget 1979		Estimates with treaty-imposed changes											
			1979		1980		1981		1982		1983		1984	
	FTP	Total	FTP	Total	FTP	Total	FTP	Total	FTP	Total	FTP	Total	FTP	Total
Transit operations	5,381	5,673	5,065	5,542	5,054	5,520	5,034	5,500	5,034	5,500	5,034	5,500	5,034	5,500
Supporting operations	4,235	4,588	1,267	1,286	1,263	1,282	1,227	1,241	1,222	1,236	1,222	1,236	1,222	1,236
General corporate	873	926	906	959	913	954	873	904	873	904	873	904	873	904
Civil functions	1,515	1,793	493	531	445	479	239	272	237	270	235	268	235	268
Health and sanitation	1,477	1,530	129	130	129	130	129	130	129	130	129	130	129	130
General government	8	8	7	7	7	7	7	7	7	7	7	7	7	7
Reorganization provision			10	10	10	10	10	10	10	10	10	10	10	10
Total year-end force	13,489	14,518	7,877	8,465	7,821	8,382	7,519	8,064	7,512	8,057	7,510	8,055	7,510	8,055
Composition of force by citizenship:														
U.S. citizens:														
Company activities	2,204	2,288	1,923	1,958	1,908	1,942	1,823	1,855	1,812	1,844	1,812	1,844	1,812	1,844
Government activities	1,433	1,656	275	302	234	261	102	128	102	128	100	126	100	126
Reorganization provision			10	10	10	10	10	10	10	10	10	10	10	10
Total United States	3,637	3,944	2,208	2,270	2,152	2,213	1,935	1,993	1,924	1,982	1,922	1,980	1,922	1,980
Non-U.S. citizens:														
Company activities	8,285	8,899	5,315	5,829	5,322	5,814	5,311	5,790	5,317	5,796	5,317	5,796	5,317	5,796
Government activities	1,567	1,675	354	366	347	355	273	281	271	279	271	279	271	279
Total non-United States	9,852	10,574	5,669	6,195	5,669	6,169	5,584	6,071	5,588	6,075	5,588	6,075	5,588	6,075
Total year-end force	13,489	14,518	7,877	8,465	7,821	8,382	7,519	8,064	7,512	8,057	7,510	8,055	7,510	8,055

	FTP	Total
Company activities	2,006	2,048
Government activities	304	333
Total	2,310	2,381

Source: Panama Canal Company, statement of operations, Feb. 1, 1978.
Note: Estimate of U.S. citizens force upon entry into force, Oct. 1, 1978.

Mr. HELMS. Mr. President, I repeat: The treaty calls for a reduction of U.S. citizen employees of 20 percent in 5 years; but the actual situation as projected by the Governor and the Panama Canal Company anticipates a reduction 74.6 percent in 3 years. This amounts to a mass exodus of experience and skills. It is doubtful whether the canal can continue to operate with high efficiency with such massive reductions. For the fact is that the Panama Canal is unique as a canal. Experience gained elsewhere cannot be transferred immediately to the Panama Canal. It takes on-the-job training, often for years, to acquire the experience and skills necessary, even when an individual already has technical training. Persons lost through normal attrition can be replaced. But if half of those necessary to canal operations leave within a year or two, there will be no one to train the newcomers—whether the replacements are Panamanian or from some other country.

CANAL PILOTS IRREPLACEABLE

The canal pilots, for example, are irreplaceable. As of December 31, there were 209 qualified canal pilots, of which 203 were operational. I might explain six pilots hold administive posts. But pilots hold different grade qualifications; the bigger the ship, the more experience is required to qualify. At the present time, there are 98 pilots who hold unlimited papers. These are precisely the most experienced and the most vital, for about half the ships going through the canal today require a pilot with unlimited papers—many of them two to four pilots.

Yet, according to the Panama Canal Company, 71 pilots will be eligible for early retirement. Not surprisingly, those eligible for early retirement are those who have the most experience.

It takes, I am told at least 8 years to train a pilot, and candidates must be shipmasters with experience on many vessels. Nor can pilots be brought from other canals or ports, because their skills are not transferable to the narrow waterways and special conditions of the Panama Canal. No other canal, for example, requires skills in both freshwater and seawater, where ships have different buoyancy.

Moreover, there is the difficulty of attracting new candidates. Although Panama Canal pilot salaries appear to be high, they are not high measured by world standards for men with their scarce qualifications. Moreover, there is an exceptionally high demand at the present time for shipmasters. It is a painfully slow process to recruit 2 or 3 new pilots, much less 71.

I point out the attrition in pilots has already begun. Two pilots—neither yet eligible for early retirement—have already left to become shipmasters; another, the former head of the pilots' association who testified last year that the treaty would have little impact on pilots, it already working in Corpus Christi, Tex.

I apologize for the length to which I have gone into the pilot's situation but I felt it necessary to illustrate what is happening throughout the canal agency. The pilots are the most vital to the operations; but a similar case can be made out for tugboat operators, lock operators, dredging supervisors, and so forth. The list of

vital occupations is long; if these experienced employees leave, canal operations and efficiency will deteriorate beyond control.

FEAR OF REPRESSION

Is the case overstated? On the contrary, I have taken pains to understate the case. I have used nothing except the official planning figures and the statements of Governor Parfitt. He said that 50 percent of those whose jobs were not abolished would leave. But a poll of U.S. citizens recently indicated that 69 percent would leave.

Why do U.S. citizens plan to leave, some of whom have never known any other home? Is it because of some vague fear of the unknown, or prejudice against the Panamanian people? On the contrary, it is because of what they already know about the Torrijos dictatorship. Indeed, about 20 percent of the U.S. citizen employees are married to Panamanians. It is precisely such employees who often are the most vociferous against the Panamanian Government. They are more keenly aware of what has happened to their relatives and friends in Panama. They know why the former group of U.S. permanent residents in Panama, a group that numbered 10,000 before Torrijos, has dwindled to about 1,000.

What the U.S. citizen employees fear most is the repression of the Panamanian Government and in particular the brutual methods of the national guard. This repression is not something that can be covered up. The Washington Post recently headlined an interview with Col. Manuel A. Noriega, head of the Panamanian G–2, as "The Name That Strikes Instant Terror." As everyone knows, the Washington Post is no friend to treaty opponents. Nor is the reporter, Sally Quinn, known for her right-wing extremism.

Mr. President, I ask unanimous consent that the article by Sally Quinn be printed in the Record at the conclusion of my remarks.

[See exhibit 1.]

The U.S. citizen employees have had too much personal experience with brutality, authoritarian methods, deprivation of civil rights, and harassment from the Panamanian Government to expect anything different if the treaty is ratified.

The Panama Canal Treaty, by surrendering the exercise of U.S. sovereignty in the zone, will deprive U.S. citizens living there of the protections of the U.S. Constitution, the impartiality of the U.S. judicial system, the protection of U.S. laws, and the security of U.S. police. Anyone who attempts to maintain that the Panamanian equivalent institutions are really equivalent simply does not know the facts.

The U.S. citizens, however, knows the facts. Bill Wright of United Features Syndicate has written a perceptive article about their fears after on-the-spot interviews. Mr. President, I ask unanimous consent that his article be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 2.]

THE OMINOUS IMPLICATIONS OF ARTICLE V

Moreover, if the U.S. citizen employees have any doubt about what is in store for them, those doubts are dispelled by a reading of article V. Of all the unnecessary and overdrawn concessions in this treaty, article V is the most ignominious of all. Nothing more clearly represents the intense desire of the Department of State to obsequiously surrender legitimate American interests, and kow-tow to the vengeance of a dictator.

For article V amounts to a bill of attainder against the U.S citizens now living in the Canal Zone. In article V, the United States not only conspires to deprive U.S. citizens of their civil rights, but also meekly agrees to enforce the edicts of the Panamanian dictator with every measure at its command.

Article V says that U.S. citizen employees "shall respect the laws of the Republic of Panama." Mr. President, it is an insult to the U.S. citizens to imply that they will not obey the law. I do not know of another treaty with a foreign nation in which the United States stoops so low as to undertake to make its citizens obey the law. I would think that it goes without saying the U.S. citizens will obey the law no matter what country they are in. And there is no evidence that U.S. citizens have not been obeying the law when they are in Panama.

There is plenty of evidence that the Panamanian dictator and his family have not been obeying Panamanian law—that they have been engaged in corruption, drug-trafficking, prostitution, smuggling, and other activities characteristic of gangsters—but there is no evidence that U.S. citizen employees of the canal agency are engaged in wholesale infractions of Panamanian law. What we need is a treaty saying that the dictator will obey the law.

Then article V says that U.S. citizen employees "shall abstain from any activity incompatible with the spirit of the Treaty." What does that mean, "the spirit of the Treaty." Maybe the State Department knows what that means; the State Department understands the spirit of surrender, the spirit of giveaway, the spirit demeaning oneself before the world, If that is what "the spirit of the Treaty" means, the State Department is very well equipped to interpret it.

But if "the spirit of the Treaty" means that U.S. citizens give up their rights to criticize a U.S. Government agency, namely, the Panama Canal Commission; or to criticize Panamanian officials who might be working against U.S. interests; or, for example, to petition Congress with their grievance—if that is what "spirit of the Treaty" means, then their civil rights will be abridged. In short, "the spirit of the Treaty" means anything the Panamanians say it means, or anything the U.S. Ambassador, as representative of the State Department, says it means.

Mr. President, this is not government by laws when we oblige our citizens to respect anything so vague and unconstitional as a "spirit of the Treaty."

Moreover, the article goes on to say that the employees "shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama." That is an extraordinary sentence, Mr. President. There is no evidence that U.S citizen employees have been engag-

ing in political activity in the Republic of Panama. In fact, there is no evidence that Panamanians have been engaging in political activity, because the dictator has banned political activity.

Now it is true that U.S. citizen employees have been campaigning against the treaties. But that is their right to do so. If the State Department disagrees, then the State Department is apparently unaware that we do not live in a dictatorship. Perhaps the treaty negotiators have been consorting with dictatorship for so long that they have forgotten what a free country is like; otherwise they would never have agreed to such a provision. Or perhaps the State Department is just looking ahead to the period after ratification and wants some authority to take action against U.S. citizens if they disagree with the State Department's manner of implementing the treaty.

That is obvious in the next sentence, and I quote:

> The United States of America shall take all measures within its authority to insure that the provisions of this article are fulfilled.

This sentence empowers the State Department to take measures against any U.S. citizen employee who displeases the whims of the dictator. This sentence inevitably will have a chilling effect not only upon the political rights of free expression which belong to U.S. citizens, but also upon all their actions and conduct during the course of their work. They know that they will be watched carefully both by Panamanian informers and State Department informers to see whether they are conforming to "the spirit of the Treaty." They know that their decisions, for example, in promoting or not promoting Panamanians in their department will have important repercussions. A casual remark against the dictator may bring them into disfavor, or even dismissal. The whole morale of the canal organization will be sapped by this dangerous and unprecedented provision.

This whole article, article V, is both dangerous and unnecessary. It is of absolutely no benefit to the United States; it is a total concession to Panamanian spite. It is noteworthy that it did not appear in the July 10 draft of the treaty. Apparently, it was put in after the so-called blackmail incident over which there has been so much discussion. This article, more than anything else, will trigger the mass exodus of U.S. citizens, with their experience and skill so necessary to the control and efficient operation of the canal.

DUAL CITIZENS

What can be done to stem the tide? It is probably impossible to restore fully the confidence of U.S. citizens in Panamanian law and justice. But there are certain steps that can be taken to reassure U.S. citizens that the United States will stand up for their interests. The first step is to delete the obnoxious provisions of article V so that the United States itself does not become the enforcer of the dictator's mandates.

One of the most serious grievances among U.S. citizens employees is the claim of Panama upon their children. Since 1975, Panama has asserted that anyone born in the Canal Zone is a Panamanian national, whatever the wishes of the person involved. After several weeks of discussions, the State Department caved in

and accepted that assertion unilaterally with no basis in law or constitutional theory. It was nothing other than an abject, pretreaty concession to Panama, against the best interest of U.S. citizens.

The practical effect is that about 80 percent of the dependents in the Canal Zone fall into this category, as well as some adults who are second and third generation Zonians. Panama claims that these "dual nationals" are subject to Panamanian law and the Panamanian constitution. So far, the most harassment has come whenever these "dual nationals" have attempted to leave Panama. Panama has insisted that children of U.S. citizens, for example, must have Panamanian identity papers and exit passes to leave Panama.

U.S. citizens fear that when Panama takes jurisdiction over the zone, Panama will also claim jurisdiction over their children, requiring them to attend Panamanian schools, or to participate in "students' brigades." In recent years, the curriculum of Panamanian schools has been reorganized on Marxist principles, using textbooks prepared in Cuba.

Article 3 of the 1972 Panamanian Constitution defines the territory of Panama as comprising the entire area between Colombia and Costa Rica, including by implication, the Canal Zone. Article 9 defines all those born in Panamanian territory as Panamanian nationals. Article 13 asserts that Panamanian nationality acquired by birth "cannot be lost, but its express or implied renunciation shall suspend citizenship"; that is, one's civil and political rights. Article 120 provides for the law to set penalties for those who seek to renounce citizenship. Article 15 says that Panamanian nationals within the territory of the Republic are subject to the constitution and law.

Unless this "dual national" problem is solved, we cannot reasonably expect U.S. citizens to remain under Torrijos regime dictatorship with their children. They are too concerned about the future and the welfare of their children to stay there. Accordingly the treaty must be amended so that U.S. citizens who are dual nationals must be considered as having exclusive U.S. citizenship.

ENGLISH-SPEAKING BLACKS IN THE CANAL ZONE

Another problem, similar to the previous one, is the plight of the English-speaking black people living in the Canal Zone. There are 1,309 canal employees who are descendants of the original West Indies workers who were brought in to build the canal. By an unfair exclusion in U.S. law they were never permitted to become U.S. citizens. Technically, they qualify as U.S. noncitizen nationals, since they were born in territory under U.S. jurisdiction. Under our law, a U.S. noncitizen national owes permanent allegiance to the United States.

However, Panama in recent years has claimed them as Panamanian citizens on the same theory that she claims dependents of U.S. citizens as Panamanian nationals. The English-speaking blacks have little interest in being Panamanian citizens. They have always demonstrated a historic allegiance to the United States. They have always lived in the Canal Zone, where they have en-

joyed higher standards of wages, housing, education, and civil services than they would have had in Panama.

Although efforts to eliminate racial discrimination in the Canal Zone have paralleled similar changes in attitude in the continental United States, the English-speaking blacks in Panama still face severe racial and other discriminations in Panama because of the language barrier, their loyalty to the United States, and envy because of their jobs and living standards. Once the treaty goes into effect, they would become prime candidates for losing their jobs and their housing to the extent that the Republic of Panama controls either.

The just solution is to allow the English-speaking blacks to petition for U.S. citizenship. But this cannot be done by legislation alone, because of Panama's insistence upon "dual citizenship." It must be done by treaty, or it will not be done at all.

The simplest way is to declare that non-U.S. citizens who have resided in the Canal Zone for 5 years or more have been legally admitted to the United States for permanent residence as of the beginning of the 5-year period. Thus they would fulfill the requirements of our naturalization law, and could petition the U.S. Court of Balboa for citizenship. In point of fact, they have actually lived on U.S. territory all their lives anyway; moreover, they have been working for a U.S. Government corporation. There are no other non-U.S. citizen residents of the Canal Zone. In addition to the 1,309 employees, I might add that there are 3,800 dependents.

A BILL OF RIGHTS

Finally, all U.S. citizens fear Panama's commitment to protect their civil rights. Even at best, Panama's civil rights guarantees are far inferior to those in the United States. In execution, their standards fall far short of promise. That is why U.S. citizen employees are deeply concerned by the lack of any commitment by Panama in the treaty to guarantee their civil rights. In fact, article V goes just to the contrary. Instead of Panama committing to protect their rights, article V commits the United States to abridge their rights.

Now it is true that Panama and the United States have agreed upon a set of 18 procedural guarantees for those who are prosecuted by Panamanian authorities. But this agreement has been given the lowest possible visibility. It is not in the treaty. It is not in the implementation agreement. It is the annex to the implementation agreement—Annex C, to be specific.

In other words, it appears as though every attempt has been made to downplay the importance of this bill of rights, inadequate though it is. Yet if it is going to provide the necessary reassurance to the U.S. citizen employees in the Canal Zone, the employees have got to be convinced that Panama has a strong commitment to those procedural guarantees. They will not believe in Panama's will to fulfill these guarantees unless Panama gives it the highest international status of an agreement.

Clearly, this bill of rights has to be on the treaty level. Nothing else is sufficient. If Panama is really serious about giving those

guarantees, Panama cannot and will not object to something she ostensibly has already agreed upon.

Mr. President, the pending amendment corrects these three problems in an attempt to reassure U.S. citizen employees that they will receive fair treatment. Without positive evidence from the United States and Panama that the employee's rights will be protected, we cannot expect to retain the expertise so imperative to controlling the canal and keeping it running efficiently.

EXHIBIT 1.—THE NAME THAT STRIKES INSTANT TERROR

(By Sally Quinn)

In Panama there is one person whose name often evokes immediate terror. It is not Omar Torrijos.

It is Noriega. Col. Manuel A. Noriega.

Noriega is the chief of intelligence, G–2. The head of La Guardia Nacional. That would be like being head of the CIA, the FBI, the Department of Defense and the Police Department all at once. Which means he has all the troops. Which means he has the power. Which means that both President Lakas and Omar Torrijos are said to be not completely at ease with the situation. Because if Noriega wanted to overthrow the government he probably could.

President Lakas will say, "Noriega's nothing but a G–2. Nobody loves the G–2, not even his wife. His business is to stick his nose in other people's lives. I don't fear him. And I don't think General Torrijos fears him."

But there seems to be a note of uncertainty in his voice.

The interview with Noriega is set for 2:30. He is late. One is led to his "private sitting room" in the National Guard headquarters building through an endless maze of tiny offices, each stationed with crew-cut uniformed guards.

The sitting room is tiny, windowless. It looks more like what one would expect of Hugh Hefner's office than the head of the Panamanian National Guard.

It is lit softly by a lamp in the corner. Thick brown shag rugs cushion the floor. Several deep, comfortable, brown leather sofas line the walls. There is a rather ornate mirrored bar with various kinds of whiskey, wine, liqueurs.

In the center of the room a glass coffee table displays a collection of porcelain frogs. The hi-fi is playing sensuous jazz, ballads and pop rock. The walls are lined with kitsch oil paintings of wretched children's faces—all with huge tears pouring down their faces.

His famale "assistant," Marcela Toson, appears and offers tea. She is a buxom, jolly, bouncing young woman, more hostess and traveling companion, as she describes it, than anything else.

An hour goes by. Suddenly there is the sound of clicking heels, then salutes. The colonel is coming.

The door pops open, enter Col. Manuel Noriega. He has gone home to change out of his uniform. For the interview he has chosen a lacy Guaya bera (shirt), tight-fitting slacks, leather boots. His wavy hair is slicked back and he reeks of perfume. He is a slight, wiry man. The high cheekbones and narrow eyes, the swarthy, pock-marked complexion give him a rather Mongolian look.

"Well," he says, grinning proudly and throwing open his arms to show himself off, "do I look like a monster?"

A FEMINIST PATRIOT

In Panama there is a women's group that meets about once a week called the "Union Patriotica Feminia." They are women in their 30s, who all may have different political ideologies but who are devoted to one purpose—to work against the Torrijos government. So far, of the 50 or 60 members, two have been jailed, two exiled.

One of the members is Alma Robles, 38, who was arrested by the G–2 last year and kept in jail for nine days without charges, before released.

Robles is the daughter of the late Rogelio Robles, former political deputy to the assembly and was married until recently to an American. An elegant dresser with a gentle manner, she is starting a boutique in Panama City.

Two years ago she was just another housewife minding her own business.

But then in January 1975 her brothers Winston and Ivan, both lawyers, were arrested and exiled.

"There was a big group arrested at that time," she says, "bankers, businessmen, radio station owners. They were all taken, one by one, from their offices and homes

one morning. It was a big scandal. According to the government they had been in 'subversive activities,' which means critical of the government."

According to Robles: "Nobody knew where the exiles were taken. In fact, they were taken to the airport. They were undressed, searched, their belongings confiscated. They weren't allowed to talk to each other. Then they were put on a plane and taken to Guayaquil (Ecuador). They had done nothing but belong to political groups who met and criticized the government. What the government did was a stupid move.

"This finally," she says, "became an international scandal." Finally members of the assembly got so angry at the government that one stood up and said "Panama has spent so much to build an international reputation and now in one week you have ruined it."

"You know," says Robles, shaking her head in scorn, "that's the thing about this government. They are so stupid. They don't define themselves. They aren't left or right. So how can we be against them? We're not against their ideology. We're against their methods."

THE YOUNGEST COLONEL

There are seven colonels in the Panamanian National Guard. "I am the youngest of all the colonels," says Manuel Noriega. "I am only 38."

He is very matter of fact, too, about how he got to be where he is. "My family," he says, "was originally Colombian. I went to the Instituto Nacional. All the people who come from there fight for their liberty and their sovereignty. It is called the Eagle's Nest. Then I went to Peru to the Military School De Chorrios."

Noriega became friends with Omar Torrijos when he came back from Peru and joined the National Guard. But their friendship was cemented when Torrijos returning from Mexico after a brief coup against him, entered Panama through the province of Chirriqui where Noriega was in charge. Noriega and his troops defended him. Now Noriega is the head of the National Guard, despite being the "youngest of all the colonels."

PUBLIC RELATIONS

At first during the interview Noriega seems quite nervous. He is perspiring as he talks, and he leans forward on the leather sofa, trying earnestly to convey each point, to convince.

"My major function," he says "is the security of the people so that they can sleep, that they can circulate, that they can live without fear, and they won't be kidnapped, to prevent terrorist attempts. . . ." he pauses, then sits back. "Well, I think that is enough."

Noriega is aware that a lot of people don't see it that way, that many Panamanians are terrified of him and that most of the Zonians live in fear that the treaties will be ratified and they will come under Panamanian police jurisdiction.

"I know," he says, almost with pleasure, "that I have an image problem. Mine is a position that doesn't attract sympathy. But somebody must do this job. And it's a normal position in all of the armies of the world. In Panama there is only one force that has control. That's my job. But I believe that in the U.S. they paint my role as larger than it is."

Noriega is aware that he is going to have a real PR problem when he takes over jurisdiction of the Canal Zone.

"Gen. Torrijos has plans to integrate all the Zone police to work with the National Guard at the beginning," he says. "Our policy will not be one of repression.

"Our G-3" he says, "has a special psychological program to adapt to the minds of the Zonians, Zonians are different from Americans, you know. They have much different minds than the Americans. This plan is made for Zonians."

Noriega defines the Zonians' fear of him and the National Guard as "a psychological problem. They live separately away from us on an island. They don't know any Panamanians or how they think. They look at Panamanians as people apart from them as if they were from another country."

He gets annoyed when asked about allegations of abuses of power and whether the Zonians have legitimate grounds for fear.

He bristles. "All these horror stories are false."

"Isn't it true that one principle of the laws of North America is that the proof is on the accuser and not the accused?"

He looks triumphant. "I would like to know," he demands, "one real thing that happened."

THE ROBLES ENCOUNTER

"We were at dinner at the house of a friend of mine," says Alma Robles. "It was September 1976. A lawyer friend of my brothers, Eusebio Marchosky, and his wife Blanca, offered to give me a ride home and also offered to take Fulvia Morales.

"It was about 11 o'clock at night as we were driving home when suddenly a large unmarked car with four men in plain clothes passed us, then pulled in front of us and forced us to stop. Four men got out and told us we'd have to come with them to the police department. Even though they were in plain clothes we knew who they were. They had *Guardia* crew cuts."

According to Robles:

She and her three friends were taken to the police department, then locked in an empty room with bright lights. Each was made to stand facing a corner for hours. Finally, the three women were taken to a detention cell.

"I had almost fainted by that time," says Robles, "standing there all that time. We weren't allowed to move or even touch the wall. When they finally took us to the women's cells it was horrible.

"It was filthy, full of vomit and cock-roaches and prostitutes sitting on the floor in the filth."

The next day they were taken again to the room where they saw Marchosky who, she says, obviously had been beaten. Later the police separated them, and interrogated Alma Robles for four hours.

They sent her back into the cell and for five days she stayed there, incommunicado. Only later did she learn that Marchosky had been exiled, put on a plane to Miami. His wife was released.

Alma Robles implored an officer to let her have some toilet articles, to notify her husband and family, to tell her what the charges against her were.

"The major, who was scared, told me that I was not under his orders. That I was under Noriega's orders. And he said he had been told I had lost all my rights."

Meanwhile her husband had been going to various police headquarters searching vainly for a trace of her until her photograph appeared in the paper with a pile of "stolen" clothes, saying she had been arrested for theft. Finally, her husband contacted a relative of hers who was a friend of President Lakas's wife. She talked to here husband; he called Torrijos and had Alma Robles released—nine days after her arrest.

She was taken by guard to the Presidential Palace, where she was greeted by President Lakas.

"He looked ashamed," she says. "He said, 'Do me a favor and go into the bathroom and clean up. My secretary will lend you cosmetics. I don't want your husband to see you like this.'

"He told me," says Robles, "that he had called Torrijos and said 'Whether she is guilty or not, if we come to the point where we have to fight women in such a way we ought to give up the whole damn thing.' "

ONE FOR THE FILES

"Alma Robles, huh," says Noriega, his face falling. "Alma Robles. Huuummmmmmm. Oh Yes, Alma Robles, I think I remember her case."

He calls out to an aide who is standing just outside the door. There is a rapid-fire discussion of the case as he dismisses the aide with the instruction, "Get me the Alma Robles file.

"You see," he says, leaning over confidentially to fill the silence before his aide returns, "there is no rule for jailing or exiling. But many times people prefer to leave the country rather than follow the laws or to confront the rules of justice."

The aide rushes in with a massive file of papers and gives it to Noriega.

"Ah ha!" he cries gleefuly. "You see, look at that. See how thick it is." And he throws the file up in the air, then catches it with grimace. "It weighs a lot," he says beaming. "It's 68 pages, see here, look. Sixty-eight pages of charges. Now I have the answer for you."

He sits back, now seeming more relaxed than he has been during the whole interview. "In this time," he explains, "there were various people who were trying to make an economic sabotage of the government. Alma Robles was using her house for plotting the economic overthrow of the government. And it was a problem for us for over two years. Well, you can see the complications.

"Also, like trying to provoke mercenaries to plan terrorist activities. But you must understand this is hard for me because she is a woman. But she was used by the group which wanted to make this economic over throw."

He grows very serious, very sincere.

"Since 1968 (the revolution) the Guardia has been good because it has served the majority of the population. But not of the economic and political interests. So the U.S. does not have to do anything, does not have to worry about us. Because we have been good."

FEAR AND LOATHING

"We are all afraid," says Alma Robles. "Let's face it. It would be foolhardy not to be. But we shouldn't be influenced by our fear. We should try to control it and do something. We're not subversive. We are trying to get more people in Panama to overcome their fear, to talk more openly, to come to meetings. We're taking advantage of the lull in the last few months since they want the treaties ratified. We do have a little freedom to meet publicly, to talk on the radio. A lot of people have taken courage to see others meeting. We don't have that much time left. The majority of people are against the government. But now they can show it."

THE MONSTER'S CAVE

Manuel Noriega is not too happy with the direction the conversation has taken. He gets up and points to a door. "here," he says, "let me show you my office."

He leads the way into a large room with fake stone walls painted in a cave-like pattern. The stereo is playing much louder in this room, Panamanian pop rock music. There is an enormous mural of Noriega parachuting out of an airplane. There are photographs of him and Torrijos around the room. A huge banquet table with ornate carved chairs dominates the office. It is piled high with bottles of liquor and boxes of candy. "This," he says, "is the monster's cave." Curled up in a cushy leather chair is a very pretty, Buxom, young Panamanian woman in tight-fitting jeans and another, perched on the edge of the chair at the table and dressed similarly. "And, these," grins Noriega, "are my secretaries."

He obviously wants to change the subject to a lighter vein. Hobbies.

"Well," he says, "I like to read, like to divert myself, I jog five miles every day and I like to dance." Then with a leer, "There are other things I like to do but I don't want you to put that in the paper.

"I collect art. I love paintings of children. And women too," he says with a laugh. "I'm a Buddhist. I started studying Buddhism four years ago. And I have a black belt in judo, I'm a vegetarian, too.

"For philosophical reasons," he says, "I don't believe men should eat the flesh of other animals.

"So you see," he says triumphantly," "I can't possibly be a monster eating up the Zonians."

EXHIBIT 2.—THE PANAMA CANAL: THE UNTOLD STORY

(By William F. Wright)

ABOARD OVERSEAS ALASKA, PANAMA CANAL.–Capt. Peter Bolton steps nimbly from a motor launch and hauls his 6-foot frame up a precarious rope ladder to the deck of the Overseas Alaska. A red and white flag flutters up the ship's halyard, signaling to all that a pilot is on board.

Bolton, 55, one of an elite band of mariners who maneuver ships through the Panama Canal, is making his 3,000th transit of the waterway.

He sees change as surely as he knows every twist and turn along the 50-mile-long canal. And he doesn't like it. Later as we near the final stages of our journey from the Pacific to the Atlantic, Bolton will say with as much resignation as defiance: "We have to accept that there will always be change in this world. However, I must say I will always be opposed to the idea of turning the canal over to Panama."

It is sentiment heard repeatedly in our journey.

The trip will point up an irony all but lost in the debate over the new Panama Canal treaties: the very agreements that insure the continued efficient operation of the waterway may do just the opposite. They have not anticipated the reaction of the pilots, tugboat captains, lockmasters and other key U.S. canal personnel who may leave before Panamanians can be trained to replace them.

Canal officials fear that the departure of a significant number of essential employees could cripple the waterway far more effectively than a hand-grenade in a critical part of machinery.

Bolton, pushing such thoughts aside, makes his way to the bridge. It is 5 a.m. Capt. Stetson Turner, the ship's skipper, greets him with a handshake and turns over control of the vessel. Bolton is now in command until the tanker leaves Canal Zone waters.

The American-registered Overseas Alaska is the closest thing to a supertanker that can transit the canal. Its beam (width) is 105 feet. The canal locks are 110 feet wide, allowing a clearance of a scant two and a half feet on each side. The 48,000 tons of crude oil from Alaska's North Slope Field force the Overseas Alaska to sit so low in the water that at times less than a foot of clearance is between our keel and the concrete floor of the lock chambers.

As we approach the canal's Pacific entrance, three more pilots climb aboard to help guide the big ship through the locks.

Two tugs maneuver the mammoth tanker into the jaws off Miraflores Locks, the first set of concrete and water stairways which will ultimately lift us 85 feet over the Continental Divide and down again—from sea level to sea level.

The early morning sunlight bathes the locks, highlighting the Panamanian and American flags flying side by side. But, for all appearances, this is an American canal. Bicentennial colors are everywhere: on tugboats, dredges and the workhorses of the canal, the electric locomotive "mules" that haul ships through the locks. Bolton leaves no doubt as to where he stands. As he guides the big ship into the first lock chamber, he dons a terrycloth hat with bold red, white and blue stripes.

As Bolton releases the two tugs, they respond with farewell whistle toots. For Vic Faulkner, captain of one of the tugs and head of the local tugboat union, it may be more than just a passing goodbye. Faulkner voices a concern we are to hear often during the transit:

"If the Panamanian National Guard is given control over the Canal Zone, I think it's a foregone conclusion that in a relatively short time the 'gringos' (Americans) will be gone. They're animals. They're not very well educated. They have no tolerance."

The 8,000-member Guard, Panama's combined military and police force, is scheduled to assume responsibility for law and order in the Canal Zone 30 months after the new treaties come into force. The prospect horrifies many Americans in the Zone, where a U.S. police force has maintained law and order since canal construction days.

Maj. Gen. Harold R. Parfitt, goverenor of the Canal Zone, acknowledges that the Zonians' concern over the National Guard issue is the most crucial question facing the canal organization.

"If their worst fears materialize and our key canal employees leave, we will have extreme difficulty in continuing to operate the canal in an efficient manner," the governor says. Gordon Frick, personnel director for the canal organization, puts it more bluntly: "If there is any semblance of harassment—any overt moves against individuals—I think a large number of people would quit and we would go down the drain."

A spokeman for the Panamanian National Guard say the Zonian's fears are unfounded. "Law-abiding persons need have no concern," he said.

Vic Faulkner says that unless Zonians get firm U.S. assurances that they and their families will be protected under the treaties, they may stage a "job action" similar to the one which closed the canal down for five days in 1976.

Faulkner voices another concern: Panamanians already employed by the canal organization—75 percent of the total workforce—may be replaced by supporters of Panama's military government.

Faulkner says two members of the Panamanian National Guard already have been assigned to be trained as tugboat captains, bypassing more qualified Panamanians already employed on the tug.

"It's a phony political cram-it-down-the-gringos'-throat operation that is not fair to Panamanians or Americans alike," he says. He says he and other tugboat captains have devised a simple way of dealing with the situation: "We don't allow them into the wheelhouse."

One of the new trainees, Samuel Jimenez, 27, acknowledges that he served as an officer aboard a Panamanian National Guard patrol boat, but says he is now a civilian. He complains that the American tugboat masters "won't let me do anything but listen to the radio."

7:08 a.m.—Bolton brings our ship to an abrupt halt just outside the first lock chamber. There is a delay that annoys the normally mild-mannered Bolton. One of the Panamanian "mule" operators is late for work. For a waterway that handles an average 40 transits a day, time is everything.

"With a big ship like this you can't just stop and start like that," Bolton says, snapping his fingers.

On shore, "Don Gifford, a lockmaster who has worked for the canal organization for 32 years, says the incident helps make his point that the waterway will deteriorate under Panamanian control.

"We have our joke here in the Zone: "Are you going to go on gringo time or Panama time?" Gringo time means you'll be on time. Panama time means you might be several hours late.

"We Americans feel that if we miss a train or bus, it's our fault. Panamanians say that the bus left me."

Gifford's opinion, shared by many Zone Americans, seems to spring from early canal construction days, when many Panamanians refused to have anything to do with building the waterway, forcing the United States to import workers from the West Indies. A Panamanian Ministry of Labor spokesman says, "Panamanians never had the feeling they had any real say-so in the canal operation, so, naturally, they have never had the same attitude towards working on the canal as the Americans did."

7:28 a.m.—The tardy mule operator arrives and we inch into the first lock chamber. Cables from the electric locomotives are attached to the vessel. Mules and ship strain together against the water pressure bottled up in the lock.

As the ship shudders to a stop in the chamber, the gate behind us closes. Water from the chamber ahead and above us flows into ours by the simple expedient of gravity. We begin to rise.

Gifford "walks" our ship into the next lock chamber. He says it won't be long before he leaves the Canal Zone for good. "As soon as the Canal Zone police are done away with, I'm gone. My children are grown up and living in the states. My wife died a few years ago. There's nothing to keep me here."

8:30 a.m.—The second and last lock chamber at Miraflores lifts us to Miraflores Lake, 54 feet above sea level. I go below to the officer's mess.

The talk returns to the canal treaties and to the danger of turning over law and order responsibilities to Panama's National Guard.

"I think that anybody who doesn't have concern about how they're going to be treated by the 'Guardia Nacional' is living in a false world," says Capt. George Markham, one of our bow pilots. "When the Canal Zone goes, I think they're going to bend over backward to make us realize they are in charge."

Capt. Peter Crowell, our other bow pilot, relates how members of the Guard beat him with truncheons at Panama's Tocumen Airport recently when he refused to sign a letter to President Carter supporting the canal treaties.

Canal officials say adverse publicity surrounding the National Guard contributes to the difficulty in attracting new pilot recruits. Another is pay. Panama Canal pilots average $44,000 a year, while Mississippi River Pilots earn between $60,000 and $70,000 a year.

Another source of discontent among older pilots is the lowering of qualifications for new members of the pilot force, once considered the aristocracy of the 10,500 U.S. civilian residents of the Canal Zone.

"When they reduce the qualifications, they take away some of the glamour of the job," Markham says.

We enter and clear Pedro Migue Locks, the second set of concrete and water steps, and at 10 a.m. we enter Gaillard Cut.

Markham, not needed at his bow post at this point, breaks away for coffee in the officers' mess. He launches into a topic often broached by Americans working along the waterway: the importance of the Panama Canal.

"I don't agree with those who say the canal is not important to out economy. And anybody who thinks that when Panama takes over they are not going to jack up the rates (tolls) still believes in the tooth fairy."

Donald G. Schmidt, economist for the canal organization, said the new canal treaties will probably mean an early toll increase of between 25 and 35 percent. This would add between $9,750 and $13,650 to the $39,000 toll the Overseas Alaska paid to transit the canal.

"In the absence of pipelines that would bring Alaska oil to the U.S. East Coast," added Schmidt, "the canal remains the only practical, and certainly the cheapest, route."

And the waterway's importance will grow. Some 550 tankers carrying 13 million tons of Alaska crude oil to the East Coast are expected to transit the canal. This is only a fraction of the 125 million tons of cargo expected through the waterway in fiscal 1978. And the canal, now handling an average of 40 ships a day, still has at least 25 years to go before it attains its projected capacity of 55 transits a day.

Markham turns his attention to the military value of the canal.

"I think it is vital to our national defense. Without it we just wouldn't be able to deploy our forces in various parts of the world to meet emergencies as we are able to do now." He notes that the only American warships not able to transit the canal are the Navy's 13 biggest aircraft carriers.

A recent study prepared by Edmund J. Gannon, defense analyst for the U.S. Library of Congress, concluded that the canal's value in the deployment of U.S. forces in various parts of the world will actually be greater in the year 2000—when Panama will assume full control of the waterway under the new treaties—than it is now. The study said this is because the Navy is expected to cut back its larger warships in favor of smaller ones able to transit the canal.

11:15 a.m.—We leave the narrow cut and steam into huge, man-made Gatun Lake, a world of emerald-green water, dense jungle and primeval rainforests that will take us to the final set of locks on the Atlantic side.

Two tugs join us to nudge our ship into the final set of locks linking the lake to the Caribbean. For Glenn Slaathaug, skipper of one of the tugs, it may be one of his last jobs on the canal.

Slaathaug, 42, is preparing to leave the Canal Zone for good. There is one problem: His wife, Sue, refuses to go through Panama's Tocumen Airport.

Slaathaug claims he was severely beaten with rubber truncheons when he was taken into custody by the Panamanian National Guard at the airport last November 19. The National Guard acknowledged the beating, when he arrived at the airport from leave but says Slaathaug was drunk and disorderly in the United States, and the beating was the only way to subdue him.

Slaathaug says he was only "slightly inebriated" and did nothing to justify the beating. Canal Zone Gov. Parfitt told us that while Slaathaug apparently was guilty of "improper conduct" at the airport, the National Guard "appears to have used excess force" in dealing with the situation.

Vic Faulkner, head of the local tugboat union, sharply criticized the governor and the Carter administration for not protesting the incident. "Excess use of force, I'll say! They literally beat the crap out of him. He was so afraid that he soiled his pants." Color photographs which Faulkner says were taken of Slaathaug shortly after the incident showed what appeared to be extensive welts on his legs, back and abdomen.

An aide of Sen. Robert Dole, R.-Kan., an opponent of the canal treaties, told a Canal Zone civic council meeting that a U.S. State Department official's response was that "if you knew all the details you would probably feel he got exactly what he deserved."

(In Washington, a State Department spokesman declined comment on grounds that the Privacy Act prevented him from discussing the incident without Slaathaug's permission.)

Whatever the facts, Sue Slaathaug says she is "ready to go" back to the United States.

"I'm not going to live under that kind of terror—that kind of fear. The only thing is, I'm scared to death of going through that airport. I'll be damned if I'm taking myself and my three children back through there. They probably have my husband's number from here to next week."

1:40 a.m.—The Overseas Alaska is approaching the waterway's final set of locks which will lower us to the Carribbean. The Caribbean Sea sparkles under clear-blue skies. But Bolton sees clouds on the horizon: the new canal treaties.

Bolton again turns his thoughts to the transfer of the Canal Zone to Panama and the introduction of the Panamanian National Guard.

"There is definitely an anti-American attitude on the part of the National Guard," he says. "My understanding is that this is being taught to them." He cites a CBS television documentary showing members of the National Guard training to the chant: "Yanqui go home "

Glenn Heath, a veteran control house operator at Gatun Locks, says he and most of the canal's other American control house operators have decided to do just that.

"My wife refuses—the word is refuses—to live here with the Guardia Nacional in our communities. A 'Guardia' is a person who has no high regard for human life. They have been trained to kill, rather than protect, the average individual."

What also concerns Bolton and his follow American workers is that Panama will assume responsibility for much of the Zone's sanitation. Willard S. Sweeney, chief of the canal organization's Sanitation Division, said he can understand the concern.

"They ask 'Will malaria come back? Will we have more rats, more scorpions?' The answer is, I'm not quite sure. It depends on how much Panama lives up to its responsibilities."

Sweeney said only one case of malaria has been recorded in the Canal Zone in the last five years. He said Panama has about 8,000 cases a year.

Bolton noted that the United States maintained sanitation in Panama until 1951, when the Panamanians demanded and received responsibility for the job "as a matter of national pride."

"We gave them new garbage trucks. Within three years they were idle because of lack of maintenance. The city became a pesthole."

Bolton said the Panamanian attitude towards maintenance bodes ill for the 64-year-old canal still operating with much of its original machinery.

"The Panamanian people simply do not have the same discipline we do. They are inclined to put things off until manana. Because of this, when they get full control of the canal, maintenance will fall to the point where there will be major delays to shipping."

A spokesman for Panama's Ministry of Labor said that to acquire the ability to maintain the canal at its present level of efficiency, "all we need is time and training."

Low morale among the canal's U.S. employees has undermined the job dedication that has long been a tradition since canal construction days.

"We have a piece of equipment that requires 15 hours to fix. The Panamanian is not quite sure how to do it. So the American, until recently, stepped in and did the job. Well, now the American is fed up. He's tired of training his replacement."

Heath says that 90 percent of American house control operators—the men who operate the vital lock machinery—have decided to leave. The result, he says, is that the canal will "slowly grind to a halt."

Capt. Bolton expresses a final sentiment, saying he doesn't care if it sounds like "motherhood and apple pie."

"It does make me proud as an American to be part of such an efficient operation. The canal has been described as the seventh wonder of the world. I believe it is and it seems a shame that it may deteriorate."

If Bolton has strong sentiments about the canal, Charles Brathwaite has bitter-sweet memories. Brathwaite, 81, is one of a dwindling band of survivors of the army of West Indians imported to help dig the canal.

We find him in a tacky, one-room dwelling in one of Panama City's worst slum districts. He invites us in, sits in a rickety rocking chair and recalls conditions under which he worked as a 16-year-old hauling bags of concrete mix to Gatun Locks.

"They were very rough. You got to be very careful. You slip on a scaffold and tumble down and you either dead or lose limbs or something or other. (According to canal records, 5,609 west Indian blacks died from disease and accidents during construction of the canal. American dead numbered some 350.)

"Wages were so small that I had to work for 16 cents an hour."

Brathwaite, clad in a tattered undershirt and faded blue pants, draws a $230 monthly pension from the U.S. government.

"I'm thankful for what I'm getting, but I should be getting more," he says. He turns aside questions about the rigid caste society that subjected Canal Zone blacks to widespread discrimination during construction days and for many years after. "I'm, drawing a little pension, I got to say God Bless America."

3:15 p.m.—A simple but clever bit of bathtub hydraulic propels us from the last chamber of Gatun Locks. As the final gate opens ahead of us, water is dumped from the chamber behind and above us. The sudden buildup of pressure in the chamber drives us forward.

Our journey from the Pacific to the Atlantic has taken nine hours and 15 minutes. Capt. Bolton and the three other pilots shake hands with the skipper and board a launch for shore. We are headed for the open sea. Behind us we leave a waterway troubled at the prospect of change.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from North Carolina. The Senator from Maryland.

Mr. SARBANES. Mr. President, I first wish to address some of these numbers that the Senator has used. In doing that, I wish to quote directly from responses that were given by Governor Parfitt, the head of the Panama Canal Company and the Canal Zone Government.

I think we should understand at the moment there are two American entities in the Canal Zone. One is the Panama Canal Company, which operates the canal, and, in addition to operating the canal, carries on a number of other functions, which, in this

country, would be functions carried on by private enterprise. It is a Government agency. It is an instance in which this Government agency carries on activities with commercial shops, bowling alleys, food production, and so forth, which, in this country, would be carried on by private enterprise, and indeed, in the Republic of Panama would be carried on by private enterprise.

In addition, there is the Canal Zone Government which carries out in this zone, over which the United States exercises jurisdiction, governmental activities comparable to what a municipality would carry out in this country, or what is carried out in the Republic of Panama by the public services of Panama in Panama City or in other localities.

Governor Parfitt is the head of those two entities, the Panama Canal Company and the Canal Zone Government. These questions were put to him and these were his responses.

Planning estimates of number of present employees (broken down into U.S. citizens and non-U.S. citizens) whose jobs will be discontinued and who are expected to be placed with other U.S. Government employment in Panama.

The response to that was:

There are approximately 2,600 full time permanent positions in functions that will be transferred to other U.S. Government agencies in Panama. Currently there are 2,500 employees in these positions, of which 1,050 are U.S. citizens and 1,450 are non-U.S. citizens. In addition, there are 250 (160 U.S. and 90 non-U.S.) temporary and part-time employees in these functions most of whom do not have transfer rights.

Those are the 250 temporary part-time employees without transfer rights.

Some of these employees may be hired by the Government agency that assumes responsibility for these functions.

It is important, in that regard, to appreciate that what is happening is that some of these functions are being transferred from the Canal Zone Government, when we cease to operate the Canal Zone Government, to other U.S. agencies which will carry forward these functions. In many instances they are being transferred to the Department of Defense. Examples of that would be schools, people who would be responsible for teaching functions, and hospitals or the furnishing of medical care.

So in response to the question, "Planning estimates of the number of present employees whose jobs would be discontinued and who are expected to be placed with other Government employment in Panama," the answer to that is "2,600 full-time positions in functions that will be transferred to other U.S. Government agencies in Panama."

The next question:

Planning estimates of number of U.S. citizens employees expected to be transferred to U.S. Government employment outside of Panama.

The answer was:

Of the 700 U.S. citizen employees whose jobs will not be continued in the Panama Canal Commission and who will not be transferred with their functions to other U.S. Government agencies in Panama, we estimate that approximately 250 will transfer to other U.S. Government employment outside of Panama. We estimate that 100 additional U.S. citizen employees will be selected to fill vacancies within the Panama Canal Commission (vacancies arising from voluntary retirement and normal attrition).

What is important to understand here is that there are now two entities, the Panama Canal Company and the Canal Zone Government. If these treaties take effect, there will be a Panama Canal Commission, which will assume many of the functions now carried out by the Panama Canal Company. The Canal Zone Government, functioning as a government, as it were, in Panama will cease to exist in governmental functions. Many functions will be assumed by Panama, and many other governmental functions now being carried out by the Canal Zone Government will be assumed with respect to American citizens and their dependents by other agencies of the U.S. Government, primarily by the Department of Defense.

So in the end, according to Governor Parfitt, when all of these transitions are accomplished, and so forth, there will only be 700 U.S. citizen employees whose jobs will not be continued in the Panama Canal Commission and who will not be transferred with their functions to other U.S. Government agencies in Panama.

In other words, with all of these U.S. citizen employees either their jobs will be continued in the Panama Canal Commission, which is the agency which will be responsible for operating and maintaining the canal—or they will be transferred with their functions to other U.S. Government agencies in Panama. That is the case for all but 700.

Mr. HELMS. I apologize for interrupting the Senator, and if he would rather proceed, I will wait. He is quoting the responses of Governor Parfitt to questions I asked Governor Parfitt. I appreciate his using the figures that I obtained from Governor Parfitt. I was wondering why the Senator omitted question 6 when he was going down the list of responses.

Mr. SARBANES. I have not gotten to question 6 yet. I intend to include question 6.

Mr. HELMS. I apologize. I thought the Senator had already gone to question 7 when he referred to the planning estimates——

Mr. SARBANES. I am on question 4. I will say to the Senator I intend to go ahead and read. I see the point he wants to make and I intend to put that one on the Record as well.

Mr. HELMS. I thank the Senator.

Mr. SARBANES. At the moment I am on question 4 of the questions which were submitted. They were submitted by letter from the distinguished Senator from North Carolina, detailed questions, which, of course, I believe in many ways is the best way to get the most thought-through and carefully worked out response. These were the responses which came back from Governor Parfitt.

Of the 700 U.S. citizen employees whose jobs will not be continued in the Panama Canal Commission and who will not be transferred with their functions to other U.S. Government agencies in Panama.

In other words, all but 700 will either continue with their jobs, which will be carried over into the Panama Canal Commission, or they will be transferred with their function to some other U.S. Government agency in Panama.

Of the 700, he then goes on and says:

We estimate that approximately 250 will transfer to other U.S. Government employment outside of Panama. We estimate that 100 additional U.S. citizen em-

ployees will be selected to fill vacancies within the Panama Canal Commission, vacancies arising from voluntary retirements and normal attrition.

Then the next question, question No. 5:

Planning estimates of the number of U.S. citizens not expected to find U.S. Government employment either in Panama or elsewhere.

The answer:

We estimate the remaining 350 U.S. citizen employees whose jobs will not be continued with the Panama Canal Commission will not find U.S. Government employment either in Panama or elsewhere. Of this group we estimate that approximately 50 to 75 percent will be eligible for early retirement.

So, if we take that very large figure of U.S. employees that was earlier put out, up in the thousands, I think it is important to appreciate from the question and the responses here—questions propounded by the distinguished Senator from North Carolina and the responses from Governor Parfitt—that, while the initial figure we are talking about is thousands, we then find, after it has all been analyzed very carefully, that the number is 700 U.S. citizen employees whose jobs will not be continued in the Panama Canal Commission or will not be transferred to other U.S. Government agencies in Panama. Now, of those 700, it is estimated that 250 of the 700 will transfer to other U.S. Government employment outside of Panama; 250 of that 700, which then reduces that number to 450.

Governor Parfitt then estimated that 100 additional U.S. citizen employees would be selected to fill vacancies within the Panama Canal Commission, vacancies arising from voluntary retirements and normal attrition.

That then leaves us with a figure of 350 U.S. citizen employees. With respect to them, he said:

We estimate the remaining 350 U.S. citizen employees whose jobs will not be continued with the Panama Canal Commission will not find U.S. Government employment either in Panama or elsewhere. Of this group we estimate that approximately 50 to 75 percent will be eligible for early retirement.

In other words, of the remaining 350, one-half to three-quarters of them would be eligible for early retirement.

Of course, the final provisions, with respect to early retirement can be established by the Congress, because it is a matter within our control and we can deal with that through legislation. By the same token, we can also deal through legislation, or actually, the executive branch of our Government can deal with it as a matter of policy, with the question of job opportunities back in this country with respect to employees. So the number that we are really, in the end, talking about, in view of the estimates, is, I think, a less significant proportion than perhaps the impression one may have gained.

Continuing with the questions:

Question 6. Planning estimates of number of U.S. citizen employees whose jobs are not discontinued by Treaty, but are expected to choose early retirement or voluntary separation within three years.

The Governor's answer to that was:

Of the anticipated 2,000 U.S. citizen employees whose jobs would remain with the Panama Canal Commission, we estimate approximately 1,000 would apply for, and choose, early retirement or voluntary separation within three years.

He then went on to question seven—I am going to come back in a second to discuss that answer.

Question 7. Planning estimates of number of Panamanian employees whose jobs are expected to become the responsibility of the Republic of Panama.

Before I go on to the non-U.S. citizens, let me go back to talking about the U.S. citizens. There is an interesting question here, and I recognize that question. That is, will U.S. citizen employees of the Panamal Canal Company currently, whose jobs would continue to be available to them with the Panama Canal Commission, stay in those jobs? The Governor has estimated here a figure of 50 percent. That is an estimate, and that is, of course, the best that anyone can do. It is an important question in a number of respects.

These are people who now have that option available to them. The opportunity is there for them if they choose to utilize it. So they are not in a position of not having the opportunity. This is really an estimate of people who may choose not to use the opportunity.

Then, of course, the question becomes, if they withdraw, as it were, precipitately from the work force, what will that do to the standard of the work force and the ability to carry on the functions of the canal? It is an important question. I have a couple of responses to it.

First of all, the thrust of the question has varying weight depending on the nature of the position that one is talking about. There could be some positions in which a lot of people would decide to take early voluntary retirement or voluntary separation. That would be their choice, and it would not make a big difference in terms of the work force, because they could be easily replaced, either by Panamanians or with other employees, American employees, who had jobs that were going to be phased out who would be entitled to move into these positions. It becomes more of a problem when we talk about highly skilled positions. The Senator from North Carolina made reference to the pilots, and that is a highly skilled position.

On the other hand, it is a well-compensated position. Like any other job a good deal of the attraction of the job is influenced by the remuneration that goes with the job. So there is the opportunity, I think, if you have a serious problem, particularly in those highly skilled positions, to adjust the salaries accordingly in order to hold on to personnel if that becomes a problem.

Second, while the treaty foresees, over the course of the century, moving to a Panamanian work force for operating and maintaining the canal, although it protects those that are there, it also allows or permits recruitment outside of Panama for certain special skills that may not be available within the Republic of Panama. In other words, if a job becomes open at a level that does not require specialized skills, highly trained skills, and—well, let me put it this way: If a job became open, you would have to look to Panama first. But if they did not have the training and the skills required to fill that job, you could recruit outside of Panama.

Therefore, you are entitled, with these very highly skilled positions we are talking about—and the numbers are small in those positions. I think most people would concede that. The number of

pilots, for example, I think is 210 or 212 pilots now working for the Panama Canal Company. If that skill is not available under the treaty, there is a specific provision that allows recruitment to take place outside of Panama. That is located in article X, section 2(a) of the treaty, which provides that:

The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

ORDER FOR VOTE TO OCCUR AT 7:15 P.M. TODAY

Mr. ROBERT C. BYRD. Mr President, will the Senator yield?

Mr. SARBANES. I yield.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the vote occur in relation to this amendment at 7:15 p.m. today.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. McGovern). Without objection, it is so ordered.

AMERICAN BUSINESS LEADERS IN PANAMA FAVOR TREATIES

Mr. MCGOVERN. Mr. President, American business leaders living and working in the Republic of Panama are overwhelmingly in favor of the ratification of the Panama Canal treaties. The views of these business leaders are typified by the comments of Mr. Edward Abbot before the Detroit Economic Club. Mr. Abbot is the Ford dealer in Panama and has lived in Panama for over 30 years. I urge my colleagues to examine Mr. Abbot's remarks, and I ask unanimous consent that his speech as it was reprinted in La Republica be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MCGOVERN. Mr President, in an interview also in La Republica, Mr. Abbot addresses the concerns of some Zonians about living under the jurisdiction of Panama. It is very interesting to note that Mr. Abbot's conclusion based on his long personal and business relationships with Panama is that these fears are unfounded. I ask unanimous consent that this interview appear at this point in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

EXHIBIT 1.—CANAL TREATY TO ATTRACT NEW INVESTMENTS IN PANAMA

Edward (Ed) Abbot, an American who has been in business in Panama for the past 29 years, late in January addressed the Detroit Economic Club as a member of a five-man "truth squad" from the Isthmus which explained the Panamanian side of the Panama Canal Treaty question to audiences in various U.S. cities.

He was named to the squad by the Panama Government as a qualified representative of U.S. businessmen here.

The full text of Abbot's address follows: Ladies and gentlemen: My name is Ed Abbott. It is quite an honor to address such a distinguished group as yourselves.

I grew up in Detroit and went to Cooley High School and attended Wayne University. Since 1945 I have lived in Panama as a private businessman and have worked with the Panamanian people for these 29 years as the Ford dealer in Panama. My experience has been that the government has always been just in its dealings with management and labor and has treated both sides with the same equitable consideration. There are approximately 6,000 U.S. families who are integrated and living in the country of Panama and I am reflecting the opinions and speaking for this group.

The private sector has always been concerned with the economic and commercial relations between the United States and Panama. The pending Panama Canal Treaty is certainly a strong influence on the business community and the attraction of new investments in Panama.

This treaty will create a strong climate of stability and the country of Panama will at last have control over its principal natural resource, after a gradual transfer of management in accordance with the terms and agreements of the new treaties.

This will enhance U.S.-Latin American relations as well as all of the Third World nations and certainly will strengthen the national interests and create an image of understanding and fair dealing with our proven allies and friends.

During this transfer of administration the rights of the 3,000 U.S. citizens who work and reside in the Canal Zone have been fully protected. The treaty which has been signed by President Carter and General Torrijos—on behalf of the people of Panama—clearly guarantees these Americans their jobs and salary levels until retirement. The process of integrating into the Panamanian economy for the present U.S. workers in the Zone will be an easy and almost automatic process—as the operation of the Canal is slowly assumed by the Panama government the present housing facilities would not be physically changed—but only the administration would change. We have a good example of this which already took place in Panama.

About 12 years ago the U.S. government returned a tract of land within the city of Colón on the Atlantic side of the Canal, in accordance with a previous agreement.

When the Panama government assumed administration of this housing area, the land and housing was offered to private citizens who were now able to own their own houses. These people built up a respectable middle class community, which has proved to be a good investment. There are absolutely no restrictions on foreigners owning their own property in Panama and the registration of deeds and ownership is patterned after and is similar to our system here in the United States.

Under the new treaty most of the present residential sections in the Canal Zone will become available for private ownership and it follows that the same U.S. citizens may elect to purchase their housing which was not possible before because all housing was furnished by the U.S. government, and if an employee either U.S. or Panamanian was terminated, he or she had to return to the U.S. or Panama, as the case may be.

Residence in the Canal Zone is limited only to the people who work there. Separate housing is provided for the U.S. citizens apart from the Panamanian employees who live in the Canal Zone and naturally this separation did not foster a program of integration.

Panama's geographical location and favorable business laws offer an excellent opportunity for future investments in this country and Panama welcomes foreign investment and participation concerning the vital interests of the United States in reference to the defense of the Panama Canal, we Americans have been informed by our military advisors that the defense of the actual Canal against an insurgent and Viet Nam type of warfare would indeed be very difficult and expensive unless the surrounding country was friendly. These treaties clearly state that the U.S. has the right and obligation to defend the waterway against any threat that could jeopardize clear passage of any vessel after the year 2000 when the Panama government has assumed full management of the waterway. At the present time the U.S. military presence in Panama is only tolerated and indeed criticized by most of our Latin American neighbors throughout the continent. Since the military action that took place on Jan. 9, 1964, the United States has recognized a need for a fair treaty with the republic of Panama and during Henry Kissinger's visit when he was Secretary of State, expressed their intent in writing to sign an equitable treaty with Panama, to end one of the last colonial enclaves that still exist in this modern world.

After all these years the Panamanian people at last are realizing their just aspirations and it would indeed be disastrous to not ratify this treaty at this time. Panama has the support of only Latin American but the whole world has supported Panama's struggle to obtain jurisdiction over their territory and the United States would severely damage their relations and image throughout Latin America and the Third World.

The U.S. would appear to act irresponsibly in the eyes of their Western allies by not ratifying a treaty that gives us the right to defend the Canal against any threat from any source.

The United States urged Great Britain to return the control of the Suez Canal and is presently supporting the people of Africa who are struggling to obtain a majority control over their country. If these treaties are not ratified, then the United States will be placed in a position where they have constantly supported and recognized smaller independent countries rights against larger and oppressive regimes and the rest of the world is now expecting them to adhere to the same policy of freedom for independent nations to pursue their own Democratic goals.

EXHIBIT 2.—FEAR OF LIVING UNDER RP JURISDICTION "UNFOUNDED"

(By J. J. Harrison)

A long-time U.S.-citizen resident of the Isthmus today branded as "grossly unfounded" the fear some Canal Zone Americans have over the possibility of living under Panama Government jurisdiction.

The assertion came from Edward (Ed) Abbot, born in Grand Rapids, Mich., some 60 years ago, but who has called Panama City, Panama, home since 1949, or for the past 29 years.

"We (U.S. citizens) have always been treated justly and with consideration and are fully integrated—and accepted—into the economic and social lifestream of Panama," said businessman Abbot in an exclusive interview with La Republica-English.

He said he was reflecting the opinion and speaking for the 6000 U.S. citizens living in Panama.

"Take it from me," the businessman said, "I am in an excellent position to know Panama and its people". He added that he is the "only Gringo" working shoulder-to-shoulder with his 202 Panamanian employees.

Abbot, also well known as an active civilian airplane pilot, commented on the rights, under the Torrijos-Carter treaties, of the approximately 3000 U.S. citizens currently employed in the Panama Canal Zone.

"The new treaties," he declared, "clearly guarantee these Americans their jobs and salary levels, until retirement".

Declaring that the process of integration into the Panamanian economy would be an easy and almost automatic one for these U.S. citizens, Abbot pointed out that the new treaties would afford them the opporunity of purchasing their own homes.

"They would also receive better facilities for entering into commercial activities just the same as so many of their 6000 countrymen have, from one end of the republic to the other," Abbot said.

He noted with "much satisfaction" that during the nine years of the Revolutionary Government, while the treaty has been an issue, "there have never been any overly serious incidents that have adversely affected the private sector in Panama."

He said Panama is one of the few nations that has consistently been free of terrorism and has enjoyed a secure atmosphere for its own citizens, and foreign residents here, alike.

Late in January, Abbot was a member of a five-man "truth squad" which visited various large U.S. cities giving Panama's side on the controversial treaties which will provide this country with complete jurisdiction over all its territory by the year 2000.

Abbot, who on that mission represented U.S. businessmen based in Panama, was accompanied by Panamanian Ambassador to Washington Gabriel Lewis Galindo, who headed the squad; Planning and Economic Policy Minister Nicolas Ardito Barletta, Treaty Negotiator Carlos Lopez Guevara and Eduardo Ferrer Morgan, the Embassy's economic advisor who served as truth squad coordinator.

The full text of Abbot's talk before the Detroit Economic Club, during the January trip, will be printed in Monday's edition of La Republic-English.

The Detroit Economic Club is regarded as one of the strongest groups of economic leaders in the United States.

ORDER FOR VOTE ON HELMS AMENDMENT TO OCCUR AT 11 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that a vote occur in relation to the pending amendment by Mr. Helms at 11 o'clock tommorrow morning.

The PRESIDING OFFICER (Mr. Metzenbaum). Is there objection? Without objection, it is so ordered.

Mr. ROBERT C. BYRD. There will be no further rollcall votes today.

[From the Congressional Record—Senate, Apr. 12, 1978]

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of Executive N, 95th Congress, first session, Calendar No. 2, which the clerk will state.

The assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, The Panama Canal Treaty.

The Senate resumed the consideration of the treaty.

AMENDMENT NO. 102

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there may be 10 minutes for discussion of the pending amendment by Mr. Helms, to be equally divided between Mr. Helms and Mr. Sarbanes, before any vote occurs.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

The Senator from North Carolina.

Mr. HELMS. Mr. President, I ask for the yeas and nays on the amendment.

The ACTING PRESIDENT pro tempore. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. I thank the Chair.

Does the Senator from Maryland wish to proceed first?

Mr. SARBANES. Either way would be quite all right.

Mr. HELMS. Mr. President, I want to thank my good friend and distinguished colleague from Maryland for making my case yesterday evening in his comments on this amendment. When I pointed out that 42 percent of the Panamanian workers would lose their jobs with the canal company and 75 percent of the U.S. citizen employees would be gone within 3 years, the able Senator from Maryland in rebuttal quoted detailed statistics given by Governor Parfitt before the Armed Services Committee.

Of course, as we agreed yesterday, the statistics cited by the able Senator came from the response of Governor Parfitt to questions which this Senator from North Carolina had propounded to Governor Parfitt. They were exactly the same statistics which I used, which I had analyzed, and which I presented to the Senate yesterday.

As the distinguished Senator discovered when he got down to question 6 of the questions I had propounded to Governor Parfitt, it was rather clear, I think, that the Governor's opinion was that within 3 years half of the U.S. citizens who are needed, half of those in necessary jobs, will leave the canal.

Of course, when half of the U.S. citizens who are needed leave, there will not be enough experts to run the canal or even to train Panamanians to take their places. Why are they leaving? They are leaving because they can see what it is like to live under a dictatorship and they do not like it.

If we are to keep the canal functioning, and I assume that all Senators agree that is absolutely essential, we must respond to the

concerns of these American citizens and try to give them enough reassurance so that they will stay long enough to keep the canal from breaking down.

The pending amendment, Mr. President, provides the bare minimum of reassurance for some—and I emphasize the word some—of their concerns.

First, it would remove Panama's arrogant claim that the children of U.S. citizens born in the Canal Zone are Panamanians subject to the whims of the dictatorship.

Second, it would give the English-speaking black people in the Canal Zone, decendants of the original canal builders from the West Indies, a chance to become U.S. citizens and thereby escape Panama's claim that they are Panamanian nationals.

Third, it will provide at the treaty level a bill of rights, a guarantee of procedural rights, for any U.S. citizen who might be prosecuted by the notorious courts under the control of a dictator.

A vote to defeat this amendment, a vote to table this amendment, is a vote, Mr. President, against human rights. It is a vote against the constitutional protections which are the privilege of every citizen of the United States.

I urge my colleagues to consider carefully the consequences when they cast their votes on this amendment.

I thank the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

The Senator from Maryland.

Mr. SARBANES. Mr. President, Governor Parfitt himself, in testimony before both the Foreign Relations Committee and the Senate Armed Services Committee really pointed out that this whole question of whether people stay on or not depends in part on the implementing legislation, which we have complete control over in terms of how we deal with our early retirement rights and job placement rights and with how the transition is accomplished. Let me just quote him twice, first before the Foreign Relations Committee:

Governor PARFITT. The Secretary is quite correct. The assurances that have been given to date, both in terms of the assurances provided by the Secretary—

And second, referring to the Secretary of the Army, who is a stockholder in the Panama Canal Company—

and in terms of those that are embodied in the treaties themselves, have been very reassuring. In the last few months there has been more of a wait-and-see attitude among the population. I would think from the standpoint of the employee guarantee if the assurances are fulfilled in the legislative package, that that would do much to retain the necessary skills that we have to have.

Before the Armed Services Committee, Governor Parfitt addressed the question of employees leaving. The question was put to him—

In your answer, could you address yourself specifically as to how many of the skilled employees might leave and the importance of the implementing legislation in their decisions?

The Governor referred to the fact that a survey was made and that it indicated they might leave. And of course, he made the statement which we quoted earlier in response to the question posed by the distinguished Senator from North Carolina.

Governor Parfitt went on to say:

> It has always been my perception that this could be prevented by two initiatives. One is providing implementing legislation which deals fairly and equitably and generously with the employees; and, two, by establishing and maintaining a high order of cooperation with Panama in order to insure that when jurisdiction passes to Panama it is done very softly, very sensitively, and thus avoids provocative incidents which will assuredly result in the outward flow of our employees.
>
> So we must effectively deal with both of those situations, in my view, in order to have an assurance of continued efficient operation of the canal.

I say to the Senator from North Carolina that the problem he has referred to is one that I am sensitive to as well. On my visit to Panama, in fact, I met at some length with Americans who work for the company and reside in the Canal Zone. I have expressed earlier in this debate on the floor my respect and admiration for the professionalism of the work they have done in operating the canal.

In fact, early on, in April of 1977, when we had the treaty negotiators at a meeting of the Committee on Foreign Relations, we received a report at that time. One of the concerns I expressed to them, which was echoed by other members of the committee, was the need for greater consultation with the American employees in the zone and sharpened attention to some of their concerns.

Now, the rights which they have been guaranteed in terms of procedures, if they become involved in some legal dispute, are quite extensive. That applies both to civilian employees and to military employees, and includes such things as a prompt and speedy trial; the right to be informed in advance of trial of the specific charge or charges to be made against them; the opportunity to confront and be allowed to cross-examine witnesses and to have legal representation, and so forth and so on. So there is an extensive list of procedural guarantees that both the military component and the civilian component, which will continue to function in Panama, either in the employ of or for the dependents of those who are in the employ of the United States Government, will have available to them and will have as protection. I think it is very important to underscore that fact.

There is a great deal of apprehension, I know, but I do think a great number of safeguards have been written in to deal with some of those concerns. Some of the other concerns are not matters that involve the Republic of Panama. Those are matters completely within the control of the Government of the United States, including the Congress. Those are matters that deal with early retirement questions and alternative job placement opportunities, and things of that sort. These are completely within the control and the purview of the U.S. Government.

The PRESIDING OFFICER (Mr. DeConcini). The Senator's time has expired. The Senator from North Carolina has 1 minute remaining.

Mr. HELMS. I ask unanimous consent that the distinguished Senator have 2 more minutes to finish his train of thought.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. I appreciate the Senator's consideration.

There is another point, and I think it is an important point to make. It is estimated that some 6,000 to 7,000 Americans currently live and work in the Republic of Panama; in other words, not connected with the Panama Canal Company. They do not live in

the zone, they live in the Republic of Panama, just as Americans live and work in France or England or Germany. The reports that we have received from the community have been that they have lived and worked there without any difficulties and without any troubles. I know that the people who live in the zone feel that they are considered or perceived differently and that there is going to be antagonism. There is some concern about that. But as Governor Parfitt has expressed here, the sensitivity of the transition is enormously important. That, I think, has been underscored to Panamanian officials.

In testifying before us, Captain Williams of the Pilots Association stated, in response to this very question:

> Recognizing this, however, it should be borne in mind that what was previously blind resistance to change has moderated considerably, to the point that a more open-minded tolerance to "wait and see" is now prevalent.
>
> How many key employees, such as pilots, will terminate their employment if this treaty enters into force?

Then he says the estimate is 5 or 10, it could go higher. But it all depends on how this transition is accomplished.

I think it can be done well. There are guarantees. Therefore, I oppose the amendment of the Senator from North Carolina.

Mr. HELMS. Mr. President, I have absolutely no problem with the good intentions of the distinguished Senator from Maryland. I know his intentions are of the best. The problem here is that he is talking about legislation; we are talking about a constitutional right and the preservation thereof. The closer the impending loss of those rights, the more quickly people leave. The Captaim Williams whom the Senator just quoted himself has already left the Canal Zone. He lives in Corpus Christi, Tex. No matter what his opinion last year, today he is exactly what we are talking about when we speak of the exodus of U.S. citizen employees who are so apprehensive about what will happen. Their concerns will not be allayed.

At this very moment, I say to the distinguished Senator, there are four of the canal pilots from the Canal Zone in the Senate appropriations room, one floor below us, who are stating their concerns to the American people through the press. So we have a very real problem here which the Senator, himself, has recognized. I think it is essential that the Senate at the treaty level, address itself——

The PRESIDING OFFICER. All time has expired.

Mr. HELMS. I ask unanimous consent that I may have 1 more minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HELMS. I think it is absolutely essential that the Senate address this human rights problem now at the treaty level, rather than have to rely on a legislative remedy which may or may not be effective.

Mr. President, I ask unanimous consent that the statement which has just been delivered to the press conference downstairs by the four pilots be printed in the Record at the conclusion of my remarks.

I thank the Chair.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT OF PANAMA CANAL COMPANY PILOTS JUNIUS CHAUVIN, JOHN WALLACE, BURLEY PRUETT, AND RAY HALL

The four of us are all pilots with the Panama Canal Company. Among us we count 53 years of service with the Company. We are not by nature politically oriented. In fact, we are just the opposite. Because of the sensitive nature of our jobs in piloting the ships of many nations, we have tried to avoid political controversies.

In addition, we don't claim any expertise in political affairs and in general would prefer to leave them to other people. But we do know the business of piloting ships through the Panama Canal. Our years of service on commercial ships and additional years of service as Panama Canal pilots gives us, we believe, a unique expertise in this specialized area. In addition, we have gained a deep appreciation of the maintenance requirements of the Canal and of the conditions necessary to keep it running smoothly.

We have taken the step of coming to Washington at our own expense to speak to members of the Senate and members of the press because we are deeply concerned that, if the Panama Canal treaties are ratified, they will have drastic effects on the operations of the Canal.

Our observation of the maintenance capability seen under the present regime in the Republic of Panama is that it is very poor. There are many roads, hospitals, power plants, industries and the like which are not functioning because of improper attention to maintenance.

Should this level of maintenance prevail in the Canal Zone after the treaties are ratified, this would make it extremely difficult to operate the Canal.

These considerations among others have caused a high level of apprehension in the Canal Zone about these treaties. And I should point out that this apprehension exists among the Panamanian employees as well as among the American employees because studies show that the present Panamanian employees will be hurt at least as much as we will—and probably more. If these treaties are ratified, it is probable that several thousand Panamanian employees will be put out of work.

Because of the intolerable living and working conditions that we foresee if the Canal Zone is placed under the new jurisdiction, we estimate that as many as 50 of the total of 206 pilots now on the force will leave within a year if the treaty is ratified.

We believe that there will also be an exodus of many hundreds of other American Canal employees—including many highly skilled technicians and supervisors.

If the treaties are ratified, the Americans in the Canal Zone would be subject to the jurisdiction of Panamanian courts and at the mercy of the Panamanian National Guard.

We should point out that there is already a shortage of pilots. More and more large ships are going through the canal and these ships require four pilots instead of the two required on average ships. Also, only senior pilots can take these ships throught the Canal. For this and other reasons, there has recently been a squeeze on the pilot force which has caused many pilots to work overtime. Efforts by the company to recruit more pilots have largely been unsuccessful.

What has made the piloting jobs attractive for us has been the steady work, good pension plan, and—most important—the good living conditions for us and our families. If the treaties are ratified, these living conditions will no longer exist.

It should be emphasized that Panama will not be able to supply pilot replacements for many years to come. It is a small country and it does not have any nautical tradition. A school has recently been established to train mariners but, the graduates of this must first serve on ships at sea before they can become qualified to begin training as canal pilots.

In closing, we want to emphasize that we are not against a new treaty but against this treaty. We believe, however, that any new treaty should above all insure that the Canal continues to function smoothly. These treaties do not do that.

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mr. SARBANES. Mr. President, I move to lay the amendment of the Senator from North Carolina on the table, and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is not a sufficient second.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. I ask for the yeas and nays.

Mr. SARBANES. I move to lay on the table the Helms amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay the amendment of the Senator from North Carolina on the table. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the Senator from Hawaii (Mr. Matsunaga), the Senator from New Hampshire (Mr. McIntyre), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson), the Senator from Michigan (Mr. Riegle), and the Senator from New Hampshire (Mr. McIntyre) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett) is necessarily absent.

The result was announced—yeas 54, nays 40, as follows:

[Rollcall Vote No. 93 Exec.]

YEAS—54

Baker	Hart	McGovern
Bayh	Haskell	Metzenbaum
Bellmon	Hatfield, Paul G.	Morgan
Bentsen	Hathaway	Moynihan
Biden	Hayakawa	Muskie
Bumpers	Heinz	Nelson
Byrd, Robert C.	Hollings	Pearson
Case	Huddleston	Pell
Chafee	Humphrey	Percy
Church	Inouye	Proxmire
Clark	Jackson	Ribicoff
Cranston	Javits	Sarbanes
Culver	Johnston	Sparkman
Danforth	Kennedy	Stafford
Durkin	Leahy	Stevenson
Eagleton	Long	Weicker
Glenn	Magnuson	Williams
Gravel	Mathias	Zorinsky

NAYS—40

Allen	Curtis	Garn
Brooke	DeConcini	Goldwater
Burdick	Dole	Griffin
Byrd, Harry F., Jr.	Domenici	Hansen
Cannon	Eastland	Hatch
Chiles	Ford	Hatfield, Mark O.

Helms	Randolph	Stone
Hodges	Roth	Talmadge
Laxalt	Sasser	Thurmond
Lugar	Schmitt	Tower
McClure	Schweiker	Wallop
Melcher	Scott	Young
Nunn	Stennis	
Packwood	Stevens	

NOT VOTING—6

Abourezk	Bartlett	McIntyre
Anderson	Matsunaga	Riegle

So the motion to lay on the table Mr. Helms' amendment No. 102 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ARTICLE VI

Mr. ROBERT C. BYRD. Mr. President, may we move to the next article?

The PRESIDING OFFICER. Are there further amendments to article V? If not, the clerk will report article VI.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

[The article is as follows:]

ARTICLE VI

PROTECTION OF THE ENVIRONMENT

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

ARTICLE VII

The PRESIDING OFFICER. Are there amendments to article VI? If not, the clerk will report article VII.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE VII

FLAGS

1. The entire territory of the Republic of Panama, including the areas the use of which the Republic of Panama makes available to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.

2. The flag of the United States of America may be displayed; together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at the site of the Combined Board, and as provided in the Agreement in Implementation of Article IV of this Treaty.

3. The flag of the United States of America also may be displayed at other places and on some occasions, as agreed by both Parties.

ARTICLE VIII

The PRESIDING OFFICER. Are there amendments to article VII? If not, the clerk will report article VIII.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

[The article is as follows:]

ARTICLE VIII

PRIVILEGES AND IMMUNITIES

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.

3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, indentifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

The PRESIDING OFFICER. Are there amendments to article VIII? If not, the clerk will report article IX.

ARTICLE IX

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

[The article is as follows:]

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Article IX

APPLICABLE LAWS AND LAW ENFORCEMENT

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements.

2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recoginzed by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws.

4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedure established in Article IV of the Agreement in Implementation of Article III of this Treaty, the owners shall be authorized to continue using the land upon which their property is located in accordance with the procedures established in that Article.

5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of nonprofit enterprises, such as churches and fraternal organizations, the cost of the purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.

6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes, they shall be compensated at fair market value by the Republic of Panama.

7. The provisions of paragraphs 2–6 above shall apply to natural or juridical persons who have been engaged in business or nonprofit activities at locations in the former Canal Zone for at least six months prior to the date of signature of this Treaty.

8. The Republic of Panama shall not issue, adopt or enforce any law, decrees, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.

9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

10. The United States of America and the Republic of Panama will cooperate in taking such Steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component, and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their

dependents, and their property. The Republic of Panama will seek from its Legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who not domiciled therein, may elect to serve their sentences in their State of nationality.

ARTICLE X

The PRESIDING OFFICER. Are there amendments to article IX? If not, the clerk will report article X.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE X

EMPLOYMENT WITH THE PANAMA CANAL COMMISSION

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panama nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualification which are not available in the Republic of Panama.

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

(d) The United States of America shall periodicaly inform the Repulic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

4. The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound

administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

7. Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

9. (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

(b) Employee unions shall have the right to affiliate with interntional labor organizations.

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such laws for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Mr. ROBERT C. BYRD. Mr. President, I understand that there will be an amendment or amendments to this article.

Mr. HELMS. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order.

AMENDMENT NO. 82

Mr. HATCH. Mr. President, I call up amendment No. 82 and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

[The assistant legislative clerk read as follows:]

The Senator from Utah (Mr. Hatch) proposes an amendment numbered 82:

After paragraph 10 of Article X, insert the following new paragraph:

"11. In order to fulfill the prior assurances by the Government of the United States respecting the economic well-being and job security of any United States national employee of the Panama Canal Company, United States nationals who are employees of the Panama Canal Company or of another instrumentality of the Government of the United States in the Canal Zone prior to the entry into force of this Treaty and who subsequently after ratification of this Treaty elect to leave the Zone or are removed from such employment for reasons other than misconduct, neglect of duty, or malfeasance shall have the right to job placement with no reduction in grade or step in a Federal position with the Government of the United States within the continental United States subject to the provisions of subchapter II of chapter 5, of title 5 of the United Stated Code."

Mr. HATCH. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will come to order. Senators will please refrain from conversation on the floor.

Mr. HATCH. Mr. President, if these treaties are approved by the Senate, and I think there is a great deal of doubt about that, they contain no assurances by the U.S. Government for the American nationals in the Canal Zone who work there other than a vague and ambiguous statement to the effect that things will be adjusted in their behalf. What has been said is that, "They will be provided for." Union and civic leaders in the Canal Zone have repeatedly asked for a detailed explanation as to exactly what these rather vague assurances mean. Their requests have either been ignored or answered with a similar vague statement, and indeed in some cases, half truths.

There is no question that an effective and efficient transition to Panamanian operation of the canal will necessitate the cooperation of those experienced U.S. employees who are presently employed by the canal. Unfortunately, because of the uncertainty that these citizens are experiencing with regard to their own employment circumstances, morale is at an all-time low among them, and the Panama Canal Company is expecting twice as many U.S. citizens to leave than is required by the treaty-imposed changes.

The employees are tired of being pushed aside and they have reached a point where they must have some assurances as to what their fate will be assuming these treaties are approved. I submit to my colleagues that it is shabby treatment for this Government to pull the rug out from underneath them and to make no firm commitment to them regarding their livelihood. Hence, this amendment seeks nothing more than fair and equitable treatment for them by guaranteeing them a job opportunity in the United States for any eligible employee who elects to leave the Canal Zone for whatever reason he deems appropriate.

I think it is important to know here that the AFL–CIO endorsed the Panama Canal Treaties as "a just and enduring basis for harmony in the Western Hemisphere." Obviously, there is a good deal of disagreement with that position in the Senate.

But I think of more importance here is the fact that their support, which has been published and distributed to all Senators, is contingent upon the equitable treatment and protection of all workers in the Canal Zone, who big labor says must not be caught in the middle and vicitimized as a result of their government's foreign policy.

The AFL–CIO goes on to say that in keeping with the treaty provisions requiring protection for the job rights and benefits of U.S. citizens employed in the Canal Zone, the Government has established an outplacement service for those employees faced with voluntary or involuntary separation from their current positions. They say that this is a good step toward meeting the Government's obligation to the citizens, but more must be done. For once I find myself in agreement with the leaders of the AFL–CIO in desiring to protect the job security of canal employees. We both agree that the administration and the Department of Defense should promptly develop, in concert with the unions representing Canal Zone workers, provisions for full and complete protection of the job rights and benefits of all these workers.

I believe this is a laudable and necessary objective and my amendment would serve as the focal point for requiring that this protection include the job placement guarantees which are rightfully due these employees who are caught so much in the middle of this complicated situation. It should be noted that these employees have been told that they will be given job placement priority in the civil service system if, and only if, their jobs are abolished. It came to my attention by two employees of the Canal Zone who visited me in my office that the Civil Service Commission in Miami and New York have been instructed not to hire Panama Canal employees who desire to transfer to those cities even though jobs were available there. It is fairly obvious to me that the Carter administration is holding them captive so that they may be forced to provide the technical expertise to Panamanians in order for them to be able to continue to operate the canal unless these American employees are willing to terminate their civil service careers. If these tactics are being used now, before the treaties are ratified, it is clear that U.S employees will have no priority placement after the treaties are implemented and when living and working conditions in the Canal Zone are bound to deteriorate even more so than they are at the present moment.

As for those U.S. employees who do not lose their jobs, they will by virtue of the situation become prisoners with no avenue of escape other than the termination of their civil service careers and the ultimate forfeiture of all they have worked for over a period of years.

This is an extremely unfair situation which should not be condoned by any Member of the Senate. If ever there were a group of Federal employees in need of such a guarantee, it is these. Supposedly hired with the protections of civil service provisions, the number of American employees in the Canal Zone will undergo a forced 20-percent drop within 5 years of the effectiveness of the treaties. The remainder will gradually be phased out by a discriminatory system of preferential hiring. Accordingly, American nationals will be subject to forced rotation into less preferable jobs,

and will be given no guarantee of nondiscriminatory assignment or promotion. As a shrinking minority of American employees become a vestige in the eyes of the Panamanians of what they will perceive to be U.S. imperialism, pressures to force the civil servants out of their jobs will become greater and greater.

I submit that they will have at that point no way to stem the tide of adverse action unless we act here and now to make it clear as to what their job security rights are.

The supposed quid pro quo is a U.S. Government promise to the effect that it will act as a placement service "to the maximum extent feasible." This is surely a weasle-type language which signifies nothing and the reports that the Civil Service Commission offices in Miami and New York have been instructed not to hire Canal Zone employees surely suggest that this commitment, as diluted as it is, is meaningless.

Hollow assurances is not justice and fairness to those Americans who are victimized, at no fault of their own, by ratification of these treaties.

My amendment would add teeth to our commitment to the employees of the Canal Zone by binding the U.S. Government to offer certain minimum guarantees which in principle are right and necessary. However, because it would be unilaterally binding on the United States, it would not require another plebiscite nor should the Government of Panama object to the personnel policies which we determine reasonably necessary to safeguard the interests of American employees.

My amendment attempts to attract similar guarantees for superlevel civil servants contained in the Ribicoff-Percy-Sasser-Javits civil service reform bill. My thesis is that if we can make job guarantees to GS-18's situated well-paid and comfortably in Washington, as we are doing pursuant to that measure to the civil rights reform bill, surely we can make a modest commitment to American's abroad who find their jobs and lifestyle hostage to the dictates of American foreign policy.

Mr. President, I submit to you that all decency and honor demands that we provide the modest job assurances that my amendment calls for so that the American nationals who work for the Panama Canal Company will know exactly where they stand and can plan their future accordingly, I believe that the Senate should join with the AFL-CIO executive council and approve this amendment which provides for some protection for the job rights and benefits of all those affected workers. I recommend the adoption of my amendment.

I certainly recommend the adoption of my amendment.

I can say that when I was in Panama last August one of the most interesting meetings we had was with the employees and the union leaders of thos employees in Panama. In addition to the fact that almost to a man the U.S. employees were against these treaties, their chief secondary concern was what will be their labor rights, assuming these treaties go through. They did not believe that they were being well taken care of. I might just add one of their chief concerns was that they should have their rights incorporated within the treaty as a protection to them because they know that if this Government does not make the commitment by having

their rights incorporated within the treaty it is very unlikely that this Government will make the commitment thereafter and they will be lost in the shuffle.

They know that, I believe that. Therefore, I sincerely bring forth this amendment, which cannot affect or hurt, it seems to me, the Panamanians, because of the nonnecessity to have a plebiscite, and I think will be human, decent, and will bring human rights right here home to those whose human rights and laboring rights are being violated by, I think, the present leadership in Washington.

Mr. GRIFFIN. Mr. President, will the Senator from Utah yield?

Mr. HATCH. I am delighted to yield.

Mr. GRIFFIN. I wish to comment that the amendment of the distinguished Senator from Utah underscores and focuses upon a number of concerns that I have had about this treaty and how it would work between now and the year 2000.

I find in my State, as I discussed this subject, that most people do not realize that 30 months after ratification the employees, whether they be Panamanian or U.S. citizens, even while performing their duties with respect to the canal itself, will be subject to Panamanian laws, Panamanian courts——

Mr. HATCH. That is right.

Mr. GRIFFIN [continuing]. And Panamanian police.

While we do not turn the canal over to Panama until the year 2000, we do turn all jurisdiction and control of the Panama Canal Zone over to the Republic of Panama 30 months after the treaties become effective. This creates a lot of interesting questions; I mean, about employee rights during this period between now and the year 2000.

For example, while this recites that labor relations with employees of the Panama Canal Commission shall be conducted in accordance with the form of collective bargaining established by the United States of America after consultation with employee unions, let me ask the Senator from Utah, who is a distinguished lawyer and has studied these things, where does the union go, to what court will the union go, to get relief after these treaties become effective?

Mr. HATCH. That is a good question. Once Panama receives all civil and criminal jurisdiction over the Canal Zone they will have to go to the Panamanian courts.

As the distinguished Senator from Michigan well knows, there are wide varieties within this country of exercises under the collective-bargaining systems of this country, and that vague language does not protect those employees one bit.

One of the points brought up innumerable times is that a lot of these U.S. employees are married to Panamanian nationals. If they do not leave now and give up their civil service jobs, because there are no jobs being provided for up here, they may, once jurisdiction is transferred to Panama, which occurs within 30 months after the day of ratification of these treaties, as I understand it, never be able to leave Panama without leaving their spouses down there and leaving their children. That is a tremendous injustice they have to face, that my amendment corrects.

Mr. GRIFFIN. Just looking at such a situation as a labor dispute that might develop 48 months or whatever after the treaties

become effective, does anybody know whether there is relief available in a Panamanian court under a situation like this, and do we know not only what the laws of Panama are today but what they will be 48 months from now?

Mr. HATCH. We do not.

As the Senator very interestingly pointed out and, as a matter of fact, it should also be pointed out, there is no labor law really protecting these citizens even under U.S. labor laws because they are employees of the Federal Government, and our labor laws do not particularly cover these employees, except the Government does treat them equally and fairly. But if my amendment is not enacted, there will be absolutely no protection to them other than, I would have to say, an inane promise that is already being abridged.

Mr. GRIFFIN. The Panama Canal Commission that will be established, presumably by implementing legislation if the treaties are ratified, will be immune from suit under the treaties.

Mr. HATCH. That is correct.

Mr. GRIFFIN. And could only be sued, as I understand it, in the Federal court in the State of Louisiana. this will create an interesting sitution for the employees, whether they are Panamanians or U.S. citizens, who have complaints against the Panama Canal Commission, will it not?

Mr. HATCH. Well, it is intolerable for them because how can they afford to press their rights, if they have rights that are litigable? They cannot press their rights.

Mr. GRIFFIN. On the other hand, it there is a strike in violation of a collective bargaining agreement, they will be dependent, the Panama Canal Commission will be dependent, upon whatever relief they may be able to get from a Panamanian court.

Mr. HATCH. That is right, and that may be no relief at all.

Mr. GRIFFIN. Yes. Unless the DeConcini amendment, of course, or some version thereof, is written into this treaty, and it is accepted not only by General Torrijos but also by the people of Panama so that we will have the right, if the canal is closed down for any reason, to do something about it.

Mr. HATCH. The Senator has very clearly pointed that out.

Mr. GRIFFIN. I think it is very interesting that so much of the argument of the proponents in this particular area depends upon the enactment of implementing legislation. For example, this treaty holds out in rather vague terms very generous benefits to come, having to do with early retirement, and so forth, if Congress will get around to passing this very generous legislation.

Yet the proponents are against having the House of Representatives pass on the treaties themselves.

Not only, as the Senator from Utah has pointed out, is there a constitutional argument having to do with the transfer of real estate for which there is a good argument that the House of Representatives should participate in the approval of the treaty, but aside from that, and it is a constitutional requirement that the House of Representatives approve the treaties, it seems to me, as I have said over and over again, it would make good commonsense to call upon the House of Representatives to approve the treaties if you expect the House of Representatives later on not only to create

a Panama Canal Commission but also to pass this legislation for these employees.

What are they going to do in the meantime? Are they just going to sit around and hope that the House of Representatives, the Congress, is going to pass this very generous legislation, because they may very well decide, well, they do not know when that is going to happen? They have had no indication from the House of Representatives that they approve of these treaties, so who could blame them if the leave, which is unfortunately what a lot of them will do.

Mr. HATCH. That is right. They want to be protected now because they know it is very unlikely that they will be protected later, and I want to protect them now because it just plain is unfair.

But the distinguished Senator has also pointed out another very important thing, and that is why should not the House be called upon to vote at least on the transfer of American property since it will be called upon to vote with regard to implementing legislation, and they may be very irritated because their rights have been avoided, or at least not listened to, especially since 235 of them have demanded the right to vote on the transfer of American property down there.

That is no insignificant thing. I think for our colleagues to waive that right for and on behalf of the House of Representatives without giving them that opportunity, by having voted down the amendments pertaining to this precise constitutional issue, was tremendously foolhardy on the part of my colleagues who voted against the House in that manner because they have basically allowed the President to extend his power, to my way of thinking, in violation of the doctrine of the separation of powers, and I think it is detrimental to the Senate in the final analysis.

But be that as it may, we lost on that amendment, and I suppose now it is in the hands of two bodies: The Supreme Court of the United States—and I hope they will read this record, because I think we made an overwhelming case—and I suppose in the final analysis the House itself, because the House has to decide whether they will implement this treaty. If they decide not to do so we are in deep trouble. So I think the House will have a double shot, once before the Supreme Court and once on the floor of the House of Representatives.

But today we are debating and arguing for the labor rights, human rights, and employment rights of American citizens in Panama, who have been promised by this Government and their own leaders here in Washington that they will be protected.

Mr. GRIFFIN. I understand from the testimony General Parfitt gave that there are in the neighborhood of 500 U.S. citizens employed in connection with the Panama Canal operation whose services are absolutely essential, and for whom Panamanian replacements cannot possibly be trained in the short term.

I further understand that a poll was taken—this was at the time of the hearings in the Foreign Relations Committee—which showed that 60 percent of the U.S. personnel working down there planned to leave if these treaties are ratified by the Senate. I do not know whether there has been subsequent updating of that or not.

I would think the President would be concerned whether these employees are going to remain on the job. If he wants to encourage them to remain on the job, he would want to resolve the constitutional question that will hang over these treaties, it seems to me, and just as a matter of good commonsense he would want to have a resolution before the House of Representatives approving these treaties, because if the House does not approve the treaties, it will mean not only is there a constitutional question to be litigated, but in the meanwhile until the House sometime thereafter acts, there is going to be concern about these employees and whether they will stay. Would it not be ironic and tragic if the Senate itself, by ratifying these treaties, should trigger an exodus that closes down the canal?

Mr. HATCH. The Senator has spoken well. One of the reasons for this amendment is to let those workers down there know that their rights are being protected and will be protected, so there will be no desire on their part to leave the Canal Zone at this time.

There may be those who are married to Panamanian nationals with dual citizenship problems, who may be forced to remain in Panama if we do not pass this amendment. I feel very sorry for those people, and would like to help them. The fact is that commonsense and reason, true paternalism, and true concern for their welfare—which are one and the same thing, as this Senator sees it—mandate that we protect these workers, and that we protect them in writing in accordance with their specific requests to be protected; and we will be doing no less than we ordinarily do for all the highly paid Government employees who sit here in perfect safety, security, and comfort in Washington, D.C. I think it is unfair to do otherwise.

I thank the distinguished Senator from Michigan, and I reserve the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The Senator from Maryland is recognized.

Mr. HATCH. Mr. President, will the distinguished Senator yield for a unanimous-consent request?

Mr. SARBANES. Surely.

Mr. HATCH. Mr. President, I ask unanimous consent that we not have a vote on this amendment until after the hour of 12:35 p.m. A number of Senators have come to me and indicated that they had commitments downtown, and they would like to be protected so that they could vote on this matter. I think it would only be fair.

Mr. SARBANES. Mr. President, if the Senator would withhold the request and we can go ahead with the debate on this amendment a bit, I would like to check on how that would affect our side.

Mr. HATCH. The people who have come to me have been from your side. This is not a partisan matter.

Mr. SARBANES. Well, we will certainly accommodate them, but meanwhile we will check it out.

Mr. HATCH. I also have to be off the floor for about 10 minutes right now.

Mr. SARBANES. I will assure the Senator that we certainly will not go to a vote until he returns to the floor, and that we will not go to a vote which does not accommodate the request. As a matter

of fact I accede to the unanimous-consent request that there not be a vote earlier——

Mr. HATCH. Let us make it 1 o'clock.

Mr. SARBANES. Members might then face a different problem.

Mr. LAXALT. We already have a 1 o'clock unanimous-consent agreement. It would have to be after that.

Mr. SARBANES. I think the problem is that by 1 o'clock Senator Stevens must be recognized in order to offer his amendment.

Mr. HATCH. Well, 12:35 will be fine.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LAXALT. What was the final agreement? What was the time?

Mr. SARBANES. No vote will occur until 12:35.

Mr. ROBERT C. BYRD. And could we say not later than 12:45?

Mr. HATCH. That will be fine.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Maryland.

Mr. SARBANES. Mr. President, we have heard a number of arguments made in the course of the presentation of the pending amendment including, to some extent, a replay of the argument that the House of Representatives is constitutionally required to participate in a transfer of property, that it cannot be done by treaty.

We have been over that argument at great length in this body. We spent 3½ days on that argument. It was rejected by the Senate by a very decisive majority, and then subsequently the Court of Appeals for the District of Columbia handed down a decision which rejected the argument.

So I do not intend to replay that theme. I think it has been fully dealt with. Let me turn to the specifics of this amendment, and address myself to them.

I said earlier in this debate that I intended to oppose amendments which would seek to place in the text of the treaty subject matter which could be handled by statute here in Congress because it dealt with a subject that was entirely within the jurisdiction of Congress. I take the view, on those matters where we retain jurisdiction and can change by statute how the matter is dealt with, that we should not place those matters in a treaty between ourselves and another country.

The other country has no role in dealing with such matters. In fact, one really should ask the question, why should we seek to do that if we want to maintain the maximum amount of control in our own hands? Why should we lose the control, we have to deal with certain subject matters through statute by placing those matters in a treaty, requiring that any changes we might want to make in how we deal with them would require an amendment to the treaty, thereby requiring the concurrence of the other country? It really defies logic, it defies commonsense, and it defies what best looks after American interests to seek to take subject matter that we can handle by statute, place it in a treaty, and give the other country that is party to the treaty influence—in fact, control, with respect to any changes, since the other party could always refuse to accede to the changes—over the subject matter.

The matter dealt with in the amendment offered by the Senator from Utah is such a matter. It deals with the question of employment rights in this country of American citizens who have been working for the Canal Company. That is a matter we will be called upon to deal with here in the Congress in the implementing legislation. We have full discretion and full scope in how we handle that matter.

We have some days on the floor when the debate is of such a nature that all of the alleged defects in the treaty are being set out from the point of view of the Panamanian people. Members of the Senate opposed to the treaties take to their feet to discuss at great length how, from their perspective, these treaties are not good for the Panamanian people. They recite all the things which are wrong with the treaties. In fact, we have the very interesting argument where it is asserted, "Well, the Panamanians should really be mad about what has happened with respect to these treaties." Having made that assertion, the same speaker then turns to the Members of the Senate and says, "We ought not to approve these treaties because the Panamanians will be mad about what is in the treaties."

On the one hand they say to the Panamanians, "you ought to be mad," and the Panamanians are all listening to this on the radio. Then Members turn to the Senate and say, "The Panamanians will be mad, and if they are going to be mad we should not approve the treaties." It is a very skillful argument.

Today is the day on which some Members of the Senate, in effect, say to the Americans in the Canal Zone that they ought to be upset, truly upset. "If they become truly upset they are going to leave their jobs, and if they leave their jobs the canal will not be able to operate. Therefore, we ought not to approve the treaties. So let us talk today about all the reasons why the Americans out to be so truly upset in working there, they will leave their jobs. If we can bring that about we will have an argument that we are not approving the treaties because the Americans will not be there to do their jobs."

Again, it is a very interesting sort of argument. Let us just talk about it for a moment.

I know that many Americans working in the Cannal Zone, working for the Panama Canal Company or the Canal Zone Government, the two American entities there, and for other Americans stationed there with the Department of Defense, are concerned about the transition and concerned about the future. That is an understandable concern. I first want to assure them that I think it is a concern of which every Member of the Senate is sensitive.

I want to repeat that: I think it is a concern of which every Member of the United States Senate is sensitive.

I recall in the spring of 1977 when the Foreign Relations Committee asked the two negotiators to come in and brief us on how matters were proceding that one of the issues that arose at that meeting, brought up by Members of the Senate, myself included, was the amount of consultation taking place with the American employees of the Panama Canal Company and the Canal Zone Government, and how much information was being transmitted to them about what the possibilities were.

We had received reports, and I think they were reports with some substance to them, that the employees really felt they were being left in the dark; that a good deal of apprehension which might be present in any event was heightened by the fact that they just did not know.

I think as a consequence of that meeting—and I checked this out during my visit to Panama in talks with Americans who live and work in the Canal Zone—there was greater consultation, there was greater information, there was an effort to be more responsive. I think that is important. But it seems to me that the protection for those employees lies within the jurisdiction which we have over how they are to be dealt with through statute.

It makes no sense to seek to put those provisions into a treaty, thereby making Panama a party to the provisions both in the first instance and a party to the provisions thereafter with respect to changes one might wish to make. It makes no sense at all to place those provisions in the treaty rather thatn dealing with them by statute here in the Congress.

I think it is clear to anyone who has any understanding of the Senate and of the House of Representatives, since it requires both to enact legislation, that responding to the legitimate concerns of the Americans who have worked in the Canal Zone would be a matter of the highest priority.

It is really not necessary to assert that the administration will do everything it can, because it is the Congress that, in the end, will make the determination.

[Mr. Clark assumed the chair.]

Mr. SARBANES. Second, I submit there is every indication that the administration will indeed do everything that it can do.

The Senator from Utah, in the course of his presentation with respect to this amendment, asserted that two regional offices of the Civil Service Commission—I think he said—had issued instructions that there was to be no hiring to people seeking jobs who currently were working for the Panama Canal Company or the Canal Zone Government.

Is that an accurate statement of the assertion?

Mr. HATCH. I appologize, Mr. President. I did not hear the question of the Senator from Maryland.

Mr. SARBANES. As I understood it, the assertion was that two regional offices of the Civil Service Commission had issued a directive that there was to be no hiring of Americans seeking employment in this country who had been with the Panama Canal Company or the Canal Zone Government.

Mr. HATCH. I do now know that they have a written directive, but complaints have been made to us by American citizens working in Panama that the jobs have dried up the minute they applied for them up here, and that they believed that the two Civil Service Commission offices are drying up the jobs and not giving them the opportunity of coming to this country.

Some of them just have to leave now because they are married Panamanian nationals and will not be able to leave later, once Panamanian law takes effect.

Mr. SARBANES. Of course, I do not for a moment concede that point. I am going to get to the assertion that somehow people will

be locked in or frozen in Panama and not be able to leave. But for the moment, I want to leave that point to one side and just deal with the question of the complaints which the Senator says have been brought to his attention.

Mr. President, when I heard that, it was a matter of very deep concern to me. I mean, if, in fact, it were true, then I think a reasonable charge could be made that the Government of the United States was not being responsive to the situation of these employees, as it should be. So, immediately upon hearing them, we naturally went to seek fuller information with respect to the matter. We have been in touch with the Civil Service Commission and have received the following statement from the Chief of the Agency Staffing Liaison of the Bureau of Recruiting and Examining. I want to read the statement in full:

> With reference to the recruiting and employing of former Panama Canal Company and Canal Zone Government United States citizen employees who may loose their jobs because of the Panama Canal treaty, the Civil Service Commission has recently instructed all of its regions to give priority consideration to the hiring of these employees. Additionally, the Commission has instructed all regions throughout the United States that they must not hire other U.S. citizen employees outside of their own agency if an available Panama Canal Company/Canal Zone Government employee is available and qualified for the position.

I submit, Mr. President, that this is a forthright statement that is responsive to the problem about which we may all have a legitimate concern. I think it is obviously directly contradictory to the basic assertions upon which the complaints to the Senator from Utah rest.

I am frank to say that I do not think the matter should rest there. It should be pursued further. It is quite possible that someone down the line is not carrying out the directives that have been given. But as I indicated, these are instructions that have been sent by the Commission to all regions throught the country and they are designed to be responsive to this problem.

Mr. HATCH. If the Senator will yield, I was happy to know that our President has said the same, the labor leaders here in Washington have said the same. But the complaints we receive are complaints of people who paid their own way to come up here to America, who are U.S. citizens working in Panama who feel that they they cannot leave Panama and they are being held hostage there; and they are going to have to give up their civil service status and leave anyway and lose their civil service status because they have to leave.

Whether the Commission issues a bulletin or not or a policy or not, and whether the President says this is or not, all I am asking to do is nothing less than we would do for any civil servant here in Washington; that is, provided these people with some job rights and job protections, because they have not brought this about. This has been brought about as a result of treaty negotiations by the last four administrations.

I do not think that it is an untoward request. Let me say that the distinguished Senator from Maryland has pointed out, and I think quite accurately, that this would not be binding on Panama.

Mr. SARBANES. No, if the Senator will let me resume, I think this is an important point. I am not really addressing, and certainly not quarreling with, the substance of the Senator's concern, or even

addressing these concerns. It is quite conceivable that, in dealing with legislation, I might even want to go further than the Senator from Utah in how we accommodate the employees. I want to say to the Senator, and I stated this at the very outset of the debate and on more than one occasion subsequent to that, that I have a high regard and respect for the professionalism of the employees who have worked in the Canal Zone and the contribution they have made.

Mr. HATCH. So do I.

Mr. SARBANES. Second, I have met with them and I think I have some appreciation of their problems and their concern. What I am saying is that we ought not to take a matter, a subject matter that we can deal with here, in the Congress of the United States, and place it into a treaty; because if we put it into a treaty, first of all, we may get a provision on which the other government has to agree, or has some role in agreeing to. They have no role in this. This is our problem and our business. Third, if in the future we want to change how we deal with it, make it more favorable, adjust to changing circumstances, we would have to go back and amend the treaty with the other country and the other country would then be in a position to put the veto on the proposed change, because it would be in the treaty and they could refuse to agree to it.

Why do that?

Mr. HATCH. If the Senator will yield on the point, I shall answer him.

Mr. SARBANES. Let me finish the question, then I shall yield.

Why put it into the treaty when we can address it here in Congress, in legislation, and have the full range of control over the subject matter?

Mr. HATCH. I think that is a fair question. Why put article X in the treaty? We have basically three pages of protections for our laboring people down there that really basically, according to the Senator's argument, do not have anything to do with the rights of Panamanians down there, or with Panama.

Since we have taken such deliberative care to put almost three or four pages in here about employment with the Panama Canal Commission, why not include these protections? All I am asking is, if a man or a woman in Panama is working pursuant to a Civil Service Commission appointment or job, if they want to leave, they ought to be able to leave and we ought to find them equivalent jobs in this country. That ought to be part of that article X. It is only fair.

I think we ought to be concerned with the human rights of our employees; especially since it will not require a plebiscite or any other passing upon by the Panamanian Government.

Mr. SARBANES. It would require their approval. You are putting it into a treaty. Once you put it into a treaty, the other party has to agree to it or it is not part of the treaty.

Mr. HATCH. Can you imagine their not agreeing to it ?

Mr. SARBANES. I do not want them to have the right to agree or not to agree to it, because we control it in the United States and in Congress, and the Panamanians ought not to have authority over it.

I do not understand why the Senator wants to bring them in as a party with respect to dealing with this problem, other than for different considerations having to do with opposition to the treaties themselves. But on this subject matter——

Mr. HATCH. If I might answer that, the different consideration does not even play a role here. I fought actively and hard against these treaties for very good reasons and I have listed those reasons on the floor. That does not enter into this particular discussion, because I happen to know, and I think nobody can argue against this proposition, that Panama could not care less whether we protect our employee rights here in America. And if they did care, I could not care less whether they do care, because I think we have an obligation as U.S. citizens to do that. I think it is our obligation to protect our employees' rights, especially since our President, our Ambassadors, our State Department, and many of the people who are voting for these treaties have said they will be provided. I do not want, any more than those people down there in Panama want, to have that left up to a subsequent bit of legislation here after the fact.

If I were absolutely certain that my amendment here would become law through legislation immediately following these treaties, maybe I would back off on this point. But I am not certain.

As a matter of fact, I do not believe it will ever become law. So I want it in here along with all these other protections, almost four pages in the Panama Canal Zone treaty.

I would submit, knowing the concern which the distinguished Senator from Maryland, and I would say many others of the 68 who voted for the Neutrality treaty, have for workers' rights, I would submit it is a valid, worthwhile thing for us to do and there is, really, no reason for stonewalling that particular objection. Not any reason whatsoever. There is no problem with Panama. There will be no problem with Panama.

I would think they would be as interested in this as the Senator, my friend from Maryland, indicated he is, and I certainly am by bringing this amendment to the floor.

If these workers' rights are not important, why have it in the treaty at all?

I would not argue that article X should be stricken from the treaty, but since article X is there, let us get this final protection, on which I think all reasonable minds would have to agree is a minimum. We have to protect those people, who did not bring this on themselves down there and who deserve a protection, as civil service employees in Washington, it has been advocated, should have, sitting here in the confines of comfort, peace and tranquillity of this city, rather than within the tremendously dislocated and problematical situation they are sitting in down there in Panama.

I am sorry to have interrupted the distinguished Senator from Maryland at this point. I just wanted to make this point. I appreciate his comments thereon.

Mr. SARBANES. Mr. President, I think it is clear, or ought to be clear, that there is no difference here with respect to responding to the concerns of the American employees or providing them protection. I made the assertion earlier in this debate that in my view

every Member of the U.S. Senate would be sensitive to that consideration.

The real difference arises with respect to the approach which seeks to deal with a subject matter that we can deal with in the Congress by statute and makes that subject matter part of the treaty, which then means that the other party to the treaty has a role to play in shaping the subject matter.

Why in the world should we do that? Why in the world should we take the matter of these employees with respect to their opportunities for other employment or their early retirement considerations, if that should be brought forth, and make that subject to agreement by the Republic of Panama, or any future changes subject to agreement by the Republic of Panama?

In fact, it is interesting that the Senator from Utah earlier was no anxious for the House of Representatives to participate in disposition of property by this approach, but, of course, would eliminate the House of Representatives from dealing with the question of retirement or Government rights.

The fact of the matter is that these employment rights can be dealt with solely by the Government of the United States, including the Congress and, therefore, that is how we ought to address this question.

I daresay when we address it on the substance, I will be every bit, if not more, responsive to these problems as the Senator from Utah.

I think that there is a matter of equity here that does need be responded to, and I have so expressed myself publicly on many previous occasions. But I do not want to take a subject matter that we can handle here and place it in a treaty, and thereby give the other party to the treaty, the other country, a right, as it were, to pass on that provision, or later to pass on any revision of it. If we later wanted to revise it, they, or course, would be in a position to block or veto it.

So it is really a matter of how we address this.

I have consistently taken this position, as I said earlier, with respect to amendments which propose to include in the text of the treaty between ourselves and another country a subject matter which we can deal with entirely and completely ourselves here by statute.

I do not think it is logical. I do not think it makes good commonsense. It does not give us as much discretion to protect our interests as we otherwise would have, and that has been the essential thrust of this argument.

I am not about to be placed in the position, and I have indicated that, of being insensitive or unresponsive to these concerns. I do not think any Members of the Senate will be insensitive or unresponsive to these concerns.

But I do not think the way to deal with them is to seek to put them in the treaty and therby give a role to Panama with respect to matters that are entirely our own responsibility and ought to be handled by us here within the scope of our own discretion and our own judgment.

Mr. HATCH. Will the Senator yield?

Mr. SARBANES. I yield to the Senator.

Mr. HATCH. With regard to that particular point, there is every reason to do it because we have given all of these other labor roles within the treaty that are not protective of our people.

But, more importantly than that, even if these amendment is adopted and incorporated within this treaty as a protection of our laborers down there, and as a minimum protection to them, there is nothing that says we have to have Panamanian consent to extend those protections, to enhance those protections, or to do anything else except lower those protections.

I have been very appreciative that the distinguished Senator from Maryland agrees with me that they ought to have these protections.

Can the distinguished Senator from Maryland guarantee to me right here today on this floor that they will have those protections within a month after these treaties are ratified, if that happens, an assumption I think at this point nobody should easily make, can he guarantee me they will have those protections through legislation formally passed through the Congress and signed into law by the President?

Mr. SARBANES. If by the question of guarantee the Senator asks, is such legislation now law, the answer is "no."

Mr. HATCH. Well, that is not my question.

Mr. SARBANES. If the question is, do I believe that there is every reasonable probability that such legislation will be enacted into law, the answer is "yes."

Mr. HATCH. Of course, that is not my question. My question is, can he guarantee it, and, of course, I already know the answer, it is that he cannot guarantee it.

Mr. SARBANES. As I say, it depends——

Mr. HATCH. If I could finish.

Mr. SARBANES. Well, I just say it depends on——

Mr. HATCH. This way, by adding to the treaty itself, we would make sure that protection is in, with no fear of anything Panama might do later, with no fear of having to obtain consent from Panama, because we would not want to have to reduce these rights once we grant them.

If we want to extend them, or enchance them, all we have to do is pass legislation later.

So the distinguished Senator's argument, it seems to me, is fatally flawed and very illogical.

Mr. SARBANES. Mr. President, I want to address myself to this guarantee question.

As I said to the Senator, if he meant by that to ask whether I can say that the law has been enacted and therefore we are beyond the lawmaking stage, the answer is "no." If by "guarantee" he means to ask whether I have every reasonable expectation that some legislation will be enacted, my answer to that is a very definite "yes."

The executive branch of our Government already has moved to respond to this problem.

The Senator earlier said that he had received complaints that regional offices of the Civil Service Commission were not accepting employment applications from U.S. citizen employees who were losing their jobs with the Panama Canal Company or the Canal

Zone Government. If it were true, that matter would be of very deep concern to me. Therefore, as soon as the statement was made, we sent someone to check with the Civil Service Commission with respect to this matter.

The information we received from the chief of the agency staffing liaison of the Bureau of Recruiting and Examining of the Civil Service Commission was as follows, with respect to their policy. I want to read this again, because I think it is important in showing how the government of the United States already is responding to the concern which the Senator from Utah outlined earlier and which others of us have outlined from time to time.

The Commission said the following with respect to its policy in this matter:

With reference to the recruiting and employing of former Panama Canal Company and Canal Zone Government of United States citizen employees who are losing their jobs because of the Panama Canal treaty, the Civil Service Commission has recently instructed all of its regions to give priority consideration to the hiring of these employees.

Let me read that again:

* * * the Civil Service Commission has recently instructed all of its regions to give priority consideration to the hiring of these employees.

Additionally, the Commission has instructed all regions throughout the United States that they must not hire other United States citizen employees outside of their own agency if an available Panama Canal Company-Canal Zone Government employee is available and qualified for the position.

Let me repeat that sentence:

Additionally, the Commission has instructed all regions thoughout the United States that they must not hire other United States citizen employees outside of their own agency if an available Panama Canal Company-Canal Zone Government employees is available and qualified for the position.

So our Government already is seeking to be responsive.

I submit that the legislation to be enacted will be fully responsive to this problem and that certainly the way to proceed is not to seek to deal with it as a treaty matter and thereby involve the other country that is party to the treaty in the decisionmaking with respect to this matter, when we can decide it here, by statute, ourselves.

For that reason, Mr. President, I oppose the amendment of the Senator from Utah.

Mr. HATCH. Mr. President, I am interested in the Civil Service document that the distinguished Senator from Maryland read; because if he reads it clearly, the rights I have been talking about here are not protected. That document does not say they have the right to tranfer, but only that they are going to have the right to be new hirees. It is not nearly as protective of our Americans who work in Panama, who are upset and disgruntled and hurt and tremendously concerned about their futures, pursuant to a treaty which does not really protect their futures, to be anything but new hirees, if they are lucky to make the transfer, if they need it, to the United States.

My amendment protects them, rather than hurts them. My amendment says:

In order to fulfill the prior assurances by the Government of the United States respecting the economic wellbeing and job security of any United States national employee of the Panama Canal Company, United States nationals who are employ-

ees of the Panama Canal Company or of another instrumentality of the Government of the United States in the Canal Zone prior to the entry into force of this Treaty and who subsequently after ratification of this Treaty elect to leave the Zone or are removed from such employment for reasons other than misconduct, neglect of duty, or malfeasance shall have the right to job placement with no reduction in grade or step in a Federal position with the Government of the United States within the continental United States subject to the provisions of subchapter II of the chapter 5, of title 5 of the United States Code.

That is very protective. It is precisely what the distinguished Senator from Maryland indicates that he agrees with.

If we read all of article X, we find that it covers matters such as employment and labor regulations, a system or preference in hiring Panamanian employees, the terms and conditions of employment, employment policies, training programs for Panamanian employees and apprentices. Within 5 years we have to reduce our employment by 20 percent. How are our people protected? It says:

The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in implementation of article III of this Treaty, of available positions within the Panama Canal Commission.

It goes on to establish qualification standards for skills and experience.

It talks about a policy of periodic rotation, at a maximum of every 5 years, of U.S. citizen employees and other non-Panamanian employees hired after the entry into force of this treaty. It reads:

It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons * * *.

They talk about wages, fringe benefits, nationality, sex, race. They talk about those who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this treaty. There is a long paragraph on that.

They talk about—

A system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty.

It talks about the salaries and other costs of employment. It talks about the negotiation of collective contracts.

It says:

Employee unions shall have the right to affiliate with international labor organizations.

It provides for early optional retirement programs.

I could go on and on. All this is discussed in article X.

We come up with something which really protects American citizens, which should be no problem to the Panamanians and will not require a plebiscite, and which the distinguished Senator from Maryland admits is something he would favor by separate legislation, but he cannot guarantee that we will have such separate legislation, and we are having trouble getting it amended to these treaties.

I submit, Mr. President, that this is a minimum amendment that we should have to these treaties and that my colleagues should

vote for it. Unfortunately, with the stonewalling that has gone on during the last weeks and months, we realize the uphill battle we have. But when these treaties are finally disposed of one way or the other, by ratification or by defeat in the Senate, I want it to be known that I have stood up for the workers in Panama and for their rights, which I think have been neglected by those who should have been representing them.

I find it very interesting that although no Senator or representative of a Senator was on the treaty negotiating team, a representative of the AFL-CIO was on the treaty negotiating team and did not insist, as a minimum prerequisite, on what I have in this amendment today.

Mr. President, I am prepared to yield back the remainder of my time and to proceed to a vote on this matter.

The PRESIDING OFFICER. Is all time yielded back?

Mr. SARBANES. I yield back the remainder of my time.

Mr. HATCH. Mr. President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SARBANES. Mr. President, I move to table the amendment of the Senator from Utah, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

[The yeas and nays were ordered.]

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Utah. On this question the yeas and nays have been ordered, and the clerk will call the roll.

[The legislative clerk called the roll.]

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the Senator from Mississippi (Mr. Eastland), the Senator from Louisiana (Mr. Johnston), the Senator from Washington (Mr. Magnuson), the Senator from New Hampshire (Mr. McIntyre), and the Senator from Michigan (Mr. Riegle) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson), the Senator from New Hampshire (Mr. McIntyre), the Senator from Michigan (Mr. Riegle), and the Senator from Washington (Mr. Magnuson) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett), the Senator from New Mexico (Mr. Domenici), the Senator from Arizona (Mr. Goldwater), the Senator from Pennsylvania (Mr. Heinz), and the Senator from Connecticut (Mr. Weicker) are necessarily absent.

The result was announced—yeas 55, nays 33, as follows:

[Rollcall Vote No. 94 Exec.]

YEAS—55

Baker	Bumpers	Chafee
Bayh	Bryd, Robert C.	Chiles
Bentsen	Cannon	Church
Biden	Case	Clark

Cranston	Huddleston	Nelson
Culver	Humphrey	Pearson
Danforth	Inouye	Pell
Durkin	Jackson	Percy
Eagleton	Javits	Proxmire
Glenn	Kennedy	Ribicoff
Gravel	Leahy	Sarbanes
Hart	Long	Sparkman
Haskell	Mathias	Stafford
Hatfield, Mark O.	Matsunaga	Stennis
Hatfield, Paul G.	McGovern	Stevenson
Hathaway	Metzenbaum	Talmadge
Hayakawa	Morgan	Williams
Hodges	Moynihan	
Hollings	Muskie	

NAYS—33

Allen	Hansen	Sasser
Bellmon	Hatch	Schmitt
Brooke	Helms	Schweiker
Burdick	Laxalt	Scott
Byrd, Harry F., Jr.	Lugar	Stevens
Curtis	McClure	Stone
DeConcini	Melcher	Thurmond
Dole	Nunn	Tower
Ford	Packwood	Wallop
Garn	Randolph	Young
Griffin	Roth	Zorinsky

NOT VOTING—12

Abourezk	Eastland	Magnuson
Anderson	Goldwater	McIntyre
Bartlett	Heinz	Riegle
Domenici	Johnston	Weicker

So the motion to lay Mr. Hatch's amendment No. 82 on the table was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion was agreed to.

AMENDMENT NO. 90

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska (Mr. Stevens) is recognized to call up amendment No. 90 to article XIV.

Mr. STEVENS. Mr. President, that is an amendment to article XIV, I believe, and it is amendment No. 90 that is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska (Mr. Stevens) for himself and Mr. Thurmond proposes an amendment numbered 90:

At the end of Article XIV add the following new paragraph:

"(2) If at any time before or after December 31, 1999, either the Republic of Panama or the United States of America abrogates, terminates, or otherwise declares void under their respective domestic laws the Panama Canal Treaty, the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal, or any amendments, reservations, understandings, or declarations thereto exchanged as part of or with the instruments of ratifications of such treaties then

such treaties shall terminate and the following treaties which would have been superseded by the Panama Canal treaty shall remain in full force and effect:

"(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;

"(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;

"(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama, concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and

"(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty. As used in this treaty the term supersede (supersedure) means to stay, set aside or render dormant.".

Renumber the existing paragraph in Article XIV accordingly.

In the title of Article I delete the word "Abrogation" and insert in lieu thereof the word "Supersedure".

In Article I, paragraph 1, delete the words "terminates and".

In Article I, paragraph 1, delete the words "This Treaty" and insert in lieu thereof "All of the Articles of this Treaty except Article XIV".

The PRESIDING OFFICER. The time on this amendment is limited to 3 hours, to be equally divided between and controlled by the Senator from Alaska (Mr. Stevens) and the Senator from Idaho (Mr. Church).

The Chair recognizes the Senator from Alaska.

Mr. STEVENS. I thank the Chair. I ask unanimous consent to have added as cosponsors of this amendment the names of the Senator from Nevada (Mr. Cannon), the Senator from Arizona (Mr. DeConcini), the Senator from Wyoming (Mr. Wallop), the Senator from Kansas (Mr. Dole), and the Senator from Arizona (Mr. Goldwater).

The PRESIDING OFFICER (Mr. Hodges). Without objection, it is so ordered.

Mr. STEVENS. Mr. President, I previously have pointed out to the Senate the legal research that my staff and I have done concerning Panamanian Supreme Court cases and the legal treaties written by distinguished Panamanain lawyers and intellectuals which indicate that the Republic of Panama may, under its domestic law, be able to declare declarations, reservations, and understandings which were not submitted to a plebiscite at the time of the original treaty, not having been reviewed by plebiscite in Panama, void under Panamanian law. The Panamanian Supreme Court has, in fact, on one occasion declared a treaty unconstitutional because it was not properly published during the ratification process.

The problem that bothers me is that reservations, declarations, and understandings are primarily attached to the Resolution of Ratification under the domestic procedures of the United States and the procedures of the Senate in connection with the previous treaty that was approved. It is apparent that that will be the situation with regard to this initial treaty, which would take effect now, if approved, and be effective until the year 1999.

It appears to me that under the intepretation given by the Panamanians under their own domestic law, these reservations, declarations, and understandings such as the DeConcini reservation are effective only if they are in fact amendments to the treaty itself,

which, under the Panamanian law, would require a subsequent plebiscite in order to be valid.

Under our domestic law, any reservation, declaration, or understanding attached to a treaty or to the resolution of ratification is binding. Under the Panamanian law that is not the situation, as we understand it, because under their law the treaty must be subject to a plebiscite. The Resolution of Ratification is not subject to a plebiscite, and there is serious doubt as to whether the reservations, declarations, and understandings that the Senate has previously adopted would in fact be binding upon the Panamanians unless this amendment is adopted.

I point out again that I am one who believes and has believed that we need a new relationship with Panama. Unfortunately I cannot support these treaties, because I find they are in fact interpreted one way in the United States and another way in Panama. The net effect of that, in my opinion, is to give a legacy to succeeding generations of Americans that can only lead to a collision between our two countries, and ultimately would mean that the United States would have to abandon its legitimate interests in the canal or use force in order to assert our rights in Panama, to protect the Panama Canal, or to continue its operations, and I consider the Panama Canal to be an area and a facility that will be of substantial importance to the United States in terms of our economy and our national security for many years to come.

It is with a great deal of reluctance that I have opposed these treaties, because I think that a new relationship is necessary. On the other hand, I do not think this generation has the right to establish a situation in which there is no alternative for future generations to protect the interests of the United States except through the use of force. The DeConcini reservation, I think, is the action of the Senate that has raised the interest of the Panamanian regime. We are informed that General Torrijos has in fact reserved judgment on this reservation, and I have placed in the Record already a series of translations from the Panamanian media which indicate an overwhelming reaction against that reservation.

I think that legally, as I have said before, any of the actions taken by the Senate in attaching amendments or reservations or declarations to the resolution of ratification are ineffective and will be ineffective in Panama unless this amendment is adopted.

The research that I have referred to, conducted not only by my office but independently by the Library of Congress, showed that the Republic of Panama, under its domestic law, may declare a reservation, declaration, or understanding of a substantive nature which has not been submitted to a plebiscite in Panama void under their constitutional procedures. In fact, as I mentioned, in 1963 the Panamanian Supreme Court ruled that the 1949 Geneva Convention on the Red Cross was unconstitutional in Panama because of a defect in the ratification procedure, as far as the Panamanian law was concerned.

I see no alternative except to declare that unless Panama is ready to accept the reservations, declarations, and understanding attached to both of these treaties and to their resolutions of ratification, as adopted by the Senate, we in effect have not reached

agreement. The effect of my amendment would be to declare that if Panama voids the action taken by the U.S. Senate in attaching a reservation, a declaration, or an understanding either to the treaties or to the resolutions of ratification, then the existing treaty relationship between Panama and the United States, so far as we are concerned, remains in effect.

I know that a similar amendment was offered before, and was rejected. I hope that in this amendment we have taken sufficient pains to see that it is drafted in a way that will accomplish the objective that we seek. We have located this amendment in article XIV, which is the dispute settlement provision. The article that terminates the Panama Canal Treaty on December 31, 1999, is also amended by this amendment. As amended, that article would terminate all of the Panama Canal Treaty except the dispute settlement mechanism on December 31, 1999. The dispute settlement mechanism, as amended by my amendment, would remain in force in perpetuity, simultaneously with the Neutrality Treaty.

There is nothing inconsistent about this approach. In fact, it is, in connection with the Neutrality Treaty, a permanent dispute settlement mechanism. There is nothing that would prohibit the application of the dispute settlement mechanism to any problem which might arise under the Neutrality Treaty. I think that would be an improvement. This is, in effect, a safety device. What it says to the Panamanians is that "If you are not prepared to accept U.S. understandings of the two treaties presented for ratification under the terms on which the United States is willing to accept them, then the old treaties remain in effect."

I am hopeful that all those who are interested in the reservations, the amendments, and the declarations which have been considered in the past will consider this amendment long and hard. I consider it to be, in my humble opinion, the key amendment in the debate and the battle so far. There is no question in my mind that General Torrijos has set the stage internationally for unilateral action on the part of the Panamanians to void the DeConcini reservation and the other amendments to the resolution of ratification on the Neutrality Treaty.

Without this amendment, without some action that clearly states the position of the United States, we are in the unfortunate position that under our constitutional system, under the decisions of our Supreme Court, the United States is bound by the treaties, if we ratify them, and we are bound by the actions we have taken in the resolution of ratification.

Under the Panamanian procedure, they are not bound by the resolution of ratification. They are not bound by the reservations, such as the DeConcini reservation, unless the resolution of ratification and the treaties are both submitted to the people of Panama in a subsequent plebiscite.

I believe General Torrijos knows that well. He has some very astute negotiators and people who have been working with him in connection with these treaties.

When I was in Panama, along with other Members of the Senate, I was privileged to meet with General Torrijos and to discuss very frankly these treaties. He knew at the time that I opposed the treaties. We discussed the matter very frankly off the record.

I have honored the conversation. I have not put on the record, here or elsewhere, the discussion which we had. I am convinced from the conversations I had that General Torrijos is a very resourceful leader, and he has taken action which any of us would have taken if we were in his position sitting in Panama with Panamanian domestic law which gives him the right to ignore the action of the U.S. Senate, if he sees fit to do so, despite the fact that we would be bound by the treaty ratifications if we, in fact, adopt the resolution of ratification.

I also should state that for myself I am concerned about the fact that the people of Panama have heard the statements here on the floor. I am certain that in the translation some of our comments have come across in Panama which have either been misunderstood or people do not understand statements which are being made in connection with the justification of maintaining our national interest as opposed to the Panamanian national interest.

We seek not to insult or to in any way denigrate the actions of our Panamanian neighbors. I, as one who has lived in a territorial status, certainly have felt the same emotions as the people of Panama and understand what the Panama Canal in the past has meant to the Panamanian national psyche. I do not blame them for wanting to seek a change in their relationship to the Panama Canal.

I fault our own people for not having explained thoroughly to the Panamanians the process of ratification of a proposed treaty under our system. I particularly fault our own people in not having protected against the misunderstandings which have arisen out of these two documents, misunderstandings which have led to meetings between the President of the United States and General Torrijos with the issuance of a statement attempting to explain the provisions of the treaty, which led to a series of amendments offered by Members of the Senate in the utmost of good faith, trying to protect the interest of the United States, and which have led to the Senate having adopted the DeConcini resolution which states that we intend to take such action as may be necessary to protect our national interest with regard to the Panama Canal.

The situation I see is that without the amendment we have proposed today we can look into the future and see the action that will take place. We will be presented with a resolution of ratification. If it is adopted there will be an exchange of documents between Panama and the United States, at which time our State Department will deliver to Panama the reservations and the declarations, the understandings, which were attached by the U.S. Senate to the resolution of ratification.

It is a very simple matter under Panamanian law to have those actions of the U.S. Senate declared void in Panama, notwithstanding the fact that the United States has already ratified, or would at that point have already ratified, the Neutrality Treaty and the Panama Canal Treaty and would be bound by its terms.

I say that the seeds of war, Mr. President, for the future generations of Americans and Panamanians exist in the misunderstandings which are apparent in these documents. There is no greater responsibility for the Members of this Senate than to make certain that these documents are interpreted in Panama and in the United

States in the same way, and to make certain that the Panamanians accept, freely and openly, any reservations, declarations, or understandings made by the Senate in its ratification process of these treaties.

If we do not do that, future generations of Americans, as I say, will have but two alternatives: Either to abandon the legitimate economic and military interests of the United States, in the future use of the Panama Canal, or to use force to assert our legitimate national interests over that claimed by the Panamanians as their legitimate national interests.

That is a terrible legacy to leave to future generations. For myself, I cannot support documents which will do that.

I urge the Senate to carefully consider this amendment. I am convinced that if this amendment is agreed to and General Torrijos declare void the reservations which have previously been adopted, we would at least preserve the framework of the treaty relationship between the United States and Panama which exists today.

Mr. WALLOP. Will the Senator yield?

Mr. STEVENS. Mr. President, I yield to the Senator from Wyoming such time as he may desire.

The PRESIDING OFFICER. The Senator from Wyoming (Mr. Wallop).

Mr. WALLOP. Mr. President, I will briefly comment. I compliment my colleague for the remarks he has just delivered. I would point out again, as I tried to do once before, that this is no killer amendment. It is placed in the treaty document as a more useful and understandable article with regards to the results it expects to effect.

The problems which were mentioned by the distinguished Senator from Alaska relate to what almost amounts to a unilateral act of ratification on the part of the United States. I do not think it is fair for our people, and surely not fair to the Panamanians, to put this kind of a burden on the process of the conduct of relations betwen our two countries without understanding, fairly clearly, what expectations there are, and to which standards we would return should either party fail to live by the articles of the two treaties, resolutions, reservations, and amendments thereto.

Much of the argument in favor of this amendment has already been presented. I associate myself with the argument in its behalf.

The arguments in favor of the amendment are not dissimilar to those I offered earlier to this treaty. Basically, this treaty, if it is abrogated, provides no ground to which to return, leaving the decision to some future American leader, or Panamanian leader, to resort to force or to accept the failure of one party or the other to abide by the terms of the treaty.

We are, in short, left in thin air as two nations, trying to conduct relations between each other.

The American people and the world, I think, deserve to know to what standard we would revert should these treaties be broken. While this appears on its face to be an argument or an agreement to contract, if you will, between Panama and the United States alone in this world, there is a world economic interest involved here that I think we, as a nation, and Panama, as a nation in the location of the canal, owe some allegiance. The standard proposed

under this amendment is recognized by both parties and it should have standing in the world community.

Simply stated, the amendment would provide that if the treaty or any of its amendments, reservations, declarations, or understandings are voided by either party, then these treaties shall terminate and we shall return basically to the status quo. If both sides uphold the terms of the new agreements, the amendment will never be used.

If it is the intent of both parties to abide by the terms of the treaties and other more evil influences on the world stage do not orchestrate or instigate an abrogation, no one will ever know of this amendment, no sovereignty be subject to it, no national loss of face be compelled by it.

Mr. President, recent events mentioned by Senator Stevens and spread across the newspapers of this land and the world bring to light the extent to which an abrogation of a treaty reservation could become a possibility, a reality. Daily, the press reports that Panama is not pleased with the DeConcini reservation, delineating what was already implied by U.S. negotiators. Panama's reaction to this interpretation highlights two points: First, that Panama and the United States do not agree on what the vague terms of this treaty mean; second, that the administration's reassurances to the Senate were more based on wishful thinking rather than rooted in solid legal fact for mutual understanding between our country and Panama.

Mr. President, I want to state again that I am not opposed to a new relatonship between our country and Panama. In a speech on the Senate floor, back at the beginning of the debate on these treaties, I established my position that, in the interest of justice and in the interest of the dignity of both countries, we should reexamine our relationship with Panama and establish a new circumstance between ourselves.

I am not oposed to new treaties. I am not opposed to redefining our role in Panama and in the Canal Zone. But the issue has always been these treaties before us and, in effect, nothing else. While we are trying to build a new relationship on a faulty and unclear document, the world, perhaps unaware of some of the implications of the documents before us, awaits action. What the Senate has been trying to do for the last 2 months is to clarify that document and to insure that both parties know what is expected of each other. Any contract is only as solid as the language of the contract, that which is contained within the four walls of the contract, as it were. Now we are given an indication of the degree to which that document is unclear.

The reaction of the Panamanians to the DeConcini reservation makes it all the more imperative that we have something upon which to fall back should these new treaties be abrogated. We need a legal and a moral foothold on which to base our actions. Mr. President, in my opinion, the Stevens amendment, of which I am pleased to be a cosponsor, gives us that basis. If the treaty is upheld, the amendment is irrelevant. But if the terms of the treaty are broken, we know what happens; Panama knows what happens, and the world, indeed, what happens. Perhaps, if that were to happen—and I, for one, hope that it will not—that new relation-

ship desired between our two countries might be negotiated more carefully in the interest of both our countries.

Mr. President, I yield back to the distinguished Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the distinguished Senator from Wyoming for his contributions in support of this amendment.

Mr. President, I ask unanimous consent that the Senator from Massachusetts (Mr. Brooke) be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, will the Chair let us know the time situation on this amendment?

The PRESIDING OFFICER. Originally it was 3 hours. The opposition has 90 minutes. Approximately 27 minutes have been used by the proponents.

Mr. SARBANES. Is there a time fixed for a vote?

The PRESIDING OFFICER. There has not been a time fixed for the vote. There was a 3-hour time limit only.

Mr. SARBANES. Mr. President, the amendment offered by the Senator from Alaska begins, if I may say so, from an extraordinary premise, which is that you should put into an agreement that you are concluding with another party to a provision saying in effect to the other party, "We anticipate or expect that you are going to violate this agreement; therefore, we are going to write into the agreement what will happen when and if you violate it."

That is an interesting way to go about making contracts and approaching agreements. In effect, what you do is, at least up to a point, make an assumption of bad faith rather than good faith on the part of the other party to the agreement. I think it is important to make that point at the outset. A country such as Panama, for 70 or more than 70 years, has really carried out the obligations of the 1903 treaty, despite resentment toward it and a feeling of antagonism that it was not fairly negotiated and that it has not kept abreast of a changing world which has made many of the concepts contained in that treaty outdated. No one, I think it is reasonable to say, would expect two independent nations today, negotiating a treaty, to be able to include in the treaty many of the provisions that are in the 1903 treaty.

Conceivably, the Soviet Union might impose such an arrangement upon a country by force. But I do not think anyone looking around the world today, at the nature of the world, would seriously suggest that two independent nations seeking to reach an agreement with one another could arrive or would arrive at the arrangements, all of the arrangements, embodied in the 1903 treaty.

Many of the issues which have been the source of contention over the years—and the contention in many respects has escalated in recent years—matters that may not really have been tenable even in 1903 between two totally independent countries. But I do not think the same sensitivities concerning many of those provisions existed then that exist now, and no two self-respecting nations could reach an agreement of that sort today.

To begin by making the assumption, as we do with the other party, that they are, in fact, going to violate the agreement, I think is an extraordinary assumption to make. I really think people ought to consider how we would feel if the other party to an agreement being reached were to say, "Well, we are reaching this agreement that is going to govern our relations over the rest of this century, and then indefinitely into the future, and this is how we perceive these matters will develop." Then at the same time if they said to us, "But you know we have a real suspicion and doubt that you are not going to keep this agreement, that you are entering into it but not in full good faith, and you are not going to keep it; and, therefore, we are going to add another provision to this agreement, which we want you, the other party, to agree to, that when you break the agreement, certain things are going to happen."

Now, just as a starter, that is an unfair premise.

The second thing is what we say is going to happen if it is broken, so that we are going back to the 1903 treaty.

Well, of course, the reason we are here with these treaties is that the 1903 treaty has proven to be inadequate and unsatisfactory to the situation.

If the 1903 treaty were adequate and satisfactory, we would not be here. We would not have negotiated these new treaties and the Senate would not have spent the last 9 weeks considering whether to advise and consent to them.

The reason we are here, and the reason the new treaties have been negotiated, is that the old 1903 arrangement, to which this amendment would return us, has clearly been inadequate, to put it mildly; inadequate to govern the relationship between the two countries in the latter part of the 20th century.

So that is why we are here. We are here because the 1903 treaty is not satisfactory. We are here, I would hope, proceeding on the premise that both parties have negotiated in good faith an agreement which they would hope to keep with one another.

Third, there is the notion that if it should happen that a substantive treaty provision is not adhered to, it would be an act of bad faith on the part of the other party. I want to underscore again that we have no reason to make that projection on the basis of Panama's past performances. The few difficulties that have occurred on occason in Panama have not really gone to the substance of the Panamanians keeping their end of the bargain.

I do not think it is an overstatement to suggest that virtually every Member of this body, away from the heat and the dramatics of the fight over the approval or disapproval of these treaties, in some calmer, quieter time, without a specific issue to which the rhetoric of the debate had to adjust itself, if he or she were to sit and read the history and the record of our activities in Panama since 1903 and the conduct of the Panamanian governments and the Panamanian people, would seriously contend that the Panamanian people and Panamanian governments have not kept their end of the bargain, kept their end of a bargain they have long regarded—indeed, from the very outset—as being an unfair bargain for them.

But I think in all fairness it would have to be conceded that they have really carried out their end of the treaty arrangements over the past three-quarters of a century.

I know the attention and seriousness with which the able Senator from Alaska (Mr. Stevens) has approached this matter. Partly in response to that seriousness of purpose which he manifested and which he has expressed in discussing the amendment today and discussing, at least, the concept of it earlier in the course of the debate, we sought from the legal adviser to the Department of State an opinion with respect to a unilateral attempt to abrogate a treaty for a material breach.

I shall take a few moments of the Senate's time to read the response that was received. Mr. President, this is a communication from the legal adviser, Mr. Herbert J. Hansell, to the Department of State:

Your staff has requested that we respond to your inquiry concerning the legal effect of (a) a unilateral attempt by Panama to abrogate the Panama Canal Treaty prior to its termination date, or (b) a material breach by Panama of the terms of that Treaty.

The termination of a treaty, or the suspension of its operation, may take place only in conformity with generally accepted rules and practices of international law. In the case of the Panama Canal Treaty, the governing rule is set forth in Article II(2) of the Treaty itself. That article stipulates that the Treaty will terminate at noon, Panama time, December 31, 1999. Absent mutual consent to an earlier termination, or a termination with another appropriate basis in international law, such as material breach by the United States or impossibility of performance, the Panama Canal Treaty will remain in force until the specified time. A unilateral declaration of abrogation or suspension by Panama, prior to the specified date, will not be effective.

Therefore, until the Panama Canal Treaty is terminated on December 31, 1999, the United States will have the legal right to assert and enforce all U.S. rights under the Treaty. Moreover, a material breach of the Panama Canal Treaty by Panama would entitle the United States to suspend performance of its obligations in whole or in part. Article 60(1) of the Vienna Convention on the Law of Treaties provides that

"A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part."

In the Panama Canal Treaty, the United States has agreed, *inter alia*, (a) that Panama will receive certain payments each year during the life of the Treaty, (b) that Panamanian nationals will increasingly participate in the operation and maintenance of the Canal and that Panama's forces will participate in the defense of the Canal, (c) to transfer to Panama certain property at the entry into force of the Treaty and during its lifetime, and (d) to transfer the Canal and related property to Panama on December 31, 1999.

In the event of a material breach by Panama of its obligations, it would be perfectly appropriate for the U.S. to withhold performance of these and other U.S. obligations under the Treaty until Panama complied once again with its obligations.

We are, of course, confident that both the United States and Panama will faithfully comply with their respective obligations under the Treaties. Indeed, in over seventy years, Panama has not committed any significant breach of the existing treaties despite the fact that it considers those treaties unfair and unjust. It is reasonable to assume that compliance with the Treaties freely entered into by Panama in 1977 will be at least as good as that experienced under a treaty entered into in the circumstances of 1903. But, as the foregoing demonstrates, the Parties would have satisfactory remedies available in the event either were to fail to comply with its obligations in the future.

That is the end of the letter.

I wish particularly to underscore the statement in the letter that—

A unilateral declaration of abrogation or suspension by Panama prior to the specified date will not be effective. Therefore, until the Panama Canal Treaty is terminated on December 31, 1999, the United States will have the legal right to assert and enforce all U.S. rights under the treaty.

As the legal adviser concluded:

We are, of course, confident that both the United States and Panama will faithfully comply with their respective obligations under the treaties. Indeed, in over 70 years, Panama has not committed any significant breach of the existing treaties, despite the fact that it considers those treaties unfair and unjust. It is reasonable to assume that compliance with the treaties freely entered into by Panama in 1977 will be at least as good as that experience under a treaty entered into in the circumstances of 1903. But as the foregoing demonstrates, the parties would have satisfactory remedies available in the event either were to fail to comply with its obligations in the future.

I have discussed to some extent—and I am going to go on to do so—the amendment offered, accepting the premise of its proponents, namely; that one of the parties to this agreement will, in fact, repudiate it. I do that simply because I want to address the substance of that contention, although, as I have said, I think it is an extraordinarily discomfiting premise to proceed upon, and its implications to the other party, of an agreement that has been freely entered into, might well be very harmful. The premise, in effect, has been put out in this amendment, and therefore I want to go on to address it.

I underscore, as I proceed to do so, that the Republic of Panama has faithfully complied with its obligations under the 1903 treaty, a treaty whose modification they have sought continuously from the very outset. Even so, they have not committed any significant breach of the existing treaties in the more than 70 years in which they have been in effect.

The first point is that if you are going to have the premise of abrogation or violation of treaties, you certainly cannot go back to the 1903 treaty. The remedy for that rests in carrying forward our rights under these treaties, under these arrangements. These arrangements have been freely entered into by both parties. The other party is entitled to expect us to carry out our part of the bargain, and we are entitled to expect them to carry out their part of the bargain.

The fact is that we are entitled, as the Department of State has said, to the legal right to assert and enforce our rights under the treaty. If an abrogation or repudiation should occur—if—our remedy is to enforce our rights under the treaty, which we are very clearly in a position to do.

Second, the treaty arrangements contained here begin the development of new arrangements between our two countries. Some changes will take place at once; others will take place in 3 years; others will take place over a continuing period of time. Very significant changes will take place at noon on December 31, 1999.

Seven years from now, or 11 years from now, or 15 years from now, if there should be some abrogation of a treaty term, it would be senseless to seek to remedy that by going back to the 1903 provision; clearly there is no reason to expect that the other party would agree to put that provision in the treaty, in any event, since those are the terms they want to get away from. But even if you add it in and it is agreed to, to try then to go back to the 1903

treaty would mean unscrambling the developments that had taken place over that 7-year period or 11-year period or 15-year period, or whatever it may be.

In effect, new treaties are cooking a new omelette; and once you start that process of cooking it, you cannot then go back to the earlier arrangement.

I urge the proponents of the amendment to stop and think for a moment about various steps that are going to occur over a period of time, and then think about what would be involved in reversing all those steps. What kind of action would you then be calling upon the United States to take?

Reference was made earlier to troubles, and so forth. Imagine for a moment, if you will, the troubles that would be associated with that process.

Second, you are then talking about a very mixed up situation. The treaty arrangements have been worked out in a very careful way. Some Members of the Senate think that they are good treaties and they support them; other Members of the Senate oppose them. But I think both sides would have to state that they constitute a fully developed comprehensive scheme as to how matters are going to proceed.

You cannot start down that path and go part way down that path, and then stop and say, "No, now we are going to leap backwards to that earlier arrangement from which we were moving." If you start down that part and something happens that impedes continuing in that direction, your remedy is to take measures to insure that you continue to assert the rights that are contained in the comprehensive arrangements which have been worked out in these treaties.

I mean the practicalities, let alone the principle, of going back to the 1903 treaty defy imagination when we ask how it could possibly be accomplished.

Of course, if you are going to make this premise about the bad faith of the Panamanians in not carrying out the treaty and therefore abrogating one of its terms—if you are going to make that assumption—then why would they not abrogate the 1903 treaty to which you are seeking to go back? In other words, the premise upon which the supporters of the amendment proceed as to how the Panamanians will behave is equally as applicable to the 1903 treaty. In fact, if they were to repudiate or abrogate the 1977 treaties, which have tried to meet many of the problems over those three-quarters of a century, there is every reason to suppose that that attitude would obviously apply to the 1903 treaty. I do not see how one can escape that conclusion.

So, we have started on a process here and if it is interrupted, the way to solve it is to continue the process. There is no way we can leap out of the middle of that process and go back to an earlier arrangement.

Some references were made as to anticipated troubles, but if you really want to imagine a situation which would bring troubles, I submit that such a situation would be an effort to go back to the 1903 treaty after we have begun the process of trying to implement and make work the 1977 treaties that are before the Senate today, assuming we advise and consent to them.

There are many, many ways, of course, in which we can seek to have the treaties complied with. The Neutrality Treaty establishing a regime of neutrality for the Panama Canal, gives to both the United States and the Republic of Panama, each acting separately, the right to take such action as is necessary to maintain the regime of neutrality embodied in that treaty. That is an important authority and one that obviously comes into play with respect to the provisions of these two treaties.

So, Mr. President, I submit that the premise on which the amendment proceeds is faulty with respect to the attitude of the Panamanian people and the Panamanian governments toward treaty obligations; but further, that even if one proceeds on that premise, the remedy for an abrogation is to enforce the rights contained in these treaties. Obviously, we cannot go back to the 1903 treaty. That is the very treaty we are trying to move away from. So, in principle, you cannot go back to it, and, in practice, I suggest that once we have started out on the process of implementing the 1977 treaties it will be virtually impossible to return to the 1903 situation because changes will have taken place—changes with respect to jurisdiction over the zone, the sovereignty which Panama exercises over its own territory, the territorial lines that are drawn, and services that are provided. For example, the Panama Canal Commission, which will become the successor American agency of the Panama Canal Company and will operate and maintain the Panama Canal for the rest of the century, will not engage in all of the retail-type activities which the Company has been engaged in over its history. They are no longer going to be running bowling alleys, food stores, shoe stores, and so forth and so on. Those, then, are going to be done privately in the economy of the country.

So a lot of things are going to happen that cannot be reversed.

If we move on these treaties, we will have entered into certain specified arrangements. Our joint responsibility, the responsibility of both countries, then, is to see that these arrangements are adhered to and carried out. It is my own belief that they will be adhered to and carried out voluntarily by both parties. There is everything in the record of our relationship to lead us to such a conclusion. But if it should happen that that is not the case, I think there are adequate authorities contained in the treaties to keep the relationship on the basis of the terms of these treaties.

For those reasons, Mr. President, I oppose the amendment which the distinguished Senator from Alaska has offered and to which the distinguished Senator from Wyoming has also addressed his thoughtful remarks, and I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alaska (Mr. Stevens).

Mr. STEVENS. Mr. President, one of the great difficulties we have in addressing this issue is the difficulty of trying to determine how we can get around the domestic law in Panama. I wish there had been proper advice given to the Panamanians about our ratification procedure. I have the feeling that had there been a real attempt to bring about understanding of this procedure the ratification process, the plebiscite that took place where Panama did, in fact, endorse these treaties before the U.S. Senate addressed them,

would not have taken place prior to our consideration of the treaties.

I may be wrong in that, but that is just my own feeling. There is no way under the current situation that these two procedures mesh.

The Senator from Maryland said why should we, in effect, enter into a contract that presumes in the beginning that one party may try to terminate it or abrogate it or declare it void.

The difficulty is that under the procedures in Panama, as I understand them—and I do not interpret the statement read by the Senator from Maryland from the Department of State legal counsel to contradict that—they can, in fact, declare a portion of the documents as not binding on Panama if they have not complied with their domestic law in the ratification process.

Again the problem in Panama as far as the Red Cross situation was concerned in terms of the Geneva Convention, as I understand it, was that the convention had not been published properly. By not having been published properly it was not before the Panamanian Government properly and, therefore, was not subject to the ratification process.

It does seem to me that the problem I am trying to address is how to make certain that we have an understanding, and my response to the Senator from Maryland would be that with due regard and respect to our Panamanian friends, the adoption of this amendment would make them carefully evaluate their actions before they attempted to void the reservations, such as the DeConcini reservation, that have been added to the resolution of ratification. If my amendment has been adopted, the Panamanians will be voiding our reservation with the knowledge that we take the position that the prior treaty arrangements between the United States and Panama remain in effect until they use their domestic law to comply with and to, in fact, adopt the reservations, understandings, and declarations of the U.S. Senate.

I do not want to get into a deep legal argument over the matter. It is my understanding that under the new constitution of Panama they except themselves from any action required by international law, if such action would be prejudicial to the national interests of Panama. Certainly all of the furor we have heard from Panama in the last few days concerning the DeConcini reservation indicates that a substantial portion of the Panamanian people believe that action of the Senate was prejudicial to the national intersts of Panama.

It is obvious that the Senate believes it was in the national interests of the United States to declare, as it did in the DeConcini reservation, our intent to protect our national interests in the Panama Canal.

I must say that as the debate has gone on, and continues, I have developed a frustration over the processes of our ratification procedure because there is no way that those of us who seek to make the treaties effective, in our opinion, and to make them reflect the desires of a majority of the people of the United States can achieve those goals.

It is fairly apparent that those of us who have tried to improve these treaties do not have a majority in the Senate.

On the other hand, whether it will be possible to have two-thirds of the Senate ratify this Panama Canal Treaty unless some action is taken to protect the reservations, declarations or understandings adopted by the Senate in its consideration of this treaty, cannot presently be predicted.

I am delighted and honored to have the support of the Senators from Arizona, both of them, Senator DeConcini and Senator Goldwater; of Senators Brooke and Cannon; and of Senators Wallop and Dole. The impact of their cosponsorship of this amendment demonstrates to me that they, too, would like to make certain that the actions taken by the Senate in the past, and which may be taken in conneciton with declarations, reservations or understandings attached to the resolution of ratification on this treaty will, in fact, be binding upon Panama.

I find no way to assure that that will be the case unless we tell Panama in no uncertain terms that if they do not accept the treaties, as we understand them, and subject to those reservations, declarations or understandings, then so far as we are concerned, we will continue to act under the treaty of 1903.

We have been careful in this amendment, as I have said, to eliminate the provisions of the treaty which would abrogate the preceding treaty arrangements, and we have changed the technical words to reflect the supersedure procedure.

We say that this treaty supersedes the prior treaties. If Panama interprets this treaty and the Treaty of Neutrality as we do then the 1903 treaty lies dormant forever. If they do not accept the treaties on the same terms, if we do not have a deal, if we do not have an agreement which is not subject to misunderstanding, then we will continue under the 1903 arrangements.

I should think from my visit to Panama that their feelings about the 1903 treaty and subsequent arrangements that are set forth in this amendment, the treaty of March 2, 1936, and the memorandum of agreement of January 25, 1955, their feelings about those prior arrangements are so well expressed that they would think twice about refusing to accept the DeConcini reservation and the other understandings and declarations that have been attached.

At the very least, Mr. President, I would say that this amendment will mean that the leader of Panama will, in fact, have to submit the treaties and the resolutions of ratification passed by the Senate to the people of Panama for a plebiscite, a second plebiscite, and the issue would then be whether or not the people of Panama wish to accept these new two treaties as interpreted by us or whether they wish to leave in effect the existing treaty relationships between our two countries. I think that is a clear-cut issue that the people of Panama ought to have the opportunity to vote on.

As I understood what I heard when I was down there it would be pretty clear to me that if they really thought about it, the Panamanians would accept these treaties with the DeConcini reservation and the other reservations, declarations or understandings. I think it is one whale of a good deal for the Panamanians. There is still a lot in these treaties that is totally unacceptable to the people of the United States.

Mr. WALLOP. Mr. President, will my colleague yield just for a question?

Mr. STEVENS. I am happy to yield.

Mr. WALLOP. He heard in the argument of the distinguished Senator from Maryland that our premise is wrong. I would submit that our premise if different. But I doubt that it can be termed wrong until history has proven that it is wrong.

I would ask my colleage from Alaska inasmuch as he is an attorney, and I assume has seen, participated in, drawn up, given counsel on a number of contracts in his life, in his professional life, it is not an unusual thing for a contract, as it were, to include a penalty clause or a return-to clause, or a clause that in some manner describes circumstances if the other pieces of the contract are not lived up to. Perhaps in this instance we would not want to call it a penalty clause, but it is a reservation clause. Is that a reasonable thing?

Mr. STEVENS. Well, legal treatises are full of materials concerning the doctrine of anticipatory breach, with actions for liquidated damages or whatever you want to call it in terms of the actions used, no matter what the terms of the relationships of the parties might be.

I hasten to add, however, that this amendment has been drafted so that if the people of Panama take action to void unilaterally a portion of the understanding as it was reached through our constitutional processes, including this process here in the Senate, we say that these treaties have no force and effect in terms of superseding the existing treaty relationship. In other words, that existing treaty relationship goes on until this process is in fact validated.

Mr. WALLOP. I appreciate that. I did not really mean—I was searching for a word. There is a sort of condition subsequent type of premise that we are working on. I do not think it is my premise, and I doubt that it is the premise of the Senator from Alaska or the other cosponsors of this amendment, that Panama will definitely abrogate this treaty. This is a condition that we hope to forestall by the kind of amendment or the kinds of conditions set forth within this amendment; is that not correct?

Mr. STEVENS. Yes, I certainly agree. I cannot contemplate that the Panamanians would refuse to accept these documents, even with these reservations and understandings, because they are so one-sided.

Mr. WALLOP. That is true. It is, therefore, not a supposition, but rather it is a recognition of a possible condition.

Mr. STEVENS. This is a winner-take-all document as far as I am concerned. After the year 2000, we have no relationship to the Panama Canal except to guarantee its neutrality. The DeConcini reservation gives us the right to protect our national interests unilaterally, but it does not restore the balance of the relationship I think should have existed in terms of a continuing partnership for the operation, maintenance, and defense, of this facility, which is so much in our national interest of every other nation in this hemisphere.

Mr. WALLOP. I certainly agree with my colleague. Not only this hemisphere but virtually the entire world of commerce, that it is virtually unilaterally laid on us to preserve after the year 2000.

I thank the Senator.

Mr. STEVENS. I reserve the remainder of my time. Did the Senator from Alabama wish me to yield? I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, the Committee on Foreign Relations, in reporting out the treaties, says the following in its recommendations to the Senate:

> The Committee recommends that the resolution of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:
>
> "The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama."

Now, the same recommendation occurs with respect to the Panama Canal Treaty. The resolution of ratification with respect to the Neutrality Treaty, which we approved in the Senate, more than two-thirds of the Senators present concurring therein, provides in its concluding paragraph:

> The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

That has been included in the resolution of ratification, and the committee has recommended that a similar provision be included in the resolution of ratification of the Panama Canal Treaty; and the chairman of the committee, as he did in the consideration of the prior treaty, will of course offer that understanding at the appropriate time.

That then becomes the treaty in its entirety. It is included in the resolution of ratification and included in the instruments of ratification to be exchanged by the respective governments, to which they would have to accede. That establishes the relationship.

I would simply repeat the previous analogy, that once you begin this relationship, if there is some abrogation later on, you cannot really unscramble the eggs. The only way to proceed is to carry forward the arrangements provided for in these treaties, and assert our rights under the treaties. That is both the practical and principled way to proceed.

The Senator from Wyoming said that I had a different premise and that he could not say it was altogether wrong to anticipate that the Panamanians will not abide by the treaty.

I am not sure I said that. What I said was that their past history was one of abiding by the previous treaty over about three-quarters of a century, in which they had substantially kept all of its terms; and I suggested that almost every Member of the Senate, when we got away from this debate would concede that upon examination of the historical records, and that past history made an assumption of abrogation an inappropriate premise on which to proceed.

But I went on to address the premise that lies behind the amendment, and to try to discuss the substance of what it proposes.

It is not for us to tell Panama how to do its business. We will have to make our judgments here as to what we think has to be done, and Panama will have to make its judgments. They did not condition their plebiscite on approval of the treaties by the Senate of the United States, nor did they condition their plebiscite on some other provision, that the treaties be approved by the House of Representatives, for example, and not by the Senate.

Suppose they had done that, and said, "Well, we are going to condition our processes on their processes," and then proceed to write our processes for us? What would our reaction have been? I do not think it is hard to predict what our reaction would have been. We have to make our judgment here with respect to what we think is appropriate, and they will have to make their judgment there.

Mr. WALLOP. Mr. President, will the Senator yield for a question on that last statement?

Mr. SARBANES. Surely.

Mr. WALLOP. You ask what the reaction would have been had the Panamanians conditioned it on ratification by the House rather than the Senate, which would have changed our processes.

I think, as I understand one of the arguments of the Senator from Alaska, what he is trying to do is fit this into processes under the Panamanian Constitution which have been already ruled upon by their supreme court. The difference, I think, is that we would have had to say we cannot do that under our constitutional processes.

As I understand the contention of the Senator from Alaska it is that the Panamanian constitution and their record with regard to the Geneva Convention has been that they cannot accept certain of these reservations that have been attached by the Senate without another plebiscite or without some other understanding from this Senate.

I would suggest that it is not our intent to ask Panama to change their processes. It is the contention of the Senator from Alaska, as I understand it, that their processes almost demand either another plebiscite or some understanding as to what takes place if it is ruled to be unconsititutional or otherwise is abrogated by some action within Panama.

[Mr. Allen assumed the Chair.]

Mr. SARBANES. Let us take the question of the United States entering into an executive agreement. What would be the Senator's reaction if the country said, "We are telling the United States we will not enter into this agreement unless it is done by treaty. In any event, we are telling you, in terms of your own processes, what you must do."

Mr. WALLOP. We would have to say we cannot.

Mr. SARBANES. Obviously, I submit that we are in the position where we will have to make our judgments and the Panamanians will have to make theirs. The nature of how we perceive they will make the judgment may affect how Senators vote on the treaties, but for the opponents to propose this kind of an amendment is

basically to state opposition to the treaties. That is what I am trying to say.

Mr. WALLOP. I would suggest that is certainly not my motive. I would not speak for the other cosponsors. It was not designed as a killer amendment and, in effect, does not do anything to their processes.

Mr. SARBANES. I did not use the term "killer amendment."

Mr. WALLOP. I agree.

Mr. SARBANES. It was not used by me with respect to this amendment.

Mr. WALLOP. Not with respect to this amendment. I am talking about the earlier amendment offered by the Senator from Wyoming.

Mr. SARBANES. In fact, I do not think I have ever used that term.

Mr. WALLOP. Well, it was a word of art in some other day which was being used with some frequency. I have not participated in the debate for some days, and I am back in the old cliches. Please forgive me.

It really has not been the intent to interfere with their processes, or at least it is not my understanding that it interferes with their processes.

I would ask the Senator from Alaska if he considers it to be such.

Mr. SARBANES. I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, on page 13 of the report of the Senate Foreign Relations Committee is this statement:

> In the event the Senate concludes that some additional change is necessary, the Committee strongly urges (1) that such material be incorporated in the resolutions of ratification as an understanding, interpretation, declaration, or some similar designation; and (2) that that material not alter the rights, duties and obligations contained in the treaties. Any material so incorporated in the Senate's resolutions of ratification will have precisely the same force and effect, under both domestic and international law, as material included in the text of the treaties themselves. Any amendment to the text of the treaties. however, is virtually certain to require a new Panamanian plebiscite—which the Committee-recommended amendments will not.

The committee goes on later to say:

> While the Committee does not believe that the Senate should, to avoid the need for a new Panamanian plebiscite, alter the substance of any new material which it believes the national interest of this country requires, it does believe that the Senate can and should take into account the form in which such material is added, since that form, even though legally inconsequential, could mean the ultimate success or failure of the ratification of these treaties.

I have no argument with that statement. That is in the report of the Senate Foreign Relations Committee, the statement "As it applies to the domestic law of the United States and to international law."

The difficulty comes as that statement is applied to the Panamanian domestic law, and as Panamanian domestic law relates to international law. The document that we are amending, which we have amended in the past and it is apparent we are going to amend this time; namely, the resolution of ratification, is clearly subject to attack under Panamanian domestic law, since under Panamanian law it is not presented to their people in a plebiscite but it is the treaty which was presented. We have, under our domestic law and our understanding of international law, interpreted these treaties

in one fashion in the United States; they, under their domestic law as it relates to international law, may interpret these treaties in another manner. The Panamanians necessarily do not accept our interpretation. We may well be entering into a new treaty relationship with the Panamanians with a situation where we have stated our understanding of these treaties in one way and they have, under their constitutional process, the absolute right to ignore what we have done, what we have said, and the statements we have made as to our understandings of the agreement into which we have entered.

In effect, what I am saying is if we pursue the course we are on now, there will not be a meeting of the minds between the Panamanians and the United States in terms of a new agreement.

This amendment should be adopted, because it will state that unless there is a meeting of the minds, unless we have actually arrived at a total consensus on the new relationship between Panama and the United States, the old relationship should remain in effect.

That is the intent of my amendment.

I might state to the Senator from Maryland, subject, of course, to his response, I am prepared to bring the matter to an end in any way he wishes to do so. We thought one other Senator wanted to speak but he is tied up in a hearing and will not be here.

Mr. SARBANES. Mr. President, I am prepared to yield back the remainder of my time and go to a vote with respect to this amendment, if that is the suggestion of the Senator from Alaska.

Mr. STEVENS. That is my suggestion, subject to whatever time the Senator from Maryland wants to take.

The PRESIDING OFFICER. Do both sides yield back the remainder of their time?

Mr. SARBANES. Yes, Mr. President.

Mr. STEVENS. Yes, Mr. President.

The PRESIDING OFFICER. Both sides having yielded back the remainder of their time, the question is on agreeing to the amendment of the Senator from Alaska.

Mr. SARBANES. Mr. President, I move to lay on the table the amendment of the Senator from Alaska and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Alaska. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. EASTLAND. Mr. President, on this vote, I have a pair with the distinguished Senator from Alabama (Mr. Sparkman). If he were present and voting, he would vote "aye"; if I were permitted to vote, I would vote "nay." Therefore, I withhold my vote.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Minnesota (Mr. Anderson), the Senator from Michigan (Mr. Riegle), and the Senator from Alabama (Mr. Sparkman) are necessarily absent.

I further announce that, if present and voting, the Senator from Minnesota (Mr. Anderson) and the Senator from Michigan (Mr. Riegle) would each vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett) and the Senator from Oregon (Mr. Packwood) are necessarily absent.

The result was announced—yeas 53, nays 40, as follows:

[Rollcall Vote No. 95 Exec.]

YEAS—53

Baker	Haskell	McIntyre
Bayh	Hatfield, Mark O.	Metzenbaum
Bellmon	Hatfield, Paul G.	Morgan
Bentsen	Hathaway	Moynihan
Biden	Hayakawa	Muskie
Byrd, Robert C.	Hollings	Nelson
Case	Huddleston	Pearson
Chafee	Humphrey	Pell
Church	Inouye	Percy
Clark	Jackson	Proxmire
Cranston	Javits	Ribicoff
Culver	Kenndedy	Sarbanes
Danforth	Leahy	Stafford
Durkin	Long	Stevenson
Eagleton	Magnuson	Stone
Glenn	Mathias	Weicker
Gravel	Matsunaga	Williams
Hart	McGovern	

NAYS—40

Allen	Griffin	Sasser
Brooke	Hansen	Schmitt
Bumpers	Hatch	Schweiker
Burdick	Heinz	Scott
Byrd, Harry F., Jr.	Helms	Stennis
Cannon	Hodges	Stevens
Chiles	Johnston	Talmadge
Curtis	Laxalt	Thurmond
DeConcini	Lugar	Tower
Dole	McClure	Wallop
Domenici	Melcher	Young
Ford	Nunn	Zorinsky
Garn	Randolph	
Goldwater	Roth	

PRESENT AND GIVING A LIVE PAIR AS PREVIOUSLY RECORDED—1

Eastland, against.

NOT VOTING—6

Abourezk	Bartlett	Riegle
Anderson	Packwood	Sparkman

So the motion to lay Mr. Stevens' amendment No. 90 on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. JAVITS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Matsunaga). Under the previous order, the Chair recognizes the Senator from Virginia (Mr. Scott).

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, and I have cleared this with Mr. Scott, that Mr. Thurmond be recognized at this time to call up an amendment, and that upon the disposition of that amendment Mr. Scott then be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. CHURCH. Mr. President, I understand that it would be agreeable with Senator Thurmond that there be a time agreement on this amendment, the time agreement being limited to 1 hour and the time being divided equally, 30 minutes to a side.

Mr. THURMOND. Mr. President, I can agree if we make it 35 minutes. I may not take that, but I would rather have it.

Mr. CHURCH. Very well. It is agreeable to the Senator from Idaho.

I, therefore, ask unanimous consent that the time be limited on the Thurmond amendment to an hour and 10 minutes, with 35 minutes allocated to each side, Mr. Thurmond being in charge of the side for the proponents and I being in charge of the side for the opponents.

Mr. ROBERT C. BYRD. Mr. President, I ask that it be in order for Mr. Thurmond to call up his amendment out of order.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP AMENDMENT NO. 24

Mr. THURMOND. Mr. President, I send my amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. Thurmond), for himself and Messrs Harry F. Byrd, Jr., Helms, Garn, Laxalt, Schweiker, Hansen, Allen, and Schmitt, proposes unprinted amendment numbered 24:

At the end of paragraph 4 of article XIII, add the following:

"(d) Notwithstanding the provisions of subparagraphs (a) and (b), the funds required to be paid in any year under this paragraph to the Republic of Panama may be paid only to the extent that the operating revenues of the Canal exceed all operating expenses of the Panama Canal Commission not including payments made to Panama under this paragraph."

The PRESIDING OFFICER. The Senator from South Carolina (Mr. Thurmond) is recognized for 35 minutes, in support of his amendment.

Mr. SCOTT. Mr. President, will the Senator from South Carolina yield briefly?

Mr. THURMOND. I am pleased to yield to the Senator from Virginia.

Mr. SCOTT. It is my understanding that the previous unanimous-consent agreement, insofar as it relates to the Senator from Virginia, is not changed in any way, other than that I will follow the Senator from South Carolina in the amendment that he brings up.

The PRESIDING OFFICER. The Senator from Virginia is correct.

Mr. SCOTT. I thank the Chair.

Mr. THURMOND. Mr. President, I would like to address myself to the financial aspects of the Panama Canal treaties. I believe the

American people are not fully aware of what it will cost them if these treaties are ratified. Let me just say, on that score, that I do not blame the American people for not being fully aware of the costs of these treaties primarily because of totally misleading statements by leading proponents of these treaties.

MISLEADING STATEMENTS ON THE COST OF TREATIES

On February 1, 1978, President Carter, in a nationally televised address to the American people, stated:

> Are we paying Panama to take the Canal? We are not. Under the new treaties payments to Panama will continue from tolls paid by ships which use the canal.

On December 28, 1977, President Carter stated:

> We wanted a treaty that did not put a financial burden on the American taxpayer, and we got it.

On September 26, 1977, Secretary of State Vance in testimony before the Senate Foreign Relations Committee stated concerning the cost of the treaties:

> The treaties require no new appropriations, nor do they add to the burdens of the American taxpayer.

Later in his testimony before the Senate Foreign Relations Committee, Chairman Sparkman asked Secretary Vance concerning the so-called implementing legislation: Will there be a necessity for the usual appropriations action?

Secretary Vance answered: "No."

Then Chairman Sparkman asked: "What, if any, budgetary impact would this have?"

Secretary Vance answered: "No appropriations will be required." And Chairman Sparkman replied, "No appropriations will be required. I think those are two questions that have concerned people."

I believe these quotes from administration officials are representative of many statements made be treaty supporters concerning the cost of the treaties. I believe these statements are misleading, intentionally or not, concerning the cost of these treaties to the American taxpayer. It is small wonder that the American taxpayer believes these treaties will not cost him.

COST OF TREATIES TO AMERICAN TAXPAYER

Let me state, as clearly and emphatically as I can, that these treaties will cost the American taxpayer a bare minimum, a rock-bottom, $758 million over the next 22 years, and in all likelihood considerably more than that.

Let me outline what constitutes this $758 million:

$440 MILLION FOREGONE INTEREST TO THE TREASURY

The Panama Canal Company has the statutory obligation to pay interest to the U.S. Treasury on the interest-bearing portion of the U.S. investment in the Canal Zone. At $20 million per year over 22 years, this will amount to a $440 million loss to the Treasury over the life of the treaty. I might note that Comptroller General Staats, in testimony before the Senate Armed Services Committee, stated

that this $20 million estimated annual interest payment "could be substantially more" per year over the next 22 years, since the interest rate is based on the U.S. Treasury average rate for long-term issues and "as that portfolio turns over, these rates are bound to go up, and I do not believe that this has been fully taken into account in these projections." According to an Armed Services Committee staff study, Mr. Staats has estimated the total loss to the Treasury over the next 22 years at $505 million.

$165 MILLION EARLY RETIREMENT BENEFITS

Additional early retirement benefits to present Panama Canal Company employees are being negotiated. These payments would, of course, come from appropriated funds. Estimates of the annual costs of the various proposals being negotiated range from $6.5 to $8.5 million per year. If we take $7.5 million, which is the midpoint of the estimates, this would amount to $165 million over the next 22 years. I believe the Senate Budget Committee estimates these retirement costs at $196.2 million through 1999.

$100 MILLION IN DEPARTMENT OF DEFENSE COSTS

Certain support functions under the treaties, such as hospitals and schools, will be transferred to the Department of Defense. Most of these costs will be billed to the new commission directly. However, under the present accounting methods, the Department of Defense will not be reimbursed for certain schooling costs which are estimated at $5 million per year, or $110 million over 22 years.

$43 MILLION IN BASE RELOCATION COSTS

There will be certain treaty-related costs having to do with relocation of certain U.S. military bases in the Canal Zone. This one-time cost is estimated to be $43 million.

Let me add up what these costs that I have just described are: $440 million in foregone interest to the U.S. Treasury; $165 million in early retirement costs; $110 million in certain Department of Defense costs; and $43 million in certain base relocation costs. The addition of these figures makes a grant total of $758 million—a direct cost to the U.S. taxpayer for these treaties, either in money that will not accrue to the U.S. Treasury or will be drawn from the U.S. Treasury through the appropriations process.

Mr. President, the Comptroller General of the United States, Elmer B. Staats pointed out in his testimony before the Senate Armed Services Committee that there will be other treaty-related costs that will be borne by other agencies of Government, but that "only sketchy details are available at this time." There is also the question of approximately $8.9 million currently owed by Panama to the Panama Canal Company for certain services which is still outstanding. Some of this debt has been outstanding since 1959.

PAYMENTS TO PANAMA TREATIES

Payments to Panama from tolls under the treaties are:

First. $0.30 per canal ton—estimated at $40 million per year—for a total of $880 million for 22 years.

Second. $10 million per year—fixed expense—$220 million for 22 years.

Third. $10 million per year for certain services such as police, fire protection—$220 million for 22 years.

Fourth. $10 million per year if revenues exceed expenditures—$220 million for 22 years.

This is a potential total of about $1.5 billion for the next 22 years, at a minimum, since some of those payments will be adjusted for inflation. This sizable sum will accrue to a country of 1.7 million people, or a total of $880 for every man, woman, and child in Panama.

Thus, in addition to the tremendous $758 million direct burden to the taxpayer, Panama will also receive from tolls over $1.5 billion over the next 22 years. While the $1.5 billion amount is anticipated to come from tolls, as treaty supporters would have us believe, there is a serious question whether or not revenues will be sufficent to meet expenditures including the payments to be made to Panama.

Let me quote from testimony of Comptroller General Staats in his testimony before the Armed Services Committee.

> If the canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the costs of the Commission, including the scheduled payments to Panama. In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through the congressional appropriations or by allowing the Commission to borrow from the U.S. Treasury.

Looking at the possibilities of increased costs over the Company's initial estimates, Mr. Staats concluded:

> It seems to me there are some very real concerns as to whether we can adjust tolls upward, assuming you do all these things that I have just lifted, and still make it possible to operate the canal without serious deficits.

While one can make different assumptions on factors affecting future canal revenues and arrive at different conclusions as to whether the canal operation will be financially sound, there is a substantial possibility that the canal will suffer operating deficits during the life of the treaty, and if so, it will be our taxpayers who will make up the deficits. I might add that these payments from our Treasury to make up deficits would, in effect, amount to a payment from the U.S. taxpayer to Panama. I would remind my colleagues that under article XIII of the the Panama Canal Treaty that the United States shall turn over the canal in 1999 "in operating condition and free of aliens and debts * * *."

On page 92 of the Foreign Relations Committee report, there is this statement:

> The treaty provides that the new Panama Canal Commission will make three different annual payments to Panama. The revenue for these payments will come exclusively from canal tolls and not from the American Treasury.

This contrasts with Mr. Staats' testimony before the Armed Services Committee, which I will repeat, because I believe it is important, since he is the chief accountant for our Government:

> If the canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the costs of the Commission, including the scheduled payments to Panama. In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the Commission to borrow from the U.S. Treasury.

So, Mr. President, the Panama Canal Treaty currently before the Senate will result in a minimum, direct cost to the U.S. taxpayer of $758 million. In addition, the U.S. Treasury will be liable for additional, undetermined amounts, which could run into many millions of dollars, if the canal has deficits in the next 22 years.

There will also, of course, be increases in tolls under the treaty in order to make payments to Panama as required by the treaty. It is difficult, of course, to state precisely what would be the additional cost to U.S. taxpayers and consumers resulting from this treaty. I believe it is clear that this treaty will cost the U.S. consumer an additional amount. An Armed Services Committee staff study indicated that U.S. shippers and consumers would bear an additional cost for the next 22 years of $1.2 billon resulting from higher tolls.

There would have been toll increases even without this treaty, but no doubt tolls will have to be increased a greater amount to cover payments to Panama under the treaty and the U.S. consumers will bear a portion of these higher tolls.

I might say there, Mr. President, I believe the record shows that about 70 percent of the tonnage that goes through the canal either originates in the United States or is coming to the United States. So it can be readily seen that almost three-fourths of the increase in tolls will be borne by consumers in the United States.

OTHER LIABILITIES

The United States and Panama also have exchanged notes regarding a military and civilian aid package to Panama which is related to the treaties but not technically dependent upon them. These consist of foreign military assistance credits—$50 million, Agency for International Development Housing Guarantees—$75 million, Export-Import Bank credits—$200 million, and an Overseas Private Investment Corporation loan guarantee—$20 million. Should Panama, which already pays 37 percent of its total income to service large foreign debts, fail to repay these amounts, totaling $345 million, the United States could become liable to make good these losses.

CLOSING

Mr. President, I believe that close analysis of the Panama Canal Treaty will reveal significant financial implications for the U.S. taxpayer. If the treaty is ratified, the U.S. taxpayer will bear a minimum direct cost of $758 million; in addition, the U.S. Treasury may very well be liable potentially for many millions of dollars if the canal runs deficits, and this is certainly a possibility. The American consumer will also bear an additional cost of some $1 billion in the form of higher cost of goods if this treaty is ratified. And finally, the United States has apparently agreed to a military and civilian aid package of some $345 million which the United States will be liable for if Panama defaults, and given Panama's current posture this is at least a distinct possibility.

Mr. President, the American taxpayer will bear all of these direct and potential costs I have cited for the privilege, yes privilege, of giving up his $10 billion canal which the United States has run, at no profit, with great efficiency, for the benefit of the world community.

Mr. President, from the financial and economic viewpoint this

treaty is of great disadvantage to the American taxpayer and ought to be rejected or, at least, significantly amended to correct this situation.

Mr. President, I ask unanimous consent that the attached tables and their explanations be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

TABLE I.—*Direct costs during life of treaty either as a loss of revenue to U.S. Treasury or to be met through appropriations*

	Millions
1. Interest foregone to U.S. Treasury ($20 million×22 years)	$440
2. Early retirement costs ($7.5×22 years)	165
3. DOD costs—Primarily schooling costs ($5 million×22 years)	110
4. DOD costs—One-time base relocation costs	43
Total A	758

TABLE II.—*Payments to Panama to be supported by toll increases (under treaties)*

	Millions
1. 30 Canal Ton—Estimated $40 million/year	$880
2. $10 million/year—Fixed Expense (×22 years)	220
3. $10 million/year—Certain Services, Police, Fire Protection, etc. (×22 years)	220
4. $10 million—If Revenues Exceed Expenditures (×22 years)	220
Total B (billions)	1.54

Total A and B (billions)=2.298=2.3

TABLE I—EXPLANATION

1. *Foregone Interest to the Treasury*—Currently the Panama Canal Company has the statutory obligation to pay interest to the United States Treasury on the interest bearing portion of the U.S. investment there. Currently this amounts to about $20 million per year. The forthcoming implementing legislation will relieve the new Panama Canal Commission (under the treaty) of the obligation to pay this interest.

2. *Early Retirement Benefits*—Additional early retirement benefits to present Panama Canal Company employees are being negotiated. These benefits would be paid by the Civil Service Commission and would not be charged to the new Panama Canal Commission accounts and, therefore, would be a cost to the taxpayers. Civil Service Commission estimates of the annual costs of the various proposals being negotiated range from $6.5 to 78.5 million a year.

The approximate mid-point in this range is used.

3. *Costs of Benefits for Dependents of Certain Personnel transferred to DOD*—Certain support functions under the new treaties, such as hospitals and schools, will be transferred to DOD. Most of these costs will be billed to the Commission directly. However, under present accounting methods DOD will not be reimbursed for certain schooling costs. This would mean an additional cost to DOD of about $5 million per year unless DOD changed its billing rates to recover the additional costs.

4. *Base Relocation Costs*—Administration witnesses indicated that there would be certain treaty-related costs having to do primarily with relocations of certain U.S. military bases in the Canal Zone. These one-time costs were estimated to be $43 million.

TABLE II—EXPLANATION

1. Panama under the Treaties will be paid 30 cents on each Panama Canal net ton transiting the Canal. This will provide payments to Panama of about $40 million annually, based on current estimates. The 30 cents will be adjusted by the U.S. wholesale price index and may result in increased payments, depending on future tonnages.

2. Panama is to be paid $10 million annually to provide various services—fire, police, streets, etc. Estimates of these costs are only about $4.4 million, so Panama, in effect, gets a $5.6 million subsidy. This amount will be adjusted every three years, depending on inflation, etc.

3. $10 million is a fixed annual annuity to be paid out of Canal operating revenues. This constitutes a fixed expense of the Panama Canal Commission.

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4. Under the Treaties, Panama is to get $10 million annually to the extent revenues exceed expenditures. There is a dispute as to whether or not this payment would be made before any prior year deficits are paid.

Mr. THURMOND. Now, Mr. President, with regard to the amendment I am introducing here to paragraph 4 of article XIII of the Panama Canal Treaty, I wish to make a few additional remarks.

The purpose of this amendment is to insure that any payments to Panama under the treaty are not subsidized by the American taxpayer. It merely requires that all operating expenses of the Canal Commission be paid before any payments can be made to Panama. The Panama Canal Commission, under the treaty, should not suffer operating deficits resulting from payments having to be made to Panama prior to payment of its necessary operating expenses.

Mr. President, on February 1, 1978, President Carter in a nationally televised address to the American people stated:

Are we paying Panama to take the Canal? We are not. Under the new treaties payments to Panama will come from tolls paid by ships which use the Canal.

My amendment merely seeks to see to it that the President's statement remains the truth.

Mr. President, I realize that this matter could be handled in the implementing legislation. However, it should be clearly understood by Panama and the United States that the American taxpayer is not going to subsidize Panama if deficits occur in canal operations. The only way to do this is by treaty amendment. As a practical matter, once these treaties are ratified, Panama could care less what our implementing legislation says.

Mr. President, since the proponents of the treaty claim that transferring this canal is not going to cost anything, I do not see why there should be any objection to accepting this amendment. The President of the United States said it would not cost anything. The Secretary of State said it would not cost anything. Many of the proponents of the treaty, have said it would not cost anything. If that position is correct, then why not accept this amendment?

Mr. President, I reserve the remainder of my time.

Mr. Matsunaga addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, I rise in opposition to this amendment.

If we were to pay Panama what we pay Spain, for example, Turkey, as another example, Greece as another example, for the use of military bases, we would be paying Panama in excess of $100 million a year. We have not, in fact, paid one penny to Panama from the time the canal was built. If we were paying $100 million for the use of military bases for the past 75 years, we would have paid over $7.5 billion. Consider the savings we have made by not being required to pay for the use of military bases in Panama.

The Panama Canal Treaty changes the basic economic assumptions under which the canal has historically been operating. For the first time the new treaty gives long overdue recognition to the fact that the canal is Panama's primary economy resource. While Panama has benefited from the presence of the United States through salaries paid Panamanians who work in the operation of the canal and by direct purchases made by the Canal Company of

Panamanian goods and by the establishment of private commercial enterprises by American business enterpreneurs, the fact remains that we have paid Panama as little as $250,000 initially for about a 16-year period and then $1.9 million for a while and presently only $2.5 million annually.

(Mr. Melcher assumed the chair.)

Mr. MATSUNAGA. The total revenues collected from tolls last year amounted to $165 million; $2.3 million of this amount paid to Panama represents less than 1.4 percent. That is what we have been paying to Panama for the use not only of the canal but the Canal Zone, a strip of land 5 miles by 51 miles running smack in the middle of the country of the Republic of Panama—5 miles, extending 5 miles, on each side of the canal, that is.

Now, by increasing the cooperation between the United States and Panama, the new treaty will allow Panama to take full advantage of its major national asset. The treaty will encourage greater Panamanian assistance to insure that the canal will be run efficiently and effectively, and certainly we must make provision so that the canal, regardless of the transfer of control, will be run as effeciently as it has been run under U.S. control.

Unless we provide these incentives and unless we provide the necessary funding for the operation of the canal, we are definitely not going to have the canal being operated as it ought to be operated.

As it has been pointed out earlier, the trend of the amount of the tolls collected has been on the increase in recent years, and we anticipate a continuing increase. It is estimated that by an increase of 25 or 30 percent of the toll charges we will collect ample sums to pay for all the costs of the operations of the canal.

If we consider the fact that we will not be paying until the year 2000 for the use of the military bases which, as I pointed out earlier, should amount to annual fees in excess of $100 million, we are, in fact, saving the American taxpayers millions of dollars annually.

The Panama Canal Treaty is intended to protect the major U.S. economic interests by insuring that the canal will remain open and operating efficiently. This is what the treaty intends to do. The United States will retain primary responsibility for operating the canal for the life of the treaty.

In addition, the treaty insures that Panama will be adequately prepared to assume full control of the canal by the year 2000, and unless we provide adequate financial means for Panama to do this, it will not be able to train the necessary personnel to take over the efficient operation of the canal.

The treaty and the additional supporting package will increase the economic cooperation between the United States and Panama. The financial arrangements designated in the treaty were designed to reflect this partnership arrangement in the operation of the canal.

Panama will assist the United States in the canal operation, and the annuity payments would give Panama a greater stake in its operation.

Mr. Speaker—I say Mr. Speaker because I see sitting in the chair a former colleague of mine in the House and it made me think for

a moment there I was still in the House, but I know I am not in the House because had it been the House I would have been shouted down by now, having expended my limited 5 minutes—Mr. President, it is also important to note that with respect to payments to Panama the treaty does not call for any additional appropriation from the U.S. Treasury.

Ambassador Ellsworth Bunker testified before the Committee on Foreign Relations on September 26 and said:

> The United States consistently maintained during the negotiations that payments to Panama for its contributions to the canal enterprise should be drawn entirely from canal revenues; that is, that the payments should reflect the canal's economic value as measured by its revenue-generating capacity.

Secretary of State Cyrus Vance made the same point, and I quote:

> Under the treaties, Panama will receive payments which more fairly reflect the fact that is making available its major national resource, its territory. But the treaties require no new appropriations nor do they add to the burdens of the American taxpayer.

In sum, the treaty will allow Panama to gain a fuller advantage of its major national resource, help in the efficient operation of the canal, protect the major U.S. economic interest by maintaining the open and free operation of the canal, and increase cooperation between the United States and Panama.

As I have on several occasions here on the floor stated, unless the Panama Canal can be kept open and free and available for use at all times by the United States, that canal is worthless to the United States.

The basic intent of the Panama Canal Treaty is to attain this objective of keeping the canal open and free for use by the United States and other countries. It is for the purpose of promoting this requirement that we have agreed to pay Panama the amounts designated in the Panama Canal Treaty.

We have consistently demonstrated here on the floor, by quoting facts and figures, that the treaty will not mean any additional assessment upon the American taxpayers; that we will be able to meet payments assured to Panama out of the revenue tolls collected from the operation of the canal.

Mr. President, the State Department comments on the proposed amendment, and I would like to recite for the record the position of the State Department on the amendment offered by the Senator from South Carolina (Mr. Thurmond).

According to the State Department:

> The proposed amendment would constitute a major substantive modification in the terms of the treaty respecting Panama's share of the economic benefits in the canal. It would seek to make the payments to Panama provided for in subparagraphs 4(A) and 4(B) of article XIII subject to the existence of operating surpluses.
>
> The proposed amendment is unnecessary and would certainly be unacceptable to Panama. Under the terms of the treaty, the United States retains complete authority over the setting of tolls (and thus over the income to the Canal Commission) and over the management of the Commission (including the setting of wages, the making of capital improvements, et cetera.) Thus, the extent to which the Canal will generate an operating profit is a matter within the discretion of the United States. Accordingly, Panama cannot be expected to accept a formula which would make the bulk of their income from the Canal dependent upon decisions within the sole discretion of the United States. If we were to insist that the payments to Panama be derived from Canal profits, Panama could be expected to insist on an

equal voice in the management decisions that would determine the amount of profit, if any.

To the extent that the amendment is designed to ensure that United States taxpayer funds will not be utilized to make payments to Panama, it is unnecessary. Economic projections demonstrate that there is no reason to believe that the Canal will not continue to be financially self-sustaining over the period of the treaty. Moreover, nothing in the treaty would permit the utilization of taxpayer funds without the authorization of the Congress of the United States.

Mr. President, it is then that the Senator from South Carolina can rise in defense of the statements he has made and in an attack upon the statements which he has attacked, the statements made by the proponents of the treaty.

The foregoing reasons, Mr. President, ought to indicate that the amendment offered by the Senator from South Carolina should definitely be soundly defeated.

I reserve the remainder of my time.

Mr. THURMOND. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 18 minutes remaining.

Mr. THURMOND. Mr. President, maybe I should not be surprised, but I was somewhat surprised, that the distinguished and able Senator from Hawaii did not answer the charge that I made.

I made the charge that there was going to be a direct cost to the taxpayers of America, and I made the further charge that there will be potential expenses that could fall upon the taxpayers of America.

The Senator from Hawaii says, "Oh, we have got bases in Turkey and this country and that country and the other country, and we have to pay them."

Maybe we do have to pay them, but we have not bought property there. We have not paid for property there. We have not expended billions of dollars on property there, as we have in the Panama Canal Zone.

We own the Panama Canal. We own it in perpetuity, and there is no comparison between Turkey and the other countries and the Panama Canal. The Panama Canal is our property. It belongs to the United States. We do not own anything in Turkey; we do not own anything in Greece and these other countries that the distinguished Senator made reference to, and it is perfectly ridiculous to try to compare Turkey and the other countries with the Panama Canal, which we do own.

Now, Mr. President, there was a statement there, I believe, that we paid only 1.4 percent of last year's tolls to Panama. I might say that for previous years we have had a deficit, and we will certainly have a deficit if we have to pay Panama $60 million a year. Who will make up this deficit? The taxpayers of America.

The distinguished Senator from Hawaii said:

Oh, this amendment here will not be acceptable to the other party, to Panama.

Why, sure, it is not acceptable to Panama, but whose interest are we looking after here, the interest of Panama or the interest of the people of the United States?

Mr. MATSUNAGA. Will the Senator yield?

Mr. THURMOND. I think the time has come in this country when we had better look after the interest of our own people for a while.

Mr. MATSUNAGA. Will the Senator yield?

Mr. THURMOND. I will yield a little later. Let me get through first.

The time has come when we need to look after the interests of the people of America. The United States has given away more than all the nations of the world put together. We certainly have not been cheesy. We have been the most generous people in the most generous nation that has ever existed on the face of the Earth. It is perfectly ridiculous to say we have mistreated Panama. We have not mistreated Panama.

Panama wanted to build this canal. They had a revolution, even separated from Colombia so that they could enter into a treaty to build this canal. They wanted to get ahead of other countries to build a canal. We paid them $10 million at that time, and we paid Colombia $25 million also for any interests they had, so they would not disturb Panama in entering into this arrangement. We paid $40 million to the French people, who had some interest there. We bought the land, and paid the landowners, even the squatters, who had no title, but were just squatting on this land; we paid them. The United States has paid everybody concerned.

We have no obligation to Panama. But because we built the Panama Canal, Panama has the highest per capita income of any country in Central America. It has the fourth highest income of any country in all of South America.

What have we done wrong toward Panama? We have done nothing but help them. We have poured money into that country every year. We have spent millions and millions of dollars down there buying goods. We have spent millions and millions of dollars down there paying employees of the United States. We have spent millions and millions of dollars down there paying non-U.S. citizens, chiefly Panamanians. Everything we have done has helped Panama.

The trouble is, they have got a dictator down there now, Torrijos, who has deprived his people of their rights, and now that country is classed along with Cuba and the Soviet Union in respect to the rights they give their people.

They have no human rights. They have no civil rights.

I wonder if President Carter has thought about that when he is talking so much now about human rights in different parts of the world. Yet he is dealing with this man. If these treaties go through, it will strengthen the hand of this dictator. It would just help to entrench this dictator in power and do it at the expense of the citizens of the United States.

Mr. President, this amendment to article XIII protects the American taxpayer from subsidizing Panama as a result of these treaties, and at the same time would help to insure proper financial management of the canal. Put simply, the amendment requires payment of all operating expenses of the Panama Canal Commission before allowing payments to Panama required under paragraph 4 of article XIII of the treaty. Then payments can be made to Panama only to the extent that operating revenues of the Canal Commission exceed operating expenses. Nothing in the proposed treaty specifies the priority of Canal Commission expenses. Therefore, the Commission can make all payments to Panama required

under paragraph 4 of article XIII, except those mentioned under subparagraph (c), and use whatever is left over to pay its expenses.

Panama could conceivably profit or benefit from the treaty while the Canal Commission operates at a deficit.

My amendment is designed to prevent this occurrence. My amendment does not prohibit these payments being made to Panama. It merely says that the necessary expenses of the canal must be paid first.

I do not see that this can be anything but beneficial for the U.S. taxpayer who will be called upon to subsidize Panama when deficits occur unless this amendment is adopted. My amendment seeks to protect the American taxpayer.

I hope the Members of this body will see fit to adopt this amendment in the best interests of the American people.

Now I will be glad to yield to the distinguished Senator from Hawaii if he wishes to propound any questions.

Mr. MATSUNAGA. I thank the Senator from South Carolina for yielding.

Under the Panama Canal Treaty as proposed, as I pointed out through testimony submitted for the record, testimony of Secretary Fance and Ambassador Bunker, it is expected that no appropriations out of the general fund will be made for maintenance of the canal and in making payments to Panama. Does the Senator realize that today the situation is such that all except $500,000, which is paid to the Republic of Panama comes from appropriated funds of the U.S. Treasury?

Mr. THURMOND. Certain funds come from the Treasury, yes. But under this arrangement we will be providing——

Mr. MATSUNAGA. So that under the treaty as proposed, none of the payments being made to Panama will come out of appropriated funds. When the Senator from South Carolina speaks of our need to think about the American taxpayer, we are indeed thinking about the American taxpayer by proposing a treaty which would require no payments out of the U.S. Treasury, whereas today we are paying $1.8 million out of the taxpayer funds.

Mr. THURMOND. We got interest back, and that interest is foregone to the U.S. Treasury, of $20 million a year for 22 years, or $440 million. Then if these treaties go through, the early retirement cost is $7.5 million for 22 years, which is $165 million. The Department of Defense costs for the one-time base relocations will be $43 million. In addition, $110 million in certain support functions will be transferred to the Department of Defense. That makes a total of $758 million which will be lost to the Treasury.

In addition to that, of course, the payments to Panama are going to be supported by the toll increases which amount to as follows: Thirty cents per canal ton estimated to be $880 million, $40 million a year, pretty well agreed on; $10 million a year fixed expense, $220 million; $10 million in certain services, police and fire protection, 22 years, $220 million; $10 million if revenues exceed expenditures for 22 years, $220 million. That makes a total liability of $1.54 billion, plus the $758 million, making a grand total of $2.3 billion.

Mr. MATSUNAGA. If the Senator will yield again, I am deeply impressed by his recitation of dollar amounts, but what is the

connection of the statement of expenses with regard to the amendment of the Senator?

Mr. THURMOND. My amendment will assure the taxpayers of America that there will be no additional expense over the previously mentioned $758 million if we turn over this canal. Why would the Senator object to that?

Mr. MATSUNAGA. That has nothing to do with the items of expense which the Senator was just quoting. As I understand the Senator's amendment, he is merely intending that the Republic of Panama may be paid only to the extent, to quote from the amendment, "that the operating revenues of the canal exceed all operating expenses of the Panama Canal Commission, not including payments made to Panama under this paragraph."

All the figures which the Senator has been quoting are very impressive indeed, but I see no relation of such amounts to his amendment.

Mr. THURMOND. Well, Mr. President, I am simply showing what it is going to cost the taxpayers of America if we turn this canal over under these treaties which are now before us.

I want to say that under the new treaty there is nothing in the treaty which specifies priority of expense payments. There is nothing in the treaty which limits payments to Panama except in paragraph 4(c) to whatever suplus exists after operating expenses are paid. There is nothing in the treaty which prevents use of taxpayer money to make payments to Panama.

My amendment would do this: It would require all expenses to be paid before any payments are to be made to Panama. It would limit all payments to Panama under paragraph 4 to the extent that operating revenues exceed expenses and prevent deficits because of payments to Panama. It will limit payments to Panama to the extent of surplus operating revenues, and thus prevent borrowing or appropriating tax dollars to pay Panama.

That is what my amendment does. It protects the American taxpayer, which the present treaties do not do.

Mr. MATSUNAGA. Does the Senator yield the floor?

Mr. THURMOND. Unless the Senator wishes to propound some questions.

Mr. MATSUNAGA. I want to take my own time now.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, it is impressive to listen to all of the expenditiures involved in the operation of the canal, but the point I was trying to make during collquy with the Senator from South Carolina is that his amendment will not in any way alter or eliminate one item of the expenses involved.

His amendment would provide that to the extent the operating revenues of the canal exceed all operating expenses of the Panama Canal Commission, only then would payments be made to Panama.

But it would in no way alter the expenditures which would be required in the operation of the canal. Much has been made about saving the taxpayer, saving the taxpayer. Repeatedly, we have pointed out, those of us who suppport the Panama Canal Treaty, that under the new treaty, the American taxpayer will not be required to pay any additional funds because the United States will have actual control over the canal, over the operation of the canal,

over the determination of the toll charges. So that, considering the trend of increasing revenues from tolls collected, we expect sufficient revenues to pay the expenses. If the opponents of the treaty wish to defeat the treaty, it would mean the retention of the status quo under which, today, only about $500,000 comes from the Panama Canal Company and the remainder of the $2.3 million which we pay to Panama comes from appropriated funds out of the U.S. Treasury which means out of the taxpayer's pockets.

Therefore, if the opponents of this treaty and the proponents of the amendment being offered by the Senator from South Carolina really mean that they want to save the taxpayers some money, they will support the treaty as it has been proposed, for, in fact, the projections indicate and those of us who support the treaty are confident that the provisions of this treaty can be carried on without assessing the American taxpayer any additional funds.

I reserve the remainder of my time.

Mr. THURMOND. Will the Senator yield?

Mr. MATSUNAGA. I am happy to yield to the distinguished Senator from South Carolina.

Mr. THURMOND. If there is a deficit down there while operating the canal, where is the money coming from?

Mr. MATSUNAGA. The Senator from South Carolina has provided figures. We proponents of the treaty have provided figures. It is a matter of whether or not you care to believe the figures as they are presented. I am sure that the Senator from South Carolina has seen projections of the collections. I wish I had them handy to me.

Here we are.

Mr. THURMOND. Mr. President, I am not speaking of projections. I am asking a simple question.

Mr. MATSUNAGA. I am answering the question the Senator has put to me.

Mr. THURMOND. If there is a deficit down there, where is the money coming from?

Mr. MATSUNAGA. From the tolls.

Mr. THURMOND. Suppose they are not sufficient.

Mr. MATSUNAGA. Well, suppose. You know, just as you can suppose anything, you can suppose that the world will come to an end tomorrow. Projections are based on the experiences of the past. If experiences of the past mean anything, then we proponents of the treaty feel that the projections we have presented for the record can be relied upon.

I remind the Senator from South Carolina of projections such as the following: In fiscal year 1979, it is anticipated that with no toll rate increase, we shall have collections, in millions of dollars, of $194 million. This is in fiscal year 1979.

With a 15-percent increase, the anticipated toll collections will be $222.5 million; with a 5-percent increase, $240 million. It is expected that a 30-percent increase might be sufficient to meet all expenses and, in 1979, it would bring in $248 million; in 1980, $250 million; in 1985, $256 million; and in the year 1990, $273.2 million.

Now, compare this to what we collected last year. It was only $165 million. So, by 1990, with a 30-percent increase in toll rates, we shall increase the tolls by over $100 million. This is how we are

going to be able to pay Panama the amounts agreed to in the treaty without requiring the taxpayer to pay any additional taxes.

Mr. GRIFFIN. Will the Senator from South Carolina yeild?

Mr. THURMOND. I do not believe I have the floor.

Mr. PRESIDING OFFICER. The Senator from Hawaii has the floor.

Mr. THURMOND. I was asking him a question. I asked the simple question that, if there is a deficit in operating the canal, where will the money come from? His answer, in effect, as I understand it, is that it is projected there will be enough funds from tolls to take care of it.

My point is if there are not enough funds, if there is a deficit, where is the money coming from?

Mr. MATSUNAGA. I shall respond to the Senator from South Carolina, as I thought I had responded, by saying by increasing the toll rates so as to meet the necessary expenses. Of course, in the meantime, we could borrow from the Treasury. There is nothing to keep us from borrowing from the Treasury and then increasing the tolls, then make greater collections and pay back into the Treasury. When I say "we" I mean the Panama Canal Commission.

That is the way to do it, just as in the operation of any business. When a businessman goes into debt one year, he borrows from the bank and makes adjustments, either to cut down costs or increase income. In the case of the operation of the canal, it is simple to increase the toll rates, because, while we are charging only $1.29 per Panama ton, the Suez Canal is charging $2.56, I believe. So that a 30-percent increase would mean nothing at all and a projection with a 30-percent increase will mean that we will not go into deficit.

Mr. THURMOND. Governor Parfitt indicated that you can increase tolls to a certain point and after that, you have a diminishing return. If you do and if there is still an operating deficit, where is the money coming from?

Mr. MATSUNAGA. Well, I suppose with the Senator from South Carolina taking the position that he has taken, nothing the Senator from Hawaii says will appease him, much less convince him.

Mr. THURMOND. The Senator from Hawaii is familiar with Mr. Staats.

Mr. MATSUNAGA. I repeat, with a 30-percent increase, it is expected that we will have no deficit at all and we will not need to assess the taxpayer any additional tax dollars in order to carry out our bargain of the Panama Canal Treaty.

Mr. THURMOND. The Senator is familiar with Mr. Staats. Let us see what he says about it. Mr. Staats is Comptroller General of the United States, appointed by a Democratic President, a good man. Let us see what he says:

> If the canal transits fall short of what is currently estimated it is possible that toll revenues will be insufficient to cover the cost of the Commission, including the scheduled payments to Panama. In this eventuality,

In this eventuality—

> the United States Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the Commission to borrow from the United States Treasury.

So, where is the money coming from except the U.S. Treasury if there is a deficit?

Mr. MATSUNAGA. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. MATSUNAGA. I reserve the remainder of my time. If the Senator from South Carolina wishes to continue, he might use the remainder of his time.

Mr. THURMOND. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Carolina has 9 minutes remaining.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I am pleased to yield now to the able Senator from Michigan, if he has a question.

Mr. GRIFFIN. The Senator from South Carolina was seeking to get the Senator from Hawaii to answer a very simple question. Of course, I have not listened to the whole debate and maybe this has been referred to several times. But it seems to me the answer to his question is very simple. It is spelled out clearly in the treaty. There is not any question, legally speaking, under the treaty, if it should be ratified, of who is going to be responsible if there is a deficit. It is fine for the Senator from Hawaii to predict and presume, and everything else, that there will not be a deficit. Maybe he is right. But the question as I understand it, of the Senator from South Carolina is, who is going to pay for it if there is?

Under article XIII of the Panama Canal Treaty, it says very clearly that upon the termination of this treaty in the year 2000, the Panama Canal shall be turned over to Panama in operating condition and free of liens and debts.

Well, there is no way the United States can turn it over to Panama in the year 2000 free of liens and debts unless the United States pays all the bills.

So the answer to the Senator's question is that if there is a deficit, the U.S. taxpayers will have to pay it.

Mr. THURMOND. That is exactly right.

Mr. GRIFFIN. We have an obligation under the treaty to do it.

Mr. THURMOND. That is exactly right. That is the position I take with the Senator from Michigan.

I want to say this, there is no question the Treasury is going to have to pay these three items under any condition. No. 1, early retirement costs, $7.5 million for 22 years, $165 million.

I see the distinguished chairman of the Appropriations Committee here and I am glad he is here, because we think this is very important.

Two, Department of Defense costs, primarily schooling costs, $5 million for 22 years, $110 million.

DOD costs, one-time base relocation, $43 million.

So there is $165 million, $110 million, and $43 million that will definitely have to come out of the Treasury. There is no question about it. It cannot come from anywhere else.

Now, a fourth item is that we are going to lose, the Treasury is going to lose, interest of $20 million a year for 22 years, and that will cost the Treasury $440 million more.

Therefore, we have got a loss to the Treasury that we cannot dispute, I think anybody will acknowledge this, of $758 million, that is a direct loss to the Treasury. We cannot get around that.

What I am trying to do with this amendment is to prevent any further loss to the Treasury, to provide that if there is any operating deficit down there, that the first funds there will go to pay that, rather than to go to pay Panama.

The $758 million we cannot get around. We are going to lose that. That is definite. But I do not want to see us lose more than that. That is the reason I offered this amendment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. Zorinsky). The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, in deciding whether or not to support the amendment offered by the Senator from South Carolina, we need to look at the situation as it exists now and the situation which will prevail after the new Panama Canal Treaty is adopted.

Nothing in the treaty—I repeat, nothing in the treaty—would permit the utilization of taxpayers funds without the prior authorization of the Congress of the United States.

Presently, as I pointed out to the Senator from South Carolina, we are paying $1.8 million out of the U.S. Treasury, out of appropriated funds, and only $500,000 of the $2.3 million paid annually to Panama comes from the Panama Canal Company.

So that what we are, in fact, doing by provisions of the Panama Canal Treaty is what the Senator from South Carolina himself is proposing, assuring that the American taxpayer will not be required to pay any additional taxes for payments to the Republic of Panama.

So talk about trying to do things which will mean additional taxes for the American taxpayer, it is clear on the face of the treaty, by the evidence presented by proponents of the treaty, that nothing in the treaty will require additional assessment of taxes on the American taxpayer for the purpose of carrying out the provisions of the treaty.

I yield back the remainder of my time.

Mr. THURMOND. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Carolina has 4 minutes remaining.

Mr. THURMOND. Mr. President, I just want to state that a statement was made there about raising the tolls and it is projected the tolls will be sufficient.

Again, I want to quote Mr. Staats, the Comptroller General of the United States. He has expressed concern as to how high we can raise these tolls, just as Governor Parfitt has, a major general who is in charge down there, the Governor of the Panama Canal Zone. He has raised the same point.

Here is what Mr. Staats has had to say:

> It seems to me that there are some very real concerns as to whether we can adjust tolls upward, assuming you do all these things that I have just listed, and still make it possible to operate the canal without serious deficits.

So Mr. Staats has very serious concerns himself as to whether we can operate without deficits.

The point I am getting at, if we do operate with a deficit, where is it coming from? That is what I am asking.

My amendment does not prohibit these payments being made to Panama. It merely says that the necessary expenses of the canal must be paid first. I do not see that this can be anything but beneficial for the U.S. taxpayer, who will be called on to subsidize Panama when deficits occur unless this amendment is adopted. My amendment seeks to protect the American taxpayer.

That is the reason I have offered it here, to provide that we will, in this case, first take care of the operating expenses before we pay money to Panama. Does that not make sense?

They claim they will have enough money from tolls, but suppose they do not have enough money from tolls, then where does it come from? It will have to come out of the Treasury, the same as the other points I mentioned a few moments ago are going to come out of the Treasury—$758 million that we all acknowledge will come out of the Treasury.

Then there will be more money to come out of the Treasury unless we pass this amendment or adopt something similar to take care of the situation.

That is what I have tried to do with this amendment.

Mr. GOLDWATER. Will the Senator yield for one point?

Mr. THURMOND. I am pleased to yield to the able Senator from Arizona.

Mr. GOLDWATER. Just one point in the testimony we heard before the Armed Services Committee.

The statement was made before the Armed Services Committee that regardless of who had control of the canal, the United States or Panama, that by the year 2000 the tolls would go up 100 percent to 105 percent.

Mr. THURMOND. I think that is the indication right there as to how high the tolls are going, and Governor Parfitt and Mr. Staats and others have expressed their concern, because when tolls reach a certain amount, then it will be unprofitable to go through the canal.

You have goods from the west coast coming to the east coast by way of truck or by train. When you have that, because it is cheaper, the income from the canal will be less; and when the income from the canal is less, who is going to make up the deficit?

I am trying to provide that Panama will not be paid first, that we pay the operating expenses of the canal before we pay Panama anything. To me, that makes sense.

Mr. President, I yield back the remainder of my time.

Mr. MATSUNAGA. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from South Carolina. On this question the yeas and nays are ordered, that the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Michigan (Mr. Riegle), and the Senator from Alabama (Mr. Sparkman) are necessarily absent.

I further announce that, if present and voting, the Senator from Michigan (Mr. Riegel) would vote "yea."

Mr. STEVENS. I announce that the Senator from Oklahoma (Mr. Bartlett) and the Senator from Oregon (Mr. Packwood) are necessarily absent.

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 96 Exec.]

YEAS—56

Anderson	Hart	McGovern
Baker	Haskell	McIntyre
Bayh	Hatfield, Mark O.	Melcher
Bellmon	Hathaway	Mentzenbaum
Bentsen	Hayakawa	Morgan
Biden	Heinz	Moynihan
Bumpers	Hodges	Muskie
Byrd, Robert C.	Hollings	Nelson
Case	Huddleston	Pearson
Chafee	Humphrey	Pell
Church	Inouye	Percy
Clark	Jackson	Proxmire
Cranston	Javits	Ribicoff
Culver	Kennedy	Sarbanes
Danforth	Leahy	Stafford
Durkin	Long	Stevenson
Eagleton	Magnuson	Weicker
Glenn	Mathias	Williams
Gravel	Matsunaga	

NAYS—39

Allen	Goldwater	Sasser
Brooke	Griffin	Schmitt
Burdick	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
Cannon	Hatfield, Paul G.	Stennis
Chiles	Helms	Stevens
Curtis	Johnston	Stone
DeConcini	Laxalt	Talmadge
Dole	Lugar	Thurmond
Domenici	McClure	Tower
Eastland	Nunn	Wallop
Ford	Randolph	Young
Garn	Roth	Zorinsky

NOT VOTING—5

Abourezk	Packwood	Sparkman
Barlett	Riegle	

So the motion to lay on the table Mr. Thurmond's amendment (UP No. 24) was agreed to.

Mr. CLARK. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. MCGOVERN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order the Chair recognizes the Senator from Virginia (Mr. Scott).

Mr. CLARK. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. SCOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

We will have order in the Senate Chamber. All Senators wishing to carry on personal conversations please retire to the cloakroom.

The Senator from Virginia (Mr. Scott).

Mr. SCOTT. Mr. President, it is understood that we will have a final vote on the canal treaty next Tuesday and I have been considering what additional factors could be presented to the Senate in order to persuade a few undecided Senators to vote against ratification. Attempts to amend the treaties appear to be fruitless and may even detract from Senators comprehending the full impact of ratification of these treaties upon our own country and the future of the free world. Even the alleged dissatifaction with one reservation by Panama could divert us from concentrating on whether ratification of the canal treaty is in the national interest.

We have had more than 50 amendments offered to the treaties to date. Most of which have been defeated by motions to table. But in one way or another all but two, the so-called leadership amendments, have been defeated. Therefore, rather than offering an amendment at this time, I would like to address the basic question as to whether the canal treaty should be ratified by the Senate.

A few days ago a long time friend and constituent stopped by the office and the first thing he mentioned was that from our point of view this treaty just did not make sense. Frankly, I believe this is the opinion of the vast majority of the American people and since we are here in a representative capacity this factor should weigh very heavily upon our minds. Of course, I agree with statements made by a number of Senators that the people of our respective States elect us to the Senate to inform ourselves on the issues and to exercise our best judgment on how to vote. They do look to us for leadership and I make no suggestion that our judgment should be determined by computers. Nevertheless, in my judgment the weight of public opinion should be a major factor to be considered.

The Neutrality Treaty ratified by a close vote of the Senate a few weeks ago is entirely different from the canal treaty now before us. The word neutrality has a good ring to it and one might assume that if the canal was operated on a neutral basis, it might be for the benefit of all mankind. However, the canal treaty now before us would give away American property; property we obtained through the payment of $10 million to the Republic of Panama; property for which we paid private owners and squatters something over $4 million; property for which we paid the French company that had attempted to contruct the canal, $40 million; and property for which we later paid Colombia, the nation from which Panama was created by secession, the sum of $25 million.

The Canal zone is part of the unincorporated territory of the United States. It is an area in which we put the genius of America to work, succeeding in constructing a lock canal where the French

had failed in constructing a sea level canal, an area within which we first conquered yellow fever, contained malaria, provided modern water and sewage systems, and healthy living conditions for a tropical jungle. Over the years we have increased the annual payment to Panama from $250,000 to approximately $2.3 million at the present time, this amount representing the payment that had been received by Colombia from the French company for the Panama Railroad which continues to parallel the canal across the Isthmus.

Over the years we have maintained the canal in proper operating condition and have permitted all nations of the world to utilize it at cost and without profit to the United States. So it is understandable, Mr. President, that the people of the United States do not consider it sensible to give away this valuable national asset, this vital artery of commerce with its strategic military importance, to a nation with a history of instability, presently headed by General Torrijos who overthrew a lawfully elected government to become chief of state.

I believe Senators should reflect upon the type of government we have in the United States and the part the people of our country should play in the decisionmaking process. I also believe we should consider conditions as they exist throughout the world, the proximity of Cuba, its activities in Africa, the Soviet buildup, and the possibility of Communist control of the canal in the future.

Virginians continue to indicate their strong opposition. A poll taken by our office indicates that 87 percent of the people are opposed to ratification and the ratio of our mail is even heavier against the treaty. Of course we know that the President, the State Department, and the Senate leadership all favor ratification of the treaty, and that efforts have been made to educate the American people, to the administration's point of view.

Nevertheless, the American Legion, the Veterans of Foreign Wars, various retired military associations and patriotic groups are opposed to ratification as well as citizens at large and it does seem that the ultimate decision in matters of such great national importance as this treaty should be made by the American people. This was the concept when our government was formed. Alexander Hamilton recognized it during the debates on the Constitution in 1778 when he said: "Here sir, the people govern." Thomas Jefferson, in various letters written after he left the White House, agreed with Hamilton's statement. He said in 1820:

> I know of no safe depository of the ultimate powers of the society but the people themselves.

Further on in the same letter he states:

> My personal interest in such questions is entirely extinct.

And I assume this is because he had left the White House more than 10 years previously and was living at Monticello, however, he added:

> But not my wishes for the longest possible continuance of our government on its pure principles.

Mr. President, I believe each Senator should be, and is concerned about the longest possible continuance of our Government on its pure principles, as Jefferson suggested.

In this connection, we can learn much from history and at a time when we are attempting to placate those agitating in Panama who covet the canal we constructed, we might look back to some of the events immediately prior to World War II and consider the parallel between efforts to appease Adolph Hitler when he was violating the Versailles Treaty, secretly building up Germany's armed forces, reoccupying the Rhineland, forming an alliance with the then dictatorship of Mussolini in Italy, coveting Czechoslovakia, Austria, and the Ukraine. You will recall Neville Chamberlain, then Prime Minister of Great Britain, going to Munich in 1938 with the head of the French Government, their meeting with Hitler and Mussolini and agreeing to German military occupation of the Sudetenland and a plebiscite to determine whether additional areas in Czechoslovakia should be annexed by Germany. This concession was made on September 30 and less than 6 months later, in March of 1939, the Germans occupied all of Czechoslovakia leading to World War II. This is history and, yet, we know that Chamberlain returned to England in triumph holding a piece of paper stating, " I believe it is peace for our time." Subsequent events proved him wrong and the fears of Winston Churchill regarding appeasement to be right. Somehow, Chamberlain and his umbrella, the concept of appeasement, seem to be relevant to the matter now under consideration by the Senate. I know it is contrary to Senate custom and decorum to carry canes on the floor of the Senate but perhaps it would be appropriate for those who favor appeasement to carry an umbrella. Because if we continue to weaken the United States by the actions we take, we may ultimately have cause to regret our actions.

In my judgment, we should think deeply about the various political and military activities present in the world today and the concessions being made from time to time by our Government to appease the appetite of aggressive nations whose philosophies are entirely foreign to our own.

In today's world we see Vietnam military forces in Cambodia, North Korean, and South Korean military forces facing one another at the 38th parallel, the obvious trouble in the Middle East, but perhaps the most disturbed continent in the world today is Africa with many thousands of Cuban troops acting as surrogates for the Soviet Union, along with a number of other Eastern European nations.

Of course a major part of our military forces abroad are in Western Europe forming part of the NATO forces facing the Warsaw Pact nations.

It is generally conceded that the Warsaw Pact nations have superior conventional forces in Europe, but that the tactical nuclear weapons of the United States and NATO nations are the major deterrent to the Communist forces over-running Western Europe should they choose to do so. But our Nation is indecisive as to the manufacture and use of the neutron bomb, we have decided against the B–1 bomber, we are negotiating a SALT II treaty which supposedly would permit the Soviet Union to have unlimited numbers of Backfire bombers, no onsite inspection of the Soviet Union forces

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even though we are told of the advances they have made on a killer satellite that might end our satellite observations of their military activities.

We should remember that our own Defense Department, in testimony before the Armed Services Committee, has indicated that Soviet strategic offensive forces have increased drastically within the last decade:

Intercontinental ballastic missiles from 224 to over 1,400.

Sea-launched ballistic missiles from 120 to 900.

Strategic warheads from 390 to 4,000.

Since 1965 Soviet conventional forces have also expanded substantially:

Military personnel from 3.3 to 4.4 million.

Divisions from 147 to 168, with added tanks, artillery, and armored personnel carriers.

Two thousand additional tactical aircraft, combined with the introduction of more sophisticated aircraft.

Naval forces with greater missile firepower, more nuclear-powered attack submarines, greater fleet range, and the construction of three small aircraft carriers.

We cannot afford to ignore the Russian buildup of its military and naval forces; of its support for revolutionary movements throughout the world; Soviet pilots flying Mig aircraft in Cuba; or Russia supplying weapons and materials for Cuba to intervene in the internal affairs of other nations; of Egypt, Ghana, and Somalia finding it necessary to expel the Russians; of Canada expelling more than a dozen Russian diplomats for attempting to bribe Canadian citizens to obtain intelligence information.

All these happenings add credence to the warning of the former Chairman of our Joint Chiefs of Staff, Adm. Thomas H. Moorer, in testimony on January 31, before our Senate Armed Services Committee. He said:

> The defense and use of the Panama Canal is wrapped inextricably with the overall global strategy of the United States and the security of the free world. I submit that, if the United States opts to turn over full responsibility for the maintenance and operation of such an important waterway to a very small, resource poor and unstable country as Panama and then withdraws all U.S. presence, a vacuum will be created which will quickly be filled by proxy or directly by the Soviet Union as is their practice at every opportunity.
>
> So, Mr. Chairman, and members of the committee, do not be surprised if this treaty is ratified in its present form to see a Soviet and/or Cuban presence quickly established in Panama. In any event, any confrontation over the "neutrality" of the canal then becomes a confrontation with the Soviet Union rather than the Panamanian guerrillas or terrorists. With the Soviets already on the scene, as Senator Goldwater has pointed out, fighting our way in—with or without the help of the small 1,500 man Panamanian Army will not be without unnecessary loss of U.S. men and material, not to mention loss of the use of the Canal.
>
> I believe a permanent United States presence in the Panama Canal Zone to be the only feasible and safe posture for all of the nations of this hemisphere. In saying this I must also emphasize that the year 2000 is meaningless insofar as the requirements for the security of this hemisphere are concerned. The threat, the problems, the global balance will not change as if by magic in the year 2000, so why should we pass this dilemma down to our children and grandchildren?

Let us remember that this same Admiral Moorer, as Chairman of the Joint Chiefs of Staff, was our No. 1 military man from 1970 to 1974. Although he is presently retired, I believe his opinions are entitled to great weight.

There seems to be a strange logic that the United States would be in a better position if we reduced its present military installations in the Canal Zone from 17 to 4 after the treaties are ratified and entirely withdraw our military presence from the canal by the year 2000. The augument goes that, with a friendly Panama, the canal would more likely be available for the use of U.S. commercial and military ships.

Mr. President, on page 35 of part 3 of the hearings before the Committee on Foreign Relations, the distinguished Senator from Idaho (Mr. Church) posed a number of questions to Admiral Moorer, the substance of which was why the leftists and Communist groups in Panama were so outspoken in opposition to the proposed treaties. And it has been mentioned on the floor a number of times during this debate that the Communist party oppose the treaties. However, the World Marxist Review; "Problems of Peace and Socicalism," contains articles indicating Communist support for the treaties. According to the Library of Congress, this paper is the American edition of a Prague publication. It is a leading theoretical journal of the Communist movement from an international standpoint. It contains programs and party decisions, and articles on the parties of specific countries. In the February issue of the World Marxist Review, an article entitled "For Panama's Complete Independence," on page 89, it expresses these thoughts:

> We live in an epoch in which imperialism is losing ground. Its positions are growing weaker and it has suffered one strategic defeat after another in many parts of the globe. The imperialist structure is being rent asunder at various levels, and one example is the distintegration of the colonial system.
>
> Let us note that the difficulties now faced by imperialism stem not only from the fact that it has outlived itself, and is being eroded by its internal crisis. They are also the result of the crushing blows by the progressive forces, which are growing stronger all over the world and which are inspired above all by the socialist community, headed by the Soviet Union, which sprang from the great October Revolution and which has blazed for mankind the trail for triumpant national liberation and social emancipation. The potential accumulated by the world revolutionary movement and the active, mighty, sustained, systematic and vigorous struggle of all the anti-imperialist forces of the globe are the main reason for the weakening of the positions of imperialism. In the new historical conditions, it no longer has any firm ground anywhere. In all its possessions, far or near, which imperialism once found it easy to maintain, the firm ground everywhere has been converted into shifting sands.

The same publication contains an article, dated September 7, 1977, by the Political Bureau, Peoples Party of Panama, which concludes with the following paragraph:

> We, Panamanian Communists, support the treaty signed by Torrijos and Carter inasmuch as it is a vehicle of our country's decolonization and point out the need for strengthening anti-imperialist national unity in order to advance toward complete liberation through the defeat of the imperialist oligarchy in all areas and consummate the structural transformations launched in preceding years.
>
> We have taken a step forward. The struggle continues.

Mr. President, I would reiterate the statement, "We Panamanian Communists, support the treaty signed by Torrijos and Carter.

I believe, Mr. President, that all Members of the Senate know that the Communist Party operates in mysterious ways; but their publications, prepared for their own membership, would appear to me to be a good source of information of their real opinions.

What is ignored here is to whom we are giving the canal—today to General Torrijos and tomorrow to who knows what Government in Panama, given that country's political instability.

Let us recall for a moment who General Torrijos is. He is the dictator of Panama who took over that country from a lawfully elected government "at the point of a gun" in 1968. He is the same dictator who has increased the national debt of Panama from some $167 million to over $1.5 billion, the highest per capita national debt in the world. He is the dictator who has compiled a dismal record on humn rights, according to Freedom House. He is the same dictator who has open admiration for Castro and who, on his return to Panama after signing the treaties in Washington last fall, sent the following message to Castro:

> On my return trip to my country and flying above the sky of Cuba, I salute you with friendship always * * * In Latin America, your name is associated with feelings about dignity that have been channeled toward a shameful period of colonialism.

This is the same Fidel Castro who has thousands of Cubans in Angola, several thousand Cubans in Ethiopia and, apparently, sees a need to have Soviet pilots fly air defense missions for him in Cuba. Torrijos is the same dictator who has never met the American Governor of the Canal Zone. This according to testimony of the Governor. I asked Governor Parfitt, when he testified before the Subcommittee on Separation of Powers of the Judiciary Committee, his personal opinion as to Communists within the structure of the Government of Panama.

Governor Parfitt, an active major general in our army, responded:

> I believe the general consensus is that the Panamania government itself is not communist-leaning, but advisers in various places within the government are in fact Communists.

I asked, "This would be advisers to General Torrijos? Some of his advisers are believed to be Communists?"

Governor Parfitt answered, "That is correct."

Let me add that Governor Parfitt also testifed at this hearing that our Government did not ask him whether the proposed treaty should be negotiated. It seems untenable that the top U.S. official, the Governor of the Canal Zone, would not be asked his opinion before the treaties were signed.

So, it does not appear that we would be giving up our $10 billion canal to any great or reliable friend of the United States. This may in part account for the fact that the vast majority of Americans are opposed to ratification of the canal treaty.

Let us look at the attitude of Latin American toward these treaties Mr. President, one of the great myths surrounding these treaties is the view that the United States will alienate all of Latin Amercia if we do not ratify these treaties. The administration would have us believe that all of Latin America strongly supports U.S. turnover of the canal to Panama.

Let us address this point. When former Deputy Secretary of Defense Clements testified before the Armed Services Committee, he indicted that Robert Hill, former Ambassador to several Central and South American countries, asked him to inform the committee that his contacts indicated most of these countries did not favor the

treaties, because they were "convinced it would be an added cost to their economy" and because they were concerned "with respect to the security of the canal" since most of their trade depends upon efficient and economical operation of the canal.

At a meeting of the Organization of Amercian States last year, the nations of Latin America passed a resolution by an overwhelming vote of 17 to 0 with 3 absentees to reaffirm:

> The principle that the Panama Canal tolls should exclusively reflect the actual operating costs.

Panama abstained from this vote and apparently implicitly criticized the Organization of Amercian States (OAS) for even considering the matter.

When Lt. Gen. Gordon Sumner, Chairman of the Inter-American Defense Board, testified before the Armed Services Committee he stated that the 19 countries of Latin America which comprise the Inter-American Defense Board:

> Look at this canal as the "Canal of the Americas" and it is important to those countries."

When asked concerning the views of Inter-Amercian Defense Board countries on the treaties, General Sumner stated that he had talked to:

> The presidents, the ministers of defense and the high level military people of the 17 countries besides the United States and Panama, and that all express a very grave concern about the treaties.

He testified that—

> They see the possibility here for conflict. They also see the possibility for mischief making by the Communists.

He went on to add that all of these countries have "some type of Communist subversion or terrorism going on within their countries." General Sumner indicated that all members of the Inter-American Defense Board have "expressed reservations about the fact that the United States will no longer be in Panama. Once we do not have the bases there, then the entire area becomes destabilized."

From my own visits to Latin America last year, I can confirm the views of both Ambassador Hill and General Sumner. There was considerable concern, particularly in countries on the west coast of South America, concerning possible toll increases. The countries of Latin America were also worried about the possible involvement of Communists in Panama once the U.S. presence there was reduced or eliminated.

It would appear that we should consider the effect of ratification on American citizens located in the Canal Zone. According to testimony of General McAuliffe before the Committee on Foreign Affairs, there are more than 30,000 Americans residing in the Canal Zone. Roughly 20,000 are military personnel and their dependents and approximately 10,000 civilian employees of the Canal Company with their dependents make up the remainder of the 20,186 Americans. These American citizens have made their objections to the treaties known in a variety of ways. Of course, in the event the treaty is ratified, we would extinguish the U.S. jurisdiction in the Canal Zone. We would terminate its legal, its national presence

there. We would terminate all of the inherent rights of our country under the 1903 convention and all subsequent agreements between the United States and Panama. We would place our citizens there, resident citizens, American citizens in Panama, including members of the Armed Forces and their dependents, under Panamanian jurisdiction.

Suggestions have been made by proponents of the treaty that we have in some manner been unfair to the Panamanian people. Yet, on checking with the State Department, we find that Panama receives one of the highest per capita levels of U.S. assistance among the Nations of the world. During the 6 years between 1971 through 1976 for instance, our average annual assistance through the AID program was just over $27.6 million, or a grand total of $165.8 million to a nation with a population of approximately 1.7 million persons.

Panama has also participated extensively in loan activity with the Export-Import Bank during recent years. We continue to be Panama's principal trading partner, and private U.S. capital has invested heavily in the country.

The number of banks in Panama has increased from 21 in 1967 to 71 in 1977 with total assets of $9.7 billion. I note from the Congressional Record of October 25 of last year that the chairman of the Senate Banking Committee (Mr. Proxmire) stated on page S 17730 that the data supplied by the Bank Regulatory Agency show United States banks had total claims on Panama of $2.831 billion as of December 31, 1976. Individual Senators can form their own judgment as to what part, if any, the banking interest has in ratification of these treaties.

Mr. President, when we consider what the United States would lose, we should bear in mind that the Canal Zone is more than just a location for a big ditch that connects the Atlantic to the Pacific Oceans. There are military and civilian facilities located within the approximately 650 square mile Canal Zone area. According to a report prepared by the Panama Canal Company in September 1977, the improvements within the zone have a replacement value of $9.81 billion. This is the value of the American property that we would give away. This does not include the value of unused Canal Zone land estimated to have a value of $115 million. It is interesting to note also from the report of the Canal Company that the country of Panama has received gross payments and income from the Canal Zone from 1963 to the present of $1.8 billion. That is for a period of 17 to 18 years and includes the annuity, wages and salaries to Panamanians, direct purchases, retirement payments and resident expenditures. It does not include foreign aid rendered by the United States to Panama which I previously referred to.

You may recall last month I had a four-volume computer printout on the Senate desk weighing 47 pounds, more than 1 foot high, and used it as a podium from which to speak. The computer printout is still in the office if any Senator would care to examine it and it contains a breakdown of the current replacement value of U.S. improvements in the Canal Zone.

A General Services Administration report on the real estate owned by the United States indicates that our Canal Zone Government has a total of 266 buildings having a gross square foot area of

2,482,037 square feet. It includes buildings of various types, 10 of which are used for offices, 32 for hospitals, 3 for prisons, 110 for schools, 22 for other institutions, 6 for housing, 6 for storage, 2 for services, 5 for research and development, and 70 for all other purposes.

A similar report of U.S.-owned real estate in the Canal Zone under the jurisdiction of the Panama Canal Company includes 2,647 buildings of various kinds having a total gross square foot area of 10,456,489; 34 of which are used for offices, 2 for schools, 1 for other institutional purposes, 2,005 for housing, 161 for storage, 29 for industrial purposes, 151 for services, and 264 for all other purposes.

This report, however, does not include the improvements on various military bases within the Canal Zone. You will remember, however, that I made a somewhat detailed report and had pictures on the floor of the Senate illustrating both the military installations and the civilian ones. I still have these pictures if any Senator would care to look at them.

Let us now turn briefly to some of the financial aspects of the canal treaties, to the loss of income to our Government or direct cost to our Government should the canal treaty be ratified between the date of ratification and the date of the termination on December 31, 1999. Without going into detail there will be a loss to the U.S. Treasury of $440 million in annual interest payment on the U.S. investment for the construction of the canal; early retirement costs of $165 million; Department of Defense costs of $110 million; one-time base relocation costs of $43 million. This totals the sum of $758 million as a minimum cost to our taxpayers for giving Panama a $10 billion Canal Zone.

As Senators know, Panama will also receive from the canal tolls under the provisions of the treaty; first, 30 cents per ton for all cargo transiting the canal. This is estimate to be $40 million per year, or a total of $880 million during the term of the treaty. Second, a fixed annuity of $10 million per year, or $220 million for the 22-year term. Third, $10 million per year for certain services such as police and fire protection, or $220 million for the 22-year period; and fourth, $10 million per year from tolls if revenues exceed expenditures and should economic conditions permit. This is an additional $220 million, or a potential total of $1.5 billion as a minimum since some of these payments will be adjusted for inflation.

So, Mr. President, I can readily see why Panama has coveted the U.S. territory over the years, and most heartily agree with the visitor who stopped by the office earlier this week and said from the U.S. Point of view, these treaties just do not make good sense.

My opposition, in a broad sense, is that the treaties are written in a way to meet the demands of Panama and to further the best interests of Panama rather than the best interests of the United States. At the present time the United States has possession and control of the canal. From the viewpoint of our own national interest there is no need to negotiate a new treaty. In my judgment, we do not obtain any benefits from these treaties but we lose substantially all of the interests we now have in the Canal Zone. It would appear that our negotiators have been willing to give

Panama anything it wanted and that Panama has wanted everything it could get. This has resulted in a one-sided treaty. A treaty that, in my opinion, is not in the interest of the United States of in the interest of the free world.

Mr. President, I have a number of amendments that may possibly be offered at a later date, one of which would have the United States retain the ownership of the Canal Zone, but would provide for a multiple nation control of the Canal Zone.

I have hesitated to introduce that at this time because of seeing amendment after amendment, regardless of its merits, being subjected to motions to table without the amendments being considered on their merits. But I do reserve the right and would advise the Senate that this amendment, together with others, may be offered at a later time.

I have an amendment that would provide that Panama would get an annuity of $10 million per year and then if the amendment should be adopted would move to strike the other provisions of the treaty.

That would mean we would continue the same conditions as we have today, except we would increase the annuity for Panama from $2.3 million to $10 million.

Certainly, to me, that would be a charitable act on behalf of the United States.

Mr. THURMOND. Mr. President, I compliment the able and distinguished Senator from Virginia for the address he has just delivered.

The Senator from Virginia has been to Panama. He has seen firsthand the situation down there. He has visited in the Panama Canal Zone. He has talked with employees down there. He has talked with the Governor of the canal. He has talked with the commanding general and the other prominent officials in the Canal Zone. He has talked with officials of the Panamanian Government.

So what the distinguished Senator from Virginia said today is firsthand information. He has proved to be a man of sound judgment, and he has been a valuable addition to the Senate.

I just wish to take this opportunity to congratulate the Senator from Virginia for bringing out these facts today, not only about the Panama Canal Zone and the Panama Canal, but also their relation to the way in which the United States is withdrawing from various parts of the world today, at the very time when the Soviets are increasing and expanding their influence throughout the world.

I hope the Members of the Senate will take time to read the splendid address of the Senator from Virginia and that people outside the Senate will have an opportunity to read it, as it is a very informative and helpful address.

Mr. SCOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Glenn). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I yield to the distinguished Senator from Alabama (Mr. Allen).

Mr. ALLEN. Mr. President, if the distinguished Senator has concluded his remarks and if he would yield the floor, I would ask for the floor in my own right.

Mr. SCOTT. I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I, too, wish to commend the distinguished Senator from Virginia (Mr. Scott) for his very fine and eloquent speech and for his analysis of what the approval of these treaties would mean to the future of the United States, because he sees these treaties as a test of our very will to survive as a great nation, he sees this as a test of whether we are going to retreat around the world every time we meet resistance, and he sees this as a very crossroad in our future, our future as a great world power, and our future as a leader of democratic thought and democratic action.

So much more is involved, as the distinguished Senator points out, than the very important matter of whether or not we shall give the Panama Canal away. Important as that is, it is not the most important feature, and our retreat from responsibility and our retreat from our role as a world power is a greater issue than the giving up of the Panama Canal, the transfer of the property to Panama and the paying of Panama of hundreds of millions of dollars to take the canal. Great as that issue is, it is not as important as the overriding issue of our desire to remain as a great world power and our determination to remain as a great world power, and this giving up of the canal symbolizes a retreat.

I appreciate the fine remarks of the distinguished Senator from Virginia (Mr. Scott). I also appreciate the very fine remarks just a moment ago on another subject by the distinguished senior Senator from Virginia (Mr. Harry F. Byrd, Jr.). Certainly the great State of Virginia is well represented here in the U.S. Senate by her two great U.S. Senators.

Mr. SCOTT. Mr. President, if the Senator will yield briefly, he is most gracious in his remarks about me and my senior colleague, and we thank him for it.

Mr. ALLEN. I say that in all sincerity, I assure the Senator, and assure the Members of the Senate.

Mr. President, this is a time for statesmanship on the part of the administration. It is a call for statesmanship, because we have before us treaties that quite obviously do not command the support of the people of either nation. It is quite obvious to the Senator from Alabama that the great majority of the people of the United States oppose giving the canal away and it is quite obvious that the people of Panama are opposed to having the canal given to them under the terms and conditions of the treaties as presently shaped here in the U.S. Senate.

I am hopeful that between now and the time that we are to vote on April 18, that the President will recall these treaties, both treaties. If one treaty is withdrawn, I would assume that both might be withdrawn, because neither can go into effect unless both are approved. I hope that the President will recall these treaties from the Senate, send them back to the negotiating table, with the implicit advice that the senate has given with respect to these

treaties from the debates that have taken place here on the floor—and with the unrest of the Panamanians, as a result of the wording of some of the reservations to the treaty.

The treaties apparently are not accomplishing one of the purposes for which they were designed. We had been assured here on the floor of the Senate before these uprisings and demonstrations took place that the treaties were needed and are needed to prevent uprisings, demonstrations, and the burning in effigy of the President of the United States. We were assured that if the treaties were not agreed to that sort of thing would happen. But now we see that, far from that being the case, if the treaties are agreed to it is going to cause great unrest, great protest, and great demonstrations in Panama.

Mr. President, who is responsible for this dilemma in which we find ourselves? Mr. Torrijos apparently has been maneuvered by action of the Senate into an untenable position, an impossible position. Even though he assured the administration that some of these reservations that have been agreed to were displeasing to him, nevertheless, contrary to the policy that had obtained throughout the proceedings on the treaties, we went ahead and agreed to these reservations that were displeasing to the dictator. Up to that time the procedure in the Senate had been to, in effect, clear everything with Dictator Torrijos, see that everything that was done in the Senate was satisfactory with him, and so far as I know as I notice the distinguished Senator from Massachusetts (Mr. Brooke) has pointed out no one here in the Senate stated that the DeConcini reservation would be unacceptable to Panama. The distinguished Senator from Massachusetts felt that in voting for the DeConcini reservation he was voting for something that the Panamanians would approve, that they did not object to. That seems to be far from the case.

Mr. President, the entire proceedings with respect to the treaty, the tabling of amendments, the acceptance of such reservations as the leadership is willing to take, the adding of the leadership amendments, all of these things had the approval of the administration, the approval of the leadership, the approval of the managers of the bill.

Not one single word has been added to either treaty that did not have the approval of the administration, the approval of the leadership, and the approval of the managers of the treaties, because they march at the head of a substantial majority of the Senators who are able to defeat any amendment they wish, who can accept any amendment they wish, so they have full control of every word that has gone into these treaties, every single word.

The negotiators agreed to it in the negotiations; the treaties were submitted to the Senate, and from that time on every bit of shaping of these treaties, every word that was turned down, every word that was accepted, had the approval of the administration or it would not have come to pass.

That being true, this impasse, this being on the horns of a dilemma, is not the responsibility of those who have opposed these treaties, those who have sought to strengthen these treaties. The impasse, the blame for the impasse, lies directly at the feet of the

administration and the leadership and the managers of the treaties.

Now, Mr. President, when these treaties were submitted to the Senate—let us go back to the very start—President Carter submitted them in the order, first, of the Panama Canal Treaty, the one we are on now; second in order was the neutrality treaty that, in fact, goes into effect starting with the next century—the main thrust of the treaty does.

It was thought, I assume, that by getting the Neutrality Treaty approved first—and who can object to neutrality—by getting the Neutrality Treaty with its elements of right of defense by the United States of the canal, by getting that approved they thought that would set in motion such momentum for the treaties that they would be approved very quickly.

I warned, Mr. President, that the leadership in insisting on taking up the Neutrality Treaty first was depriving many Senators of the right to vote for the Neutrality Treaty. Why? Well, if the Panama Canal Treaty had been approved first then there would have been very little objection to the Neutrality Treaty. It would just have been a question of how much defense was going to be allowed, and once the decision had been made to give the canal away Senators would have flocked to support the Neutrality Treaty.

Some 86 Senators joined the leadership amendment which was supposed to have provided greater defense rights for the United States in the canal.

But the leadership reversed that order of consideration of these treaties, and therein lies their fatal flaw. If they had continued with the order in which they were submitted, the Panama Canal Treaty first, this whole matter would have been disposed of, in my judgment, weeks ago.

I predicted, Mr. President, more that once here on the floor that this reversal of the order of consideration of these treaties would add at least 1 week to the time it would take to act on both treaties. I believe I was too low in my estimate. I believe it has added 2 or 3 weeks to the time taken to consider both treaties.

I firmly believe if we had not seen these treaties changed in the order of their consideration, and in putting the Neutrality Treaty first, which required Senators who opposed the Panama Canal Treaty also to vote against the Neutrality Treaty, whereas they would have voted for the Neutrality Treaty if that had been the second treaty to be considered—so the fatal mistake thus far with respect to the treaties was the order of consideration.

I tried, and 29 other Senators tried, to get that order reversed, to go back to the question of deciding the basic issue first, and everything else would then have been easy, decide whether they were going to give the canal away before we worried about defending it in the year 2000.

A motion was made—the Senator from Alabama made that motion—that we reverse the order and consider the Panama Canal Treaty first. That received 30 votes here in the Senate. If that side had prevailed, and we had considered the treaty we are now considering first, this whole matter would have been disposed of. It would not have been necessary to negotiate with the distinguished

Senator from Arizona (Mr. DeConcini) with respect to his reservation, because Senators would have been falling all over themselves to come forward and pledge their support to the Neutrality Treaty. I believe we would have disposed of the Neutrality Treaty in 2 days time if the basic issue had first been decided.

All these negotiations were out in the open. Nobody is disclosing any secrets. I know of no secrets with respect to the negotiations. It is all a mater of public record that it was necessary in order to pass the Neutrality Treaty to accept Mr. DeConcini's reservation, and they did accept his reservation word for word.

Mr. DeConcini voted for the treaty, along with at least two other Senators who based their vote, conditioned their vote, on accepting the DeConcini Amendment, and the first Treaty was ratified.

Now they are talking about, Mr. President, undercutting, diluting, changing the nature of the DeConcini reservation which had already been agreed to, the treaty with respect to which it had been added had been agreed to, and now they are talking about some sort of language in the Panama Canal Treaty that would supposedly say that we did not mean what the DeConcini amendment says when we agreed to it.

Well, everybody knew what was in the DeConcini amendment. They had been negotiating over it for days. It had been subjected to review by Senator DeConcini's staff, the Senator himself, by the State Department, and the attorneys for the State Department, by the President himself. They all knew what was in it. It has not got any hidden meaning. It is all right there for anybody to see who bothers to read it.

Now, where the mixup has come is this: We recall that the two leaders stated they could not support the treaty as it was first presented to the Senate, because it did not give us the unilateral right to intervene for the defense of the canal, and the leadership amendment is supposed to have given us that right. But Dictator Torrijos very wisely and cannily and shrewdly had inserted in the memorandum between the President and the dictator a paragraph that protected him and his regime, and that protection is absent in the DeConcini reservation, and that is what all the furor is about.

The leadership amendment, based word for word on the memorandum by the President and the dictator, had three items that gave protection to Panama in the event of U.S. intervention for the purpose of defending the canal. The leadership amendment was designed to give us the unilateral right to defend the canal. The DeConcini amendment gives us the unilateral right to keep the canal open—just one little step further, to keep it open—which would involve defense even if it requires, according to the DeConcini amendment, military action on our part. But the DeConcini amendment does not have these three saving clauses that the leadership amendment has: First, that in our intervention we should not interfere with the internal affairs of Panama; second, that in our intervention we should not interfere with the territorial sovereignty of Panama; and third, that we should not interfere with the independence of Panama. Those three savings clauses are in the leadership amendment, but they are not in the DeConcini amendment, and that is where the slip-up came.

The dictator was willing to take the leadership amendment, because there was as much in the leadership amendment for him as there was for the United States. But under the DeConcini amendment we are given a defensive right without any burden; so therein lies the basis of the Panamanian objection.

It did not come as a surprise to the administration that Torrijos objected to this amendment, and they exchanged letters on March 15, the dictator and the President, wherein the dictator raised objections to the reservations that he saw coming, but he was assured by the President that the reservations would not interfere with the spirit of the agreement that he and the dictator had reached.

So I feel that in the next few days, strange things are going to happen here on the floor of the Senate. They are going to try to placate the Panamanians. They are going to try to weaken the DeConcini amendment, even though it has already passed, and on the basis of the DeConcini amendment three votes were cast for the treaty. Having obtained the fruits of the agreement as to the DeConcini amendment, having gotten the benefits of that agreement—that is, the approval of the treaty—now they are going to want to put something in this treaty to placate the Panamanians. I do not know whether that is going to give offense to those who voted for the treaty on account of the addition of the DeConcini amendment. I rather imagine it will. But here we are going to be playing one side against the other, trying to make concessions here without losing support there, and I do not know whether that tightrope can be walked.

I would have hoped that the U.S. Senate would not be subjected to that ordeal. I do not know what the outcome is going to be on these treaties, but I say if they are agreed to it is not going to be any great credit to the United States of America. It is not going to fulfill the promises that were made with respect to what these treaties would do. They were supposed to be good neighbor gestures. They are supposed to allay hostility, anti-Americanism. Why, they just add fuel to the flames, Mr. President; and that is the reason why I say that the time has come for statesmanship in this regard.

I hope that the Senate will not be required to doctor up this second treaty to try to please the Panamanians, to try to please those Senators who rested their faith in the administration when they accepted the DeConcini amendment, and now see the prospect that in this instrument they are going to try to take back what they said in the DeConcini amendment.

That is not going to look too good on the part of the United States, Mr. President, to accept an amendment that has undergone close and careful scrutiny, every word weighed, and then accepted by the leadership, accepted by the managers of the bill, and accepted by the President.

Now they say, "Oh, we must do something to clear up the questions over the DeConcini amendment." Well, if you do that, if you backtrack on that, you are certainly running the risk of losing both treaties.

Mr. President, rather than see the treaties defeated outright on next Tuesday, would it not be the better course of wisdom, the

better course of diplomacy, and the better course of statesmanship to have these treaties recalled? It can be done. Have these treaties recalled, then have further negotiations take place in the light of this debate, in the light of the defects and ambiguities of both treaties, study these debates here in the Senate, feel the pulse of the Panamanians a little bit closer, and come up with a treaty that might well be acceptable to a two-thirds majority here in the Senate, and that might be acceptable to the Panamanians.

Why add fuel to the flames of the unrest in Panama that exists now? All groups, with one possible exception, one political party there—or I do not think political parties are allowed to exist any more in Panama, but there are various factions in the country. I think all of them have come out against the treaty, according to the news accounts.

Mr. President, an article appeared in the Washington Star yesterday about these negotiations that are taking place between the Americans and Panamanians to try to placate them and at the same time not antagonize Senators who thought they had an agreement as to the first treaty. I ask unanimous consent that the article, entitled "Panama's Efforts Again Embarrass Treaty Backers," written by Walter Taylor, and published in the Washington Star of Tuesday, April 11, 1978, be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

PANAMA'S EFFORTS AGAIN EMBARRASS TREATY BACKERS

(By Walter Taylor)

American supporters of new Panama Canal treaties again have been embarrassed by Panamanian machinations over Senate-approved changes in the agreements.

This time it involves the White House and the head of its congressional liaison staff, Frank Moore, one of the individuals President Carter credited for securing Senate passage last month of the first of the two canal pacts. Reports possibly traceable to Panamanian officials also have questioned the actions of Carter himself in accepting one controversial alteration in the treaties.

Administration officials already were concerned that Panama's vociferous protests about the co-called "DeConcini reservation"—a Senate-passed provision designed to permit unilateral U.S. action to maintain operation of the canal—might unravel the tenuous majority that supports the treaties in the Senate.

Senate Republican Leader Howard H. Baker of Tennessee, a key backer of the agreements, already has issued one stern warning to Panama about its behind-the-scene maneuvering to have the DeConcini measure softened, or at least portrayed in a light less grating on Panamanian sensibilities.

Panama has stopped short of rejecting the treaties, but it was revealed last week that its head of government, Brig. Gen. Omar Torrijos, had written the leaders of more than 100 member countries of the United Nations to protest the DeConcini change, and that Torrijos' ambassador to Washington, Gabriel Lewis, had telephoned a number of senators to strongly criticize Senate approval of the reservation.

With administration officials still trying to prevent a backlash in the Senate from those events, the White House yesterday found itself having to deny the authenticity of a purported transcript of a White House meeting between Lewis and Moore that was leaked to reporters by opponents of the treaties.

The original source of the transcript could only have been an official of Panama.

One flabbergasted administration official, asked about the accuracy of the transcript early yesterday afternoon, scoffed at the document. "There was nobody there but (White House officials) and the Panamanians. We didn't even make a transcript. And certainly it wouldn't be to the Panamanians advantage to let anything like that loose."

Later, however, it became evident that the "transcript," said by sources originally to have been written in Spanish, had been prepared from notes of one of the Panamanian participants in the meeting. The introduction to the documents is written in the first person, as if by either Lewis or the other Panamanian official in attendance, R. A. Bilonick Paredes.

"As soon as we entered the office of Mr. Frank Moore, he gave us the news . . ." the memo begins. The remainder of the three-page document is presented as a verbatim transcript of candid give-and-take between Lewis and Moore.

After a number of queries by reporters, the White House late yesterday issued a statement, attributed to Moore, saying the supposed transcript was "riddled with inaccuracies."

On top of the disputed transcript, reports circulated among some key treaty supporters that Carter had been warned by Panamanian officials that the DeConcini reservation was unacceptable even before the Senate vote on the provision, yet publicly embraced it in an 11th-hour scramble to line up the necessary 67 votes for treaty approval.

Sen. Dennis DeConcini, D-Ariz., the sponsor of the controversial provision, has said Carter indicated to him that the change would cause problems with the Panamanians, but never suggested that the language of his proposal might lead to outright rejection of the treaties.

The accuracy of the reports that Carter was flatly told that Panama might reject the agreements if the DeConcini reservation was adopted by the Senate could not be confirmed. But the scenario evidently was found plausible by two of the strongest treaty supporters in the Senate.

A senior aide to one of the senators, relaying the sentiments of his boss, said flatly that Carter twice had been warned by Panama, but had not passed the information along to treaty supporters. "All of this might have been avoided had anybody known the consequences," said the Senate staffer.

A key Democratic supporter, asked whether Carter should have anticipated the harsh reaction of Panama to the measure, confirmed that the President's pre-vote knowledge "was a matter of question." It might be, he said, that the President "bungled."

The original source of the reports could not be pinpointed. The possibilities, however, seemed to include only the President and members of his administration or Panamanian officials.

The latest turn of events further clouded the outlook for Senate action on the treaties when less than a week ago adoption seemed assured. A final vote on the agreements, which would cede the canal to Panama in the year 2000, is scheduled next week.

Opponents, whose every effort to kill the treaties has been stymied, seemed to be basking in the predicament the administration and its forces in the Senate suddenly found themselves.

The Senate leadership endorsed the language causing the current controversy, Sen. James Allen, D–Ala., a leading opposition spokesman, reminded his colleagues yesterday.

Opponents' newest ammunition was the so-called transcript of the Moore-Lewis meeting, which depicts Lewis as demanding a new resolution to "neutralize the effect" of the DeConcini reservation.

The document includes this exchange:

Lewis: "Let's get to the point. The main objective of my visit is to know whether you have a rough draft of a resolution that might neutralize the effect of the DeConcini amendment and if so, when you could give it to me for my study, as the clock is now against us. It is necessary that I send this speech to Panama as the DeConcini amendment affects us directly and the speech should have the objective of resolving the problem that the DeConcini amendment put us into."

Moore: "I do not see any difficulty. (Deputy Secretary of State) Warren Christopher will have the text ready tomorrow for certain."

Later in the exchange, the document quotes Lewis as saying, "I think you have public officials with interventionish mentalities."

"Where?" Moore is said to have asked.

"Not here at the White House but in all your departments," Lewis is quoted as responding. "Many of them are not high-level officials but of the middle level."

At still another point in the conversation, Lewis suggests that senators "are not aware of the Panamanian reality" regarding hostility to the treaty changes. "You're right," Moore is quoted as responding, "But we cannot make the senators of the opposition face this."

In the statement released by the White House last night, Moore acknowledged that he had discussed the general political situation that the DeConcini reservation had created both in Panama and among supporters in the Senate.

Moore added, however, that he told the Panamanian officials "that in no way would an amendment undercutting the legality of the DeConcini amendment be adopted by the U.S. Senate."

Referring to a meeting the Panamanians were planning for the next day, last Thursday, with Assistant Democratic Leader Alan Cranston of California, Moore said he told the Panamanians he thought it "would be helpful in terms of expressing their concerns." But he said he "pointed out to them, however, that in no way should they become involved in proposing language for an amendment or reservation."

No such admonitions appear in the "transcript" that was circulated yesterday.

Despite the continued flap over the DeConcini amendment, administration officials and leading Senate supporters continued to be optimistic that the political tumult both in Panama and in the Senate can be overcome.

Sen. Frank Church, D-Idaho, one of the floor managers of the treaties, said in a speech on the Senate floor yesterday that Panamanian objections to the DeConcini measure stem from a "simple misunderstanding" over the use of the word "intervention" to describe U.S. rights to protect the neutrality of the canal.

"Intervention to us may mean taking action for the limited and specific purpose of protecting our legitimate security interests in the canal," said Church. "But in Panama and throughout the rest of this hemisphere, the word 'intervention' conjures up all that was humiliating and distasteful in their relations with the United States 50 years ago."

Church proposed a clarifying statement, possibly one added to the treaties themselves, spelling out that the United States has no desire to intervene in the internal domestic affairs of Panama. "Let us make it unmistakably clear that we will not back away from or dilute in any fashion the essential and legitimate rights to protect the neutrality of the canal which we have so carefully defined in the treaty and in the action taken by the Senate."

But, he added, "let us find an appropriate way to reassure the people of Panama that our intention was not to nullify the specific pledge of non-intervention in the internal affairs of Panama (and) reaffirm the specific commitment to respect Panama's territorial integrity and political independence which we similarly voted to incorporate in the treaty."

In an interview, Church indicated that treaty supporters are likely to propose a new pact change that would fill his prescription for ending the current dispute. There also is the possibility that Carter may make a clarifying statement regarding U.S. and Panamanian rights under the proposed new treaties.

The precise language of another treaty provision is yet to be hammered out, Church added.

Meanwhile, 60 opponents of the treaties in the House said yesterday they would ask the Supreme Court to overturn a lower court decision and give the House a voice in the canal decision. The lawmakers, led by Rep. Mickey Edwards, R-Okla., also asked Chief Justice Warren T. Burger to order Carter to shift no property until after the high court has acted on a challenge to any such transfer.

Mr. ALLEN. Mr. President, on tomorrow—and I may have to do it right at the very last, after the time for debate has expired—I am going to offer an amendment calling for another plebiscite in Panama before these treaties go into effect.

We say, why have a stipulation like that in there? Let the Panamanians handle it the way they want to.

Well, it is important, Mr. President, that we have a compact with the people. Let us not have another 1903 treaty which the Panamanians will rail against for the next 22 years, just as they have said they have railed against the 1903 treaty since 1903.

Let it not be said that we just dealt with a dictator down there and after we put in amendments here in the Senate we did not ask the people of Panama if they approved of that action, we just asked the dictator.

Let us profit by the mistakes and lessons of the past. Let us not have another 1903 treaty that the people of Panama say they were not consulted about.

They had a plebiscite back in October of last year. Yes, everybody in Panama was praising the treaties then. But a different situation prevails now. The people of Panama are not praising these treaties. They are severely condemning them. In light of that, in light of our future dealings with the Panamanians, let us get approval of what we have done from the people of Panama. Otherwise, we will live to regret it.

That is the best way to put a stop to demonstrations, possible sabotage, marches, burning. Let us submit this to the people of Panama, or require that before it goes into effect—and I have an amendment that will accomplish that—the issue again be submitted to the people of Panama in view of the change in the treaty.

Those are two alternatives I suggest as a means of extricating ourselves from this dilemma: First, have the President recall these treaties from consideration by the Senate, which I believe would be an act of statemanship. Otherwise, we will have a divided Senate; we are going to have a divided Panama; we are going to have a divided United States of America.

Recall these treaties from the Senate. Send them back to the negotiating table. Profit by the lessons of history. Profit by the debate which has taken place here. Profit by the knowledge of the feelings of the Panamanians. Eliminate the defects and the ambiguities that are now in the treaties, and which have been pointed out, well-recognized by all. Then our efforts thus far will not have been in vain. That would be the preferable course, to my way of thinking.

Failing in that, Mr. President, I anticipate the treaty can probably be rammed through the Senate. It is going to leave some bad feelings. If we undercut the DeConcini amendment, that is going to leave bad feelings throughout the Senate. If we ram more DeConcini reservations through to keep his vote and the vote of several others, that is going to anger some of those who have been voting for the treaties and against all amendments. I see nothing but chaos and confusion if we continue to press for a vote on this treaty on April 18.

I do believe the President can perform an act of statemanship by withdrawing the treaties for further negotiation.

Failing in that, let us not repeat the mistakes of 1903. Then we were dealing with a revolutionary government of short tenure in office. Now we are dealing with a revolutionary government of long tenure in office, but still a revolutionary government not elected by the people. I would say that the dictator in Panama is no more representative of the people of Panama than was the revolutionary Government of Panama with which we dealt in 1903.

There is an analogy. In 1903 and in 1978 our dealings have been with nonelected, revolutionary governments, so we should beware.

The treaty in 1903 was not approved by the people of Panama, though it was quite obvious that it met with their approval. It was a quid pro quo situation as between the revolutionary leaders and the United States that we guaranteed Panama's Independence and

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they guaranteed to let us build a canal. That is the long and short of it.

Whereas it met with the apparent approval of the people of Panama in 1903, it will not meet with the approval of the people of Panama in 1978. Why, Mr. President, should we submit to the Panamanian Goverment a treaty that is admittedly unpopular in Panama and admittedly unpopular in the United States?

One distinguished Senator reported this morning that he has asked for calls to his own State office with expressions of approval or disapproval of this treaty we are considering right now. He said over a 24-hour period the call-ins to his office—none of them conspired, as far as he knew—were 96 against the treaty and 2 in favor of the treaty.

I will not say that is the ratio throughout the country, but it is certainly heavy against the treaty in my State of Alabama.

Why should the U.S. Senate, deciding what is best for the people of Panama and the people of the United States, submit an unpopular treaty to Panama that has been changed to such an extent that it is causing demonstrations in Panama, and has caused the dictator there to extend the Easter recess for schools in Panama beyond the date of final action by the Senate? He knows the students are against this treaty so he has not allowed them to return to school where they might demonstrate. They have a long Easter recess for the schools in Panama.

Should we again make the mistake of 1903? We are getting very dangerously close to doing just that.

We say now, "Those fellows back in 1903, why did they not wait a little while and get this government functioning down there, get it set up to where they could have a plebiscite?"

Well, we did not do it, because it was quite obvious that this is what Panama wanted and it certainly was what the United States wanted. But we do not have that situation today.

The distinguished Senator from Alaska (Mr. Gravel) earlier this week, as a strong supporter of the treaty—right here on the Senate floor where I am pointing—said in his judgment the people in Panama would overwhelmingly defeat these treaties in a plebiscite.

If that is the case, why are we forcing this treaty on them? Is this creating a good neighborly feeling? I do not see that it is.

This is doing just the opposite, Mr. President, of what these treaties are supposed to do. They are supposed to show how bighearted the United States is. We are going to give away a $10 billion property because we do not like the 1903 treaty; we took advantage of Panama; we are going to rectify that mistake, even though the Panama Canal has been a boon and a blessing to the people of Panama, allowing them to have the highest standard of living in all of Central America. Even though 80 percent of the employees of the canal are Panamanians, we did them wrong back in 1903 and we have to rectify that; we have to make amends; we have to give the canal to Panama.

That is supposed to be the reason for giving the canal away, to keep the Panamanians happy, to keep them from sabotaging the canal, to keep them from demonstrating and rioting. But it is not working out that way. Strange to say, it is my view, based on my observation of the facts, I believe there would be great rejoicing in

Panama if these treaties, as presently written, were defeated by the U.S. Senate. That is what the tone of the people seems to be at this time.

Torrijos, in great dismay and confusion, does not know whether to submit the treaty, if approved by the Senate, to the people in Panama in a plebiscite and have it defeated and, possibly, have himself kicked out of office; or to approve the treaties as an act of the head of state and surely get toppled from his dictatorship. So he is going to be pressing the Senate and he or his representatives, his government, have had great control over the action in the Senate. They have turned down all amendments except the leadership amendment. When I speak of the DeConcini amendment, that is a reservation to the resolution of ratification, not the treaty. They are careful to say that nothing but the leadership amendment, and had protection for the dictator as one of its paragraphs—they split the memorandum and made two amendments out of it. Those are the only two amendments that have been agreed to here in the Senate.

Every single addition, every single word added to this treaty had the approval of the administration and the leadership. Their final draft, their final draft, their final work, is before the Senate now, and I daresay no amendments will be allowed. I am hoping that they will—I know the leadership would not agree to it. I hope the Senate will agree to require a plebiscite down there so that we can have a compact with the people of Panama and not just a dictator and have shades of 1903 abound here in the Senate.

The treaty is the work, the shaping of the treaty is the work of the administration and the leadership, based on negotiations by our negotiators. So blame cannot be laid at the door of those of us who sought to strengthen these treaties if they are to be agreed to. I do not approve of the treaties, but if they are to be approved by the Senate, I want them to be as strong as possible in the interest of our defense rights on the canal and in the interest of the American taxpayer. Those are my two goals with respect to the amendments. If those amendments improving the treaties have the result of killing the treaties, I could not help that. But if they were to pass, I want the treaties to be just as strong in the interests of the people of the United States, in the interests of the taxpayers of our Nation, as we can possibly make them.

We have this situation of being caught on the horns of a dilemma. How are they going to keep the Panamanians happy and keep faith with those Senators who voted for the DeConcini amendment in good faith, and then who voted for the treaty on the condition of the DeConcini amendment having been adopted? Are we going to keep faith with them, those who wanted strong unilateral defense rights, a strong unilateral right to keep the canal open—and the leadership agreement and the administration's agreement to that amendment carried with it the votes of three Senators who make that statement openly. They got the treaty passed by agreeing to the DeConcini amendment. Now they are talking about changing this treaty to change the impression gained by the Panamanians from the DeConcini amendment; in other words, water it down or dilute it.

Let us see if that can be done, even. Oh, I know it can be done from the standpoint of strength in numbers. I know that the leadership can put in any amendment they want to and say, "This is a good amendment; vote for it," and it would pass. But let us see what this handiwork would be after they have rammed such an amendment through the Senate.

(Mr. Sasser assumed the chair.)

Mr. ALLEN. I am hopeful, Mr. President, that if they plan—speaking of the leadership now—if the leadership plans to put some sort of language in the Panama Canal Treaty that would undercut or dilute or change—I shall use the word "change"—the meaning of the DeConcini amendment, I hope they will offer it in time for there to be some debate on the issue. I know they can wait until the end of the day tomorrow if they go the amendment route rather than the reservation route, and offer it after all time for debate has ended. At 6 o'clock tomorrow afternoon, we cannot debate on amendments any further. But anybody can offer an amendment that wants to and get a vote on it. So if the leadership offers an amendment, and I rather imagine they will follow the policy they have had heretofore of not allowing amendments to the treaty, they will probably offer it as a reservation.

But, reservation or amendment, I hope they will offer it at such time as there will be opportunity to debate that amendment, because I want the cards to be laid on the table as to just what they are going to do.

Are they going to try to placate the Panamanians or are they going to keep faith with those who voted for the DeConcini amendment and also voted for the treaty on the condition that the DeConcini amendment had been agreed to? It is going to be interesting to see the movement of the leadership to seek to resolve this impasse.

I suggested two routes out of the dilemma: One, withdrawal of the treaties by the President of the United States, which would be an act of statesmanship; second, agree to an amendment requiring a plebiscite by the people to the changed circumstances, the changed wording, the changed meaning of the treaty.

Let us see what the legal effect would be of an amendment or a reservation to the Panama Canal Treaty by the leadership. Suppose they put in an amendment or reservation saying that it has been our policy through the years not to intervene in another country's foreign affairs, in another nation's internal affairs, and we give assurance that is going to be our policy in the future and anything we may have said in the other treaty, if it conflicts with this, we really did not mean that.

If they have some sort of amendment or reservation of that sort and attach it to this treaty, let us see what would be the effect of that.

This treaty will be gone on January 1 in the year 2000. It will be dead. It will be dead as a doornail and we would go under the other treaty.

So, any language that is put in this treaty will expire at the very time of the Neutrality Treaty with the DeConcini amendment, which is directed directly at article V of the Neutrality Treaty, which makes reference to the start of the new treaty, which is at

the expiration of the other treaty. So, anything that is said in this treaty will expire and would go under the Neutrality Treaty, because by then the canal will be wholly Panama's.

They will not have any Panama Canal Commission any more, or Panama Canal Company, and anything in the treaty will drop, including any amendment or understanding placed in this treaty seeking to dilute the DeConcini amendment.

It will have performed its function, the Panama Canal Treaty. Its provisions would be what might be called functus officio. It has performed its function and there is no further use for it. It is consigned to history.

But the new treaty, the Neutrality Treaty, would then come into effect with the DeConcini amendment in full force and effect stating that notwithstanding any other provision of the treaty, any other provision of article V, this shall be the rule, that the United States will have the right to keep the canal open, even it it takes military action.

As I say, the Deconcini amendment did not have these three saving clauses in it that the leadership amendment had. That was something the President and the dictator agreed on. While the dictator agreed to something, he is sure of getting something back. He got back a commitment that the United States would not interfere in the internal affairs of Panama, that the United States would not impinge upon their territory, their territorial jurisdiction, and that they would do nothing to interfere with the independence of Panama.

That is the reason the dictator was so agreeable to this memorandum that he and the President entered into, because there was more in it for him than there was for the United States.

But where the slip-up came, Mr. President, was that, apparently, that fact escaped the notice of, I imagine, the dozens of people that analyzed the DeConcini amendment, that poured over its every word, that weighed every word. They just did not relate it to the leadership amendment.

Some thought, this is just the leadership amendment all over again. Besides, it is just a reservation, anyhow. So what?

Well, it is worded, though, it is going to be part of the notes of ratification that both sides have got to agree on.

So there has been a slip-up here, Mr. President, a slip-up by the leadership in being so anxious to pick up these last three votes for the treaty that they agreed to an amendment that they knew displeased the Panamanians.

The very first time, Mr. President, in this whole 2 months of debate, the very first time that an amendment was agreed to that met the displeasure of the Panamanian dictator, just one time, one slip-up, and we are in this impasse today.

The question is going to be: Can we placate the Panamanians without doing damage to the Senators who placed their trust in the supporters of this treaty when they agreed to vote for the treaty if the DeConcini amendment were approved?

That is going to be the question. Are we going to placate the Panamanians at the expense of the feelings of the U.S. Senators?

That is the reason I say these treaties ought to be recalled by the President. They are not popular in Panama. They are not popular in the United States.

Those of us who oppose the treaties, or those of us who are trying to strengthen them, do not believe they are in the best interest of the people of the United States. Panama feels that the DeConcini amendment is an insult to their national dignity and a threat to their sovereignty. I personally do not feel that it is. They think so. A mistake has been made. Let us admit it.

Mr. President, if we are to have further negotiations, and we can have them if the President recalls now, or if the treaties are defeated, either way, there can be negotiations, why defeat the treaties and go back to negotiations when we can avoid that vote by having the treaties recalled by the President and have further negotiations?

I have no doubt that an acceptable treaty can be arrived at, one that would meet a consensus here.

I do not state I would support it. But I believe an acceptable treaty that would meet the approval of more than a two-thirds consensus here in the Senate could be agreed upon with further negotiations, but I feel that those negotiations would be hampered if the Senate first defeats the treaties.

If we gain the treaties, Mr. President, if we win on the treaties, what are we going to have? Panamanians unhappy. Dictator Torrijos, who has worked closely with the Government of the United States, at peril as to his position—and I would not regret to see dictator Torrijos overthrown. I think it would be good for Panama, good for the possibility of a democratic administration in Panama. But I would hate to see him deposed as a result of his able negotiations for his country in concluding the negotiations on these treaties. I would hate to see him turned out because of the unpopularity of the treaties. I would not object. I would be glad to see the democratic forces in Panama take over the government there. But I would hate to see the submission of these treaties, unpopular as they are in Panama, cause his overthrow.

That can be avoided, Mr. President, by either of the two routes I am suggesting:

Either recall by the President or submission to a plebiscite in Panama.

Mr. President, from the very start it has been the policy of the leadership to stonewall against amendments; whereas, amendments were sought, legitimate amendments, that may possibly cause a new plebiscite in Panama. But it has not been our attitude—those who oppose the treaties—to freeze out the Panamanian people from having an opportunity to speak on this tremendous issue of such vital importance to the people of Panama—of greater importance, I dare say, to the people of Panama than to the people of the United States.

Should we send the treaty back to dictator Torrijos, with the danger that he, as head of state, might accept these treaties, causing great concern and consternation in Panama? Is that a good neighbor policy? Is that creating friends in Panama and in Central America and South America?

Panama already is trying to undercut this treaty. Dictator Torrijos has written the heads of state of more than a 100 nations. He has had his Ambassador to the UN, Mr. Illueca, submit to the UN the DeConcini language and Senator DeConcini's statement on the floor; Senator Edward Kennedy's statement on the floor; a communique from the minister of Foreign Affairs of Panama, issued the 27 of March, 1978 and the Resolution of Ratification of the treaty. He has submitted all these things to the UN General Assembly as a predicate to making an effort to have this DeConcini reservation nullified by the UN.

That is a pretty highhanded performance, to seek to nullify a treaty that has not even been sent down for approval. That is what we are running into. They do not like this amendment. Let us face it. They do not like this treaty with this amendment in it. Let us face that.

Mr. President, I ask unanimous consent to have printed in the Record the letter from Panama's Ambassador to the UN, together with the enclosures he added to the letter.

There being no objection, the material was ordered to be printed in the Record, as follows:

IMPLEMENTATION OF THE DECLARATION OF STRENGTHENING OF INTERNATIONAL SECURITY

(Letter dated 28 March 1978 from the Permanent Representative of Panama to the United Nations addressed to the Secretary-General.)

I have the honour to send you herewith the note verbale from this mission dated 28 March 1978, together with the following documents:

(a) Resolution of ratification of the Treaty concerning the permanent neutrality of the Panama Canal, adopted by the United States Senate on — March 1978 (see appendix I);

(b) Statement by Senator Dennis DeConcini (see appendix II);

(c) Statement by Senator Edward Kennedy (see appendix III);

(d) Communique from the Ministry of Foreign Affairs of Panama, issued on 27 March 1978 (see appendix IV).

In compliance with instructions from my Government, I request you to have the note verbale and the above-mentioned documents distributed as documents of the General Assembly under item 50 of the preliminary list.

JORGE E. ILLUECA,
Ambassador, Permanent Representative.

ANNEX

(Note verbale dated 28 March 1978 from the Permanent Representative of Panama to the United Nations addressed to the Secretary General.)

The Permanent Representative of the Republic of Panama to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honour to inform him that His Excellency Brigadier General Omar Torrijos Herrera, Head of Government of the Republic of Panama, has addressed a letter to the Heads of State and Heads of Government of the States members of the international community.

General Torrijos's letter and the documents enclosed make reference to the vote which took place on 16 March 1978 at the United States Senate on the Resolution of Ratification of the Treaty concerning the Permanent Neutrality of the Panama Canal. In this resolution, approval to the ratification was granted subject to a number of amendments, conditions, reservations and understandings, inserting among them a precondition to American acceptance of the Neutrality Treaty, knows as the "DeConcini Amendment" (see clause (b)(1) in the attached clipping of the United States Congressional Record, vol. 124, No. 38, pp. S3857—3858 (appendix I)).

According to its proponent, the "DeConcini Amendment" is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government", pretending that said amendment must be construed to permit the United States to

intervene in Panama in the event of labour unrest, strikes, a slow-down, or under any other pretext labeled as interference with Canal operations (see text of Senator Dennis DeConcini's statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States CONGRESSIONAL RECORD, vol. 124, No. 38, pp. S3817–3818 (appendix II)).

Not only does the amendment make no reference to the regime of neutrality, but, as stated by Senator Edward Kennedy, who opposed the DeConcini Amendment, "Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory." Now Panama is asked, in Kennedy's words, "to accept an amendment which has the ring of military interventionism—not just during this century, but for all time" (see text of Senator Edward Kennedy's statement before the United States Senate on 16 March 1978 inserted in the attached clipping of the United States CONGRESSIONAL RECORD, vol. 124, No. 38, p. S3824 (appendix III) and the attached text of the communique of the Panamanian Ministry of Foreign Relations, dated 27 March 1978 (appendix IV)).

Since the Treaty provides for accession by all States to the Protocol whereby the signatories would adhere to the objectives of the Neutrality Treaty and agree to respect the regime of neutrality, the Panamanian Head of Government has considered it his duty to address this letter to the Heads of State or Heads of Government of the States members of the international community that in so many instances have offered their solidarity and support to the Panamanian nation is its long struggle to reach a peaceful solution to the Panama Canal question based on the recognition of her sovereignty over the totality of its national territory.

APPENDIX I

(Resolution of Ratification of the Treaty concerning the Permanent Neutrality of the Panama Canal adopted by the Senate of the United States of America on 16 March 1978.)

Resolved, (two-thirds of the Senators present concurring therein), that the Senate advise and consent to the ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, together with the Annexes and Protocol relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-fifth Congress, first session), subject to the following—

(a) Amendments:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorported as an intergal part of this Treaty, as follows:

" 'Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

" 'This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.' "

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: 'The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in the case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.' "

(b) Conditions:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America shall have the right to take such steps as it deems necessary, in

accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in this Treaty shall preclude Panama and the United States from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or maintenance of defense sites after that date in the Republic of Panama that Panama and the United States may deem necessary or appropriate."

(c) Reservations:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States by the American Battle Monuments Commission, including the display of the flag of the United States, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

(2) The flag of the United States may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, as such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

(3) The President—

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States; and

(B) shall have announced, immediately after the date of exchange of the instruments of ratification, plans, to be carried out at the expense of the United States Government, for—

(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the secretary of the Army not later than three months after the date of exchange of the instruments or ratification of the Treaty shall not be removed; and

(ii) transporting to the United States for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i); and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kind objecting under clause (B)(i) of all available options and their implications.

(4) To carry out the proposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the proposes of such articles, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) Understandings:

(1) Paragraph 1(c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

(i) the costs of operating and maintaining the Panama Canal;

(ii) the competitive position of the use of the Canal in relation to other means of transportation;

(iii) the interests of both Parties in maintaining their domestic fleets;

(iv) the impact of such an adjustment on the various geographical areas of each of the two Parties; and

(v) the interest of both Parties in maximizing their international commerce.

The United States and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this treaty" in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxiliary vessel of the United States or Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in the annexes or the Protocol relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

(5) The President shall include all amendments, reservations, understandings, declarations, and other statements incorported by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

Appendix II

(Statement made by Senator Dennis DeConcini in the Senate of the United States of America on 16 March 1978.)

Mr. President, I thank the Chair for his indulgence in calling the Senate to order.

For the last three (3) months, I have argued that the treaties as drafted did not appear to contain sufficient safeguards for the United States. But I have also stated publicly that I believe a new treaty with Panama was essential; that history had bypassed the era of simple colonialism when large powers bullied the small. Until recently, I believed that it would be possible for the Senate to make some constructive amendments to the treaty that would satisfy the needs of Panama—but not at the sole expense of the American people. However, as every member of this Chamber knows, the administration was unwilling to accept the slightest changes in the text of the agreement.

Because of this recalcitrance, I suspect that a number of potential supporters of the treaty were lost. Together with Senator Ford, I offered a number of amendments to the treaty. When it became clear that no amendments except the so-called leadership amendments would be accepted, I began to search for alternatives that would accomplish the desired objectives.

After extensive consultations with experts from the executive, Congress, and the academic community, I became convinced that it would be possible to achieve a clearer understanding of American rights and responsibilities under the treaty through the device of an amendment to the resolution of ratification in the nature of a condition precedent to American acceptence of the treaty itself. Such a condition will be binding on the Republic of Panama.

Therefore, I have recast my amendments in this form. I have assured the President that if my amendment No. 83 to the resolution of ratification is accepted by the Senate that I will vote in favor of the Neutrality Treaty. In turn, the President assured me yesterday in a meeting we had at the White House that he would accept and support my amendment. To the best of my knowledge, that is how things stand as of this moment.

I would like to stress that I am offering this amendment in the name of the people of Arizona. Like Senator Ford, I too have crossed my State and spoken personally to hundreds, perhaps thousands of concerned citizens. As a whole, my constituents do not approve of the panama Canal treaties. However, they are willing to accept their necessity if American rights to insure open and free access to the canal are clearly spelled out. That is all my amendment intends—but that much at least is essential.

AMENDMENT NO. 83, AS FURTHER MODIFIED

Mr. DECONCINI. Mr. President, I would like to call up my amendment No. 83, as modified. I would ask, Mr. President, to further modify such amendment. A few of these changes are purely technical and drafting changes.

The PRESIDING OFFICER. The Senator will suspend until the clerk states the amendment.

Mr. DECONCINI. Mr. President, I have the clarified drafted change amendment that I would ask the clerk to state.

The PRESIDING OFFICER. The clerk will state the amendment.

The second legislative clerk read as follows:

The Senator from Arizona (Mr. DeConcini) and Mr. Ford propose amendment numbered 83, as further modified, as follows:

Before the period at the end of the resolution of ratification, insert the following: "subject to the condition, to be included in the instrument of ratification of the Treaty to be exchanged with the Republic of Panama that, notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be".

Mr. DECONCINI. Mr. President, the changes are technical and draft changes. The one substantive change is to include the phrase "according to its constitutional processes," after the words "to take such steps as it deems necessary" and before the words "including the use of military forces."

I send to the desk a clean copy and I thank the Chair and the clerk for reporting the same.

I also would like to ask that Senator Cannon, Senator Chiles, Senator Nunn, Senator Long, Senator Talmadge, Senator Paul Hatfield and Senator Hayakawa be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

The purpose of this amendment is quite simple, Mr. President. It is designed to establish a precondition to American acceptance of the Neutrality Treaty. That precondition states that regardless of the reason and regardless of what any other provision of the Neutrality Treaty might say or what interpretation it might be subject to, if the Panama Canal is closed, the United States has the right to enter Panama, using whatever means are necessary, to reopen the canal. There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as to the means necessary to insure that the canal remains open and accessible.

A good deal of the discussion involving the Panama Canal treaties has centered upon threats to the canal which might come from third parties—more specifically—the Communist countries. While this concern is certainly justified, I have been equally bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly government; political riots or upheavals—each of these alone or in combination might cause a closure of the canal. In February 1975, for example, there was a "sickout" which disrupted the efficient operation of the canal. Yet as I read the treaties, there does not appear to be any specific guarantee that a disruption of the canal arising out of internal Panamanian activities can be swiftly and adequately dealt with.

Although General Torrijos has brought a welcome degree of stability to Panama in recent years, it can be argued that the history of Panama is one of substantial political instability and turmoil. Under normal circumstances, the United States would not or should not contemplate intervening in the internal affairs of another nation. However, there are extremely unique and special circumstances surrounding the relationship between the Unites States and Panama. Since the beginning of this century, the Unites States has exercised de facto sovereignty over the Panama Canal Zone, and has been responsible for the defense and operation of the canal. We have maintained this control over the canal for one very simple reason: The Panama Canal is vital to the security, economic and military of the United States. This fact must be recognized in any treaty which comtemplates a fundamental change in the American-Panamanian relationship.

The amendment contains a very specific reference to the use of military force in Panama. I believe these words are absolutely crucial because they establish the American right—which I am not convinced is adequately provided for either in the

body of the treaty or the leadership amendment—to take military action if the case so warrants. It further makes it clear that the United States can take military action on Panamanian soil without the consent of the Panamanian Government.

The question of consent is also crucial. Since the main thrust of this amendment is directed toward situations in which the canal is closed because of internal difficulties in Panama—difficulties like a general strike, a political uprising, or other similar events, the consent of the Panamanians to take action would not make sense. If America is to have any right at all under this treaty, it must have the right to act independently to protect the canal and to keep it open.

I believe that the question of an attack on the canal by a third party aggressor is adequately dealt with in the treaty. There seems to be little question that under such circumstances the United States does have the right to act with the Panamanians to protect and defend the canal. Thus, my concerns have centered around two problems. The first is the one expressed in the amendment now on the floor. The other is the question of a continued military presence.

We have just adopted an amendment by Senator Nunn that I had the privilege of cosponsoring. It provides that the United States and Panama may conclude an agreement providing for a continued American military presence in Panama after the year 2000. This change is important because it may be vital to both countries to provide for such presence while at the same time not disrupting the regime of neutrality that is established.

It was my desire, and the desire of Senator Nunn, to allow for a continued presence without a new treaty that would, by its very nature, call into question the regime of neutrality. It is much more appealing to have that right embodied in the very document that creates the regime of neutrality. Therefore I complement the Senator from Georgia in his efforts to gain acceptance of the military presence reservation.

I hope the Senate will support the amendment I offer to the resolution of ratification providing for America's right to keep the canal open. I am also happy to announce that the President of the United States has endorsed this change, and has indicated that he believes it to be a constructive step in fulfilling the goals of the Neutrality Treaty.

I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the canal. It recognizes the very special relationship that the Panama Canal has to American security.

I certainly hope, Mr. President, that if this right is attached to the treaty it will never need to be exercised. Yet, it is important that the American people know that should the need arise, the United States has sufficient legal sanctions to act.

Mr. President, I commend this change to my colleagues and urge their support.

Mr. President, I ask for the yeas and nays on this amendment.

Appendix III

(Statement made by Senator Edward Kennedy in the Senate of the United States of America on 16 March 1978.)

MILITARY INTERVENTION IN PANAMA

Mr. President, we have before us an amendment to the resolution of ratification of the Panama Canal Neutrality Treaty which would permit the "use of military force in Panama" by either party, "if the canal is closed or its operations interfered with".

I am opposed to this amendment. It stirs up what is already an emotional issue in Panama, without adding to rights of the United States already recognized by the treaty.

From the outset, the people of Panama—and all of Latin America—have rightly opposed U.S. military intervention in their internal affairs. That is why the negotiators, the administration, and the Senate leadership have all carefully defined and limited the expression of our military rights to the defense of the neutrality of the Panama Canal. Even the reservation on defense arrangements, adopted by the Senate yesterday, provided that Panama and the United States could jointly—I emphasize jointly—agree to American military deployments, after the year 1999, which facilitate performance of "responsibilities to maintain the regime of neutrality" over the Panama Canal.

Now we have an amendment which starkly insists on our right to use miltary force in Panama—always the most sensitive issue from its standpoint as a small, proud, sovereign state.

Now we have an amendment which makes no reference to the regime of neutrality which it is our responsibility to defend.

Now we have an amendment which could—but must not—be construed, instead, to permit the United States to intervene military on almost any pretext. A strike, a slowdown, even inefficient operation of the canal could—but must not—be used as a pretext to use force, in order to "restore the operations of the canal".

Mr. President, Panama has waited 75 years since its independence to end American occupation of its heartland. It must wait another 22 years before it achieves full control over its national territory. Now we are asking Panama to accept an amendment which has the ring of military interventionism—not just during this century, but for all time.

I recognize that acceptance of this amendment may facilitate ratification of the Panama Canal Treaties. If the amendment is accepted, I believe that our Nation is honorbound to strictly limit its interpretation and not, as General Torrijos warned in Washington last October, to allow the treaties to "become an instrument of permanent intervention" in Panama.

Fortunately, our right of military action continues to be defined by article IV of the Neutrality Treaty, as amended by the Senate.

This is our right "to act against any agression or threat directed against the canal or against the peaceful transit of vessels through the canal".

This is our right to assure "that the canal will remain open, secure and accessible".

This is not a right to take action "against the territorial integrity or political independence of Panama", prohibited under article IV of the treaty.

This must not be a right to intervene in the Panama Canal on any pretext labeled as interference with canal operations.

With these understandings, Mr. President, we can hope to avoid continuing confrontation between Panama and the United States. Without them, we can look forward to a continuation of the unfairness and the resentment which has caracterized our treaty relationship since 1903.

Appendix IV

(Communiqué 1 from the Ministry of Foreign Affairs of Panama, issued on 27 March 1978.)

In our communiqué 1 issued on 16 March, we expressed the decision of the Government not to issue any statment regarding what the Senate had agreed to in relation to the Treaty concerning the permanent neutrality and operation of the Panama Canal. We gave as the reason for such a decision the fact that the Panamanian people had approved two treaties, that is to say the Neutrality Treaty and the Treaty on the Panama Canal. Until the Senate decides the fate of the latter, it will not have responeded to the decolonization programme approved by the Panamanain people.

We also stated in the above-mentioned communiqué 1 that the Government as a whole would study the conditions under which the Senate had given its advice and consent to the Neutrality Treaty and those that it might attach to a decision on the Treaty on the Panama Canal. We have begun that process. But inasmuch as the liberation process is a national undertaking and since, before taking any decision, each citizen must have full knowledge of all the understandings of the Senate regarding the treaties, the Ministry of Foreign Affairs has deemed it appropriate to publish the text of the Senate resolution concerning the Neutrality Treaty without waiting for the official text to be delivered to use through the usual channels.

We are living a crucial moment in our history. Now, more than ever, our country demands from its sons serenity, dignity and a sense of national unity.

Panama sees its future with the serenity of a country engaged in an irreversible process of decolonization.

We must remember that only the peoples that love freedom can be free. Panama has opted for its definitive freedom. In this process we have the decisive support of the peoples of the whole world, as was seen from the session of the Security Council held in Panama in March 1973. On that occasion the world, faced with the veto of the United States delegation vetoes the United States for not removing the causes of the conflict engendered by the presence of a foreign Government within Panamanian territory.

We recommend to our fellow citizens to study objectively the documents published today in Spanish and English, so that they might assist the Government in taking the post patriotic decision which, as stated by General Omar Torrijos Herrera, Head of the Government of Panama, will be taken within the framework of a great national consensus.

Mr. ALLEN. Mr. President, we speak of the DeConcini amendment. As the DeConcini amendment, it would not have stood a chance on the floor of the Senate—not a chance. It was offered as an amendment to the treaty, and the managers of the bill had it turned down by the Senate. But then when it was offered as a reservation, carrying out their commitment to accept it in return for three votes, the supporters of the treaties had it adopted as a reservation or—I suppose to state it most accurately—as an amendment to the resolution of ratification, providing for a reservation.

That then became a leadership-approved amendment; else it would not have gotten to first base. It would not have received approximately 37 votes. But with the leadership's stamp of approval, it received a vote of about 55 to 35. So much for the powers of the leadership over this treaty.

Mr. President, again I say that putting an amendment into a treaty that expires at the end of this century, an amendment seeking to dilute the provisions of an amendment to the treaty which already has been agreed to, which lasts in perpetuity, is just folly. It cannot be done.

So any language we put in the present treaty in an attempt to dilute the DeConcini amendment might look good on the surface, but it is something that cannot be done; nor can legislative history, at this late date, have anything to do with expressing the background and the reasons why at that particular time the DeConcini amendment was agreed to.

The legislative history with respect to that amendment, if it did not expire with the adoption of the amendment—and possibly it did not, because it could have been reconsidered, but it was not—expired when the motion to table the motion to reconsider was agreed to. That shut off all legislative history with respect to that amendment. Then when the treaty was adopted, that just bolted the door. There could be no more legislative history explaining why the Senate agreed to the DeConcini amendment and saying that we did not mean what we said back then. That is water over the dam. That cannot be done on this treaty.

We might say, 3 weeks after an amendment is adopted, "Gee, I just happened to think of a good reason why we adopted that amendment," and stand on the floor of the Senate and say, "This is part of the legislative history." That does not make it so. The legislative history ended with agreeing to the treaty.

So we will have to put in an amendment, they say, or a resolution or something, to get away from this DeConcini amendment that we approved, to which we gave our stamp of approval.

What kind of business is that, Mr. President? This is not a game here. The U.S. Senate has discharged its solemn duty to advise and consent, in this case, to the Neutrality Treaty.

A motion was made to reconsider that action. That was tabled. That treaty is gone. It is gone from consideration of the Senate except, I would assume, by unanimous consent. It is gone from

consideration of the Senate unless resubmitted by the President as a new and revised treaty. This same treaty could not come back to us, but if it is sent back as a new treaty, even though it might have the very same provisions, it could be considered. But as to creating legislative history, the opportunity to do that is gone. And any effort to undercut the DeConcini amendment I assure the Senate will not meet with approval of a number of U.S. Senators.

So that leaves, it would seem to me, Mr. President, two courses that the Senator from Alabama suggested as the two best possibilities for extricating ourselves from the horns of this dilemma.

I believe that that will be best for Panama. I believe that it will be best for the United States. And I am hopeful that that will be done because if we go ahead and ram the treaty through, if we can, send it down to Dictator Torrijos as a hot potato, or a hot coal—I guess it would be hotter than a hot potato—it could well cause his removal from office either way he goes. If he submits it to the people it will be defeated in such a resounding fashion that it would be treated as a referendum on his tenure in office, and I believe it would be untenable for him to continue in office. If he accepts it without a referendum, without a plebiscite, it is going to cause a revolt in Panama because the Panamanians see this as an affront. They are happy to accept it now; of course they want the canal. But as has been said here on the floor of the Senate, and I am going to reiterate this because it has been indicated that the proponents of the treaties are the ones who are trying to shield the Panamanians from having their national dignity impugned, I say that the Panamanian people are a proud people and a sensitive people. They want the canal, yes. But they do not want their sovereignty assailed, and they do not want the United States to retain the right to come back in to Panama any time they want to keep the canal open. They say that is an affront to their national dignity.

And based on news accounts it seems they would be willing to give up the canal rather than have their dignity affronted. So I say that the people of Panama are a proud people. They are proud of their nation. They are proud of their nationality. They are proud of their sovereignty and they want to insist on their sovereignty. But I will say the proponents of the treaties have been concerned not that the people would have an opportunity to vote on this treaty, but they have been concerned and have insisted that they not have right to vote on the treaty.

Mr. President, who is interested, then, in the sensitivity of the Panamanian people? The opponents say, "Let us not have a treaty unless the Panamanian people approve of it." What is wrong with that principle to stand on? The administration does not stand on that. The administration and the leadership would be glad to accept a treaty approved by the dictator alone, not the Panamanian people in another plebiscite.

Now, is that a correct statement? The distinguished Senator from Idaho (Mr. Church) time after time has stated here on the floor, "Do not amend this treaty, do not amend it at all, because if you do it is going to call for another plebiscite and it is going to kill the treaty."

Mr. President, I say if the Panamanian people do not approve of the treaty we ought to kill it, and if we are not willing to kill it, we ought to allow the Panamanian people speaking in a plebiscite to kill the treaty if that is the national will of the people of Panama.

So these things will have to be thrashed out. Are we going to try to placate Panama, or are we going to be willing to undercut the action of the Senate as expressed in the DeConcini amendment, approved by the leadership? This is not something that was just eased in at the last moment. Mr. President, this provision was studied word for word, each word weighed and analyzed, with the Panamanians saying they did not want it, they objected to it; and, as I say, for the first time that I know of the wishes of the Panamanians were discarded, and they were so desperate to pass these treaties that they agreed to something that they knew the Panamanians would reject. So they took their chances. The Panamanians do object.

The distinguished Senator from Massachusetts (Mr. Brooke) has sharply criticized the administration for accepting this amendment and not divulging to the Senate the fact that the Panamanians objected to the amendment. The distinguished Senator from Massachusetts has grave doubts about approving this treaty, and he made a speech in which he finally agreed to support the first treaty. He said if he voted that day on the Panama Canal Treaty he would vote against it. I do not believe that this incident about the DeConcini amendment is going to improve his frame of mind as he looks at the question of whether he is going to support this treaty.

Mr. President, we also brought out here on the floor the exchange of correspondence between the dictator and the President, both letters dated March 15. It must be on the basis of cables. Otherwise, we need to call in the Panamanian Post Office if they are the ones that were able to do such a good job. But it looks like it would be the U.S. Post Office and Postal Service because the letter would have to have gone from the United States to the dictator in Panama.

That would have been the service of the U.S. Postal Service.

At any rate, both letters were dated the 15th. Torrijos raised a question about these coming reservations. He is worried about them. He is protesting against them, and the President answering, "Well, yes, we are going to take some reservations but they are not going to interfere with the spirit of the agreement we have reached."

Well, there was a mistake somewhere along the line because it has interfered with this agreement that they have.

So, Mr. President, the administration went heedlessly onward accepting the DeConcini reservation knowing the peril of accepting it, so anxious not to be turned down by the Senate on the treaty that they took a calculated risk of accepting the DeConcini reservation and getting the treaty approved. Now it has been stated that something must be done in this treaty to show that that is not our meaning.

I do not believe that is going to sell. I do not believe it is going to sell, first, to the Senate. I do not believe it is going to sell to the

people of the United States. I do not believe it is going to sell to the people of Panama.

If that was our intent we would have the unilateral right to act. If that was our intent when we approved the DeConcini reservation and approved the first treaty it is our intent now no matter what is said in this treaty.

So, Mr. President, I again turn to my suggestion of a solution of this impasse, a solution that will remove us from the horns of this dilemma, and that is for the President to ask for a withdrawal of these treaties and save everybody's face in this regard.

We have been on the treaties now, I guess, for over 2 months. Our negotiators worked for 13 years and came up with a treaty. The leadership has been in full control of it from the date it hit the desk of the Secretary. They are responsible for every word that was added to that treaty or to the resolution of ratification. They approved every single word. There is not a single word in there that did not have the blessing of the leadership.

So there is where the leadership has led us in this case, to a treaty that is not satisfactory, not acceptable, either in Panama or the United States, and I hope the President will withdraw these treaties from consideration by the Senate.

Mr. President, I thank the Chair and I yield the floor.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PANAMA CANAL TREATY OPINION POLL

Mr. SCOTT. Mr. President, our office is in the process of getting out our April report to constituents. Of particular interest to colleagues, I would think, is the result of our opinion poll. I would call their attention especially to the fact that 83 percent of the people responding opposed ratification of the Panama Canal treaties. I ask that a copy be printed in the Record.

CANAL TREATIES

(BY BILL SCOTT)

The President submitted to Congress two interrelated treaties regarding the Panama Canal. One purportedly was to guarantee the permanent neutrality of the canal and was approved in the Senate by a narrow vote. The second or more important treaty, is presently under consideration with a final vote scheduled for April 18. This second treaty transfers sovereignty, ownership and control of the canal to the Republic of Panama with provisions for its joint operation through December 31, 1999, or somewhat more than 21 years.

On various occasions I have spoken against ratification of the Canal Treaty proposal because it seems unreasonable for us to convey to Panama, without consideration, property of the United States having a replacement value of approximately $10 billion. Over the 21-year period of the treaty Panama would receive approximately $1.5 billion from canal tolls, and during the same period the treaty would cost the U.S. taxpayer $750 million. It also seems unwise for us to start on a course which could result directly or indirectly in communist control of this vital artery of commerce with its strategic military importance. However, proponents of the treaty argue that failure to give up our property will result in less friendly relationships

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with Latin America and its retention is a remnant of colonialism. To the contrary, respect for the United States would be lessened within the world community; and our allies within the free world will have less confidence in our ability to lead them toward peace through strength.

We do appreciate the many thousands of individual letters and phone calls received regarding this important matter that indicate Virginians are overwhelmingly opposed to ratification.

IMMIGRATION BILL

Our office has received considerable comment from constituents expressing the view that many responsible citizens may be deprived of potential employment opportunities by illegal aliens. Upwards of three million illegals are holding jobs in this country, according to Department of Justice figures.

A proposal I introduced would require Congressional approval of large-scale admission of foreign refugees, would impose fines on employers who knowingly hired illegal aliens, and prohibit those individuals living in the country illegally from receiving federal assistance, such as food stamps or Medicaid benefits.

Under current government policy, known as parole authority, the Attorney General can allow certain aliens to come into the United States and remain, without specific Congressional approval. A provision of the proposed bill would include the number of refugees paroled into the U.S. within the national quota for that country. It also provides that the government would be required for the first time to report quarterly on the number of illegal aliens holding jobs in the United States.

LABOR LAW REFORM

The Senate is expected to soon debate proposed amendments to the National Labor Relations Act. This is the basic law regulating collective bargaining in the United States and is intended to protect employees on their right to join unions and bargain collectively. During the past few months amendments to the Act have passed the House of Representatives with strong support of organized labor, and are now under consideration in the Senate.

Those supporting labor law amendments argue that delays in enforcement of employee rights have frustrated attempts of large numbers of employees to exercise their right. They believe that changes are necessary to prevent delays in holding union elections and enforcing remedies in unfair labor practice cases.

The bill would, among other things, expedite enforcement of orders of the National Labor Relations Board, and prevent employers found guilty of unfair labor practices from receiving federal contracts for a period of three years.

Opponents of the bill claim, however, that it is really intended to arrest the decline in union membership; and that when viewed together, the amendments put considerable power in the hands of union organizers and sharply weaken the ability of employers to resist union organization. They argue, for example, that one of its provisions would compel them to give unions equal time, on company property, if management held conferences with employees on company time.

TUITION ASSISTANCE

The Finance Committee has reported a tuition tax credit bill which would phase in over the next three years a tax credit for educational expenses. Beginning August 1, 1978, the measure would provide a credit equal to 50 percent of tuition and fees to college students with a maximum credit of $250. Two years later, the credit would be increased to cover tuition and fees for grade schools and high schools. Starting the following year, 1981, the credit would be extended to cover the expenses of graduate students and part-time students. The Committee and the Administration admit the bill could cost the government over $5 billion a year in lost tax revenues.

Proponents argue that the tax relief provided by this bill is intended to maintain the nation's historic mixture of both public and private education. They do not consider the cost to be great in comparison with the total federal budget for education or that the grant and loan approach gives more power over education to Washington bureaucrats.

Opponents say that both the tuition tax credit proposal and the extension of the grant program to church-related and private grade and high schools are unconstitutional under the First Amendment provision for separation of church and state. They believe that church-related schools would be the primary beneficiaries of the bill.

RICHMOND VISIT

Our next visit to the Richmond office is scheduled for Friday, April 28, and any constituent desiring to discuss a problem or issue is welcome to stop by during regular business hours. The state office is located on the eighth floor of the Federal Building at 400 North 8th Street. The office phone number is 649–0049 if you care to call in advance but an appointment is not necessary.

MILITARY SPENDING

The President has forwarded to the Congress a budget request of $126 billion for the Department of Defense for the fiscal year beginning October 1. The funds would be spent for procurement of new weapons systems, research and development, military personnel and military retirement pay in addition to operations and maintenance of our active and reserve forces. This request is particularly important in light of a major buildup of the strategic and conventional forces of the Soviet Union over the last ten years.

We are told that the Soviet Union has significantly increased its manpower and nuclear and conventional war equipment such as long and intermediate range missiles, tanks, submarines, and this buildup shows no signs of slowing. The committees will take the Soviet buildup into account when making decisions on the U.S. defense budget, and the chairman of the Senate Armed Services Committee has recently indicated hearings will be had on the production of the neutron bomb.

Some adjustments in the President's recommendations will, of course, be made and this could include additional spending to maintain the capacity to defend the country and its vital interests throughout the world.

CIVIL SERVICE PROPOSALS

Constituents and especially Federal employees should be interested in Administration plans to reorganize the Civil Service System. Two means are being used to put the plan into effect: 1) a legislative proposal to be enacted by Congress, and 2) a reorganization plan under the President's general authority, to reorganize agencies unless either house of Congress disapproves the plan within 60 legislative days after it is submitted.

The Civil Service Commission would be abolished in favor of an Office of Personnel Management and a Merit Systems Protection Board. A Federal Labor Relations Authority would administer the existing federal labor-management relations program. Among many other proposed changes is the creation of a Senior Executive Service under which agency heads would have more authority over the pay grades, promotion and demotions of 9200 top government managers. Should you desire a copy of the bill as introduced or a copy of the organization plan, when submitted, please let us know.

CONGRESSIONAL PAPERS

During the 12 years of service in the House of Representatives and the Senate, our office has accumulated an assortment of papers which are being donated to George Mason University in Fairfax.

George Mason, a state institution, was chosen partly because our home for the past 31 years is within a few miles of the campus. However, the university is a developing institution with a present enrollment of approximately 9,600 students, with the prospects of becoming one of the major schools of higher learning in Virginia within a few years. It is understood that a legislative study committee is considering the establishment of a law school on the Fairfax campus; and the university, located within one of the most populous and fast-growing areas of the state, should be considerably expanded in the years ahead.

The papers will include a variety of material, such as statements made on the floor of the House and Senate, legislative proposals, committee activities, correspondence with private organizations and governmental agencies, newsletters, responses to annual questionnaires, speeches and background reports on issues considered by Congress.

Members of the University faculty and library staff will undertake the task of organizing and preserving items of significant historical value, and our office will work with them in the transfer of the material to the University. it is understood that I will have access to the material, and it can be utilized by the faculty, students working with them, and will be available to the general public three years after the termination of my Senate service.

OPINION POLL RESULTS

We are grateful to constituents who responded to our 12th annual questionnaire and shared their views on a number of important issues. The tabulation of results, some of which are shown below, leaves little doubt of how Virginians feel on the questions presented.

87 percent of the people responding opposed ratification of the Panama Canal treaties, while 13 percent favored ratification.

Only 6 percent favored election day voting registration, while 94 percent expressed opposition.

An overwhelming 86 percent of those responding opposed repeal of the Hatch Act, while 14 percent favored repeal.

The enactment of a national welfare system was opposed by a margin of 86 percent to 14 percent.

With regard to the proposed Strategic Arms Limitation Agreement now being negotiated, only 12 percent of the constituents who responded believed the Russians would adhere to any treaty agreed upon, while 13 percent believed the Senate should ratify a treaty regardless of any imbalance in numbers in order to obtain a limitation on the growth of strategic arms, and 15 percent believed we should allow the Soviets to have material superiority in some fields to compensate for our more sophisticated weapons in other areas. 88 percent, 87 percent and 85 percent respectively were of a contrary opinion.

83 percent of those responding would amend the Constitution to provide that the states rather than the federal government have the power to regulate the circumstances under which pregnancies might or might not be terminated.

76 percent of the people felt that foreign assistance should be reduced or eliminated entirely, while only 3 percent favored a spending increase. The remaining 21 percent preferred retaining foreign aid at present levels.

SOMETHING TO PONDER

"To inform the minds of the people, and to follow their will, is the chief duty of those placed at their head."

THOMAS JEFFERSON.

[From the Congressional Record—Senate, Apr. 13, 1978]

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. DOLE. Mr. President, parliamentary inquiry.

The ACTING PRESIDENT pro tempore. The Senator will state it.

Mr. DOLE. Is there a time limit on this amendment?

The ACTING PRESIDENT pro tempore. There is; one hour, equally divided.

UP AMENDMENT NO. 25, AS MODIFIED

Mr. DOLE. Mr. President, I send to the desk a modified form of amendment No. 3 and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Kansas (Mr. Dole) offers an unprinted amendment numbered 25.

Mr. DOLE. Mr. President, I ask unanimous consent that futher reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

In the second sentence of the first paragraph of article XI, strike out "for thirty calendar months" and insert in lieu thereof "until such date as is agreed upon by the members of the Panama Canal Consultative Committee, but not before January 1, 1990".

In paragraph 2 of article XI, amend subparagraph (a) to read as follows:

"(a) The authorities of the United States of America shall have the primary right to exercise criminal and civil jurisdiction over employees of the Panama Canal Commission who are citizens of the United States and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:"

In paragraph 2(a)(i) of article XI, strike out "offense committed" and insert in lieu thereof "act or omission".

In paragraph 2(a)(ii) of article XI, strike out "offense committed" and insert in lieu thereof "act or omission".

In the text following clause (ii) of paragraph 2(a) of article XI, strike out "offenses committed" and insert in lieu thereof "acts or omissions".

Strike paragraph 6 of article XI.

Renumber subsequent paragraphs of article XI accordingly.

Mr. DOLE. Mr. President, on my time, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unamimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. Nunn). Without objection, it is so ordered.

Mr. DOLE. Mr. President, I ask unanimous consent that I may proceed as in legislative session for a period of 5 minutes, the time to be charged against the time of the Senator from Kansas.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. On two matters, both relating to agriculture.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

UP AMENDMENT NO. 25, AS MODIFIED

Mr. DOLE. Mr. President, at the desk is a modified form of amendment No. 3 to article XI of the Panama Canal Treaty.

Consistent with the intent of article XI of the Panama Canal Treaty, which seeks to "provide for an orderly transition" of jurisdiction over the Panama Canal Zone, I have proposed an amendment which would simply extend the period for the transfer of jurisdiction from the United States to Panama. This treaty is being marketed by the administration as a "twenty-two year" transition document. However, a careful reading of the treaty provisions suggests that this is not a 22-year transition agreement—it is a 30-month transfer of title. Thirty months is entirely too short a period to avoid serious disruption in the lives of Americans and their dependents who live and work in the Canal Zone. In order to prevent confusion, disruption, and a massive exodus of Americans now residing in the Canal Zone, it is important to extend the transition period for a more orderly transfer of authority.

As things now stand, the treaty returns full jurisdiction over the Canal Zone to Panama as soon as the treaty enters into force, and it transfers all U.S. judicial, administrative, and regulatory authority to Panama 30 months later. After that, American citizens will be subject to Panamanian law, and subject to Panamanian civil and criminal justice as well.

More specifically, article XI provides the following: Effective immediately, Panama assumes full plenary jurisdiction over the entire Panama Canal Zone, and Panamanian courts assume jurisdiction over all new civil cases of a private nature involving American citizens. Only 30 months later, at the end of the so-called "transition period," Panamanian courts will assume jurisdiction over all criminal cases involving American citizens; the United States will withdraw all its police forces and lose all police authority in the former Canal Zone; and the U.S. court system will cease to function. American laws, regulations, and administrative authority will no longer be enforced. All this occurs, despite the fact that the United States retains the right to use certain designated areas and installations within the former Canal Zone until the year 2000. I question just how effective our rights of "use" will be for the remaining 20 years, after our laws and administrative authority end in 30 months.

UNFAIR TO AMERICAN EMPLOYEES

Mr. President, I believe the question is, does this constitute "orderly transition"? I do not know of many Americans who are willing to subject themselves to the justice and authority of the Panamanian National Guard. This provision will literally drive Americans out of Panama. If article XI remains unchanged, I believe we will see a mass exodus of U.S. engineers, pilots, and other canal personnel within the next 2½ years.

As a matter of fact, a public opinion questionnaire circulated among United States Canal Zone employees last November, and provided to me by the Panama Civil Council during my visit last December, demonstrates that 70 percent of those surveyed intend to leave the Canal Zone soon after these treaties are ratified. Over half of those who intend to leave indicated that their "primary reason for leaving" was the loss of American jurisdiction in the form of the police and court system in the Canal Zone. Fully 90 percent of those intending to leave plan their departure within 3 years after the treaties are ratified.

Think of it: 3,000 American employees in the Panama Canal Zone, who have played the central role in operating and maintaining the canal for decades; and 70 percent of the sampling which was surveyed indicated that they and their families would feel compelled to leave Panama soon after these treaties are ratified. Considering the treaty provisions, I am not sure that many of us can blame them.

American employees have served the canal well since it was completed in 1914. No employee should have to fear for his future job security, or for the protection of his personal rights, and those of his family. During our visit to the Panama Canal Zone last December, Senator Paul Laxalt and myself visited with dozens of canal employees, who expressed distress about protection of their property and personal rights after the Panamanian police and courts take control. They deserve better than this. Their skill and dedication deserve the careful consideration of the U.S. Senate. We can give them proper consideration by simply extending the "transition period" to a length more suitable for "orderly transition," including proper training for Panamanian replacements.

DOLE AMENDMENT

Mr. President, this amendment I have offered will permit the Panama Canal Consultative Committee to study the matter after the treaty takes effect and, with the benefit of actual experience, make a recommendation as to when the period of tranistion should formally end. However, under the terms of this amendment, the period will in no event terminate prior to January 1, 1990. This date coincides with transfer of the administration of the Panama Canal Commission from United States to Panamanian leadership, under the terms of article 3 of the treaty. It is logical that primary U.S. authority over both the Panama Canal and the special Canal Zone areas should expire about the same time.

By allowing for this extended transition period, we will allow for a more orderly and gradual phase-out of American employees in the area, and of judicial and administrative control over them. Also, by preserving U.S. jurisdiction over civil cases as well as criminal cases involving American nationals during the transition period, we better protect the interests of our own citizens living in the area.

Thus, if this amendment is adopted, treaty arrangements will be as follows:

First. Panama will still assume full plenary jurisdiction over the Canal Zone upon entry into force of the treaty. And the U.S. will

still retain rights of use over certain designated areas and installations in the Zone.

Second. The U.S. court system will continue to function, and will retain jurisdiction over all criminal and civil cases involving American citizens who are employees of the Panama Canal Commission, until at least the year 1990. This jurisdiction will also continue with respect to employee dependents, and to members of the U.S. forces and their dependents as well. It will apply to "acts or omissions" occurring during the transition period, or prior to it, within those areas and installations used by the United States under the provisions of the treaty.

Third. U.S. police forces will remain on hand, exercising their proper and limited authority within the areas and installations used by the United States, until at least 1990.

Fourth. The laws, regulations, and administrative authority of the United States, which are now applicable in the Canal Zone, shall remain in force during the extended transition period, just as they would for the 30-month period envisioned in article XI.

That is all. There is no change in other provisions in the treaty. Neither employment conditions nor defense provisions are changed in any way by this amendment. It is designed only to protect Americans residing in the Canal Zone, and to provide for a more orderly transition—not to obstruct or eliminate those transition arrangements.

Certainly, there is no way to guarantee that the same level of civil and political rights will be honored by the Panamanian National Guard once it gains total jurisdiction over the Canal Zone and Canal Zone employees. Given the very inconsistent record of the Panamanian Government with regard to human rights, and given the popular disdain for the American presence in the zone, there is every reason to believe that the rights of our citizens may not be fully observed and protected. We realize that Americans are going to leave, but we do not want a mass exodus at the outset. We want an orderly withdrawal, and an orderly transition.

The best thing we can do is to provide an adequate period of time for an orderly transfer of judicial and police jurisdiction. This is all this amendment seeks to accomplish.

Mr. President, that is all this amendment seeks to do. That is all it does. I hope that the amendment will be accepted by the treaty proponents. It is not in any way designed to frustrate the pro-treaty forces, not in any way designed to frustrate the Panamanian leadership, it is not in any way designed to confuse American leadership. It is designed solely to provide a more orderly transition and to provide some protection for U.S employees in the zone.

Mr. President, I reserve the remainder of my time.

Mr. MOYNIHAN. Mr. President, I rise to respond to the thoughtful and reasoned statements of the Senator from Kansas, and to state also why it is that the proponents of the treaty before us cannot in good faith accept his amendment.

The amendment to extend the transition period for the transfer of judicial jurisdiction is, in our view, unnecessary to protect the interests of U.S. citizens or to operate and defend the canal. Just as important, to us as to them, we feel it would be a needless insult to Panama.

I want to make clear that we do not suggest that the Senator from Kansas would intend such an insult, but it would be perceived as such, The Senator from Kansas is the most courteous and thoughtful of men and sensitive to others' feelings in a way that is not always encountered in public life. But it is, nonetheless, the case that we would be saying, in this instance, that Panama is not capable of administering its own laws in its own territory and that its laws are inherently unfair. There is nothing in our experience to warrant our saying that and, even if there were, it would be most impolitic to say so. This is not something a sovereign nation says to another sovereign nation when it wishes to maintain good and close relations.

With equal justice, countries in Latin America might have said to this country that our laws were not fair and our administration of justice was not equitable at a time when racial discrimination against black Americans and against Hispanic Americans was so common. Yet, without in any way endorsing our arrangements, they never chose to suggest some fundamental institutional incapacity to live up to their standards, as this amendment would suggest that we fundamentally believe that Panamanians could not live up to ours.

The Panama Canal Treaty and agreements in implementation of articles III and IV of the treaty contain carefully negotiated provisions to protect U.S. citizen employees of the canal commission, military personnel and their dependents, and to guarantee these individuals specified procedural rights in any criminal proceeding under Panamanian law. It is important to note that these guarantees and rights apply whether the alleged criminal act occurred in the canal zone or elsewhere in Panamanian territory. The extension of the transition period will only continue U.S. jurisdiction over offenses committed within the zone.

The fact is that Panama is another country and Americans who wish to go and live there are going to have to accept the normal circumstances that living in another country involves, which means being subject to its laws. Just as importantly, it is a condition which we impose on Panamanians or any other foreigner living in our country. Simply, elemental respect for a friendly nation, an allied nation, surely behooves us to reject this proposal.

Mr. President, I wish to speak, at the outset of this last day of debate on general provisions of the treaty, about the general circumstances we find ourselves in. Particularly, I should like to speak to some of the opponents of the treaties, not least to the Senator from Kansas (Mr. Dole), who knows the high regard in which I hold him. I must say that I am troubled at what seems to me to be a flight from reality, among both the liberals in the Senate and the conservatives in the Senate, a flight from the reality that the true concern of American foreign policy has to be with the threat from an evermore aggressive, evermore powerful Soviet Union. Our concern has to be with the expansion of totalitarian power in the world, with the growth of its military strength.

In the Senate, in late 1975, we faced the first clear challenge of the Soviet Union in the post-Vietnam period. The Soviet Union invaded Africa with a mercenary corps of Cuban soldiers. I used the word "mercenary" then, to the great horror of many persons. I

might point out that President Carter used the same word in his Wake Forest speech just a month ago.

Mr. President, the openly flaunted Soviet aggression in Africa was clearly meant to be a test of our will in the aftermath of the defeat in Vietnam. The Soviets would see whether it would work. I was then the U.S. Permanent Representative to the United Nations and I found myself speaking out against the Russians, saying that, at the very moment when the last vestige of white imperialism was disappearing from the African Continent, suddenly the blue eyes were back, white men with European weapons murdering black men, and were we going to stand for this?

The Africans at that time were pleading. President Kenneth Kavnda, of Zambia, was pleading in the private councils of his continent and in his capital, that someone come and stop the Soviets. I remember he called them the plundering tiger and its marauding cubs. "Come and help," they said.

Here in the U.S. Senate it was decided we would not help. Not only would we not fight, we would not even talk, or help others who would fight.

Mr. President, I cannot imagine a more difficult set of readings for some Members of our body, than that which they said in that debate, when one after another they said, in effect, we will not get into another Vietnam, this has nothing to do with the Soviets, just taking the anticolonialist side and they will be sorry they ever got in there.

And we backed down. We said, "They will fight and we will not."

Since that day, Mr. President, none of those speeches which said that we would have nothing to fear from the Soviets would be made on this floor today, I daresay.

But today, the Secretary of State is leaving Washington to fly to Rhodesia, a place an American Secretary of State has never visited. Why he does not want to be in Washington for the success of these treaties, I do not know. But he is leaving. He is going on two hopeless journeys—one to Rhodesia, the other to Russia.

In Rhodesia, he is going to be insisting that Marxist guerrillas armed by the U.S.S.R.—our Secretary of State is going to insist that Marxist guerrillas armed by the Soviet Union—be brought into the Government of Rhodesia, renamed Zimbabwe, where a peaceful settlement and black majority rule have at last came about.

Why will he do that? Why will he, a man who was the Deputy Secretary of Defense during the Vietnam war—when fighting Marxist guerrillas was what we were supposed to be doing over there—insist on bringing the Marxists into the Government of Zimbabwe? Why? Because power comes out of the barrel of a gun, and the guns pointed at Rhodesia are Russian.

Every State Department spokesman who comes to Capitol Hill to talk to us says that we have to do this in Rhodesia or the Russians will sent the Cubans in. The Russians will fight and, of course, we will not. We will never help anybody who will fight. That is apparently all past.

The talk is that the Russians will only be there a little while, they are just helping out, they will be sorry, and so on, and so on.

Let us all be honest. In northeast Africa, the Russians brought not just a general to Ethiopia but they brought General Petrov, the first time in the history of Russia that a commanding general of the Soviet land forces has commanded forces outside the land mass of the Warsaw Pact countries.

Our foreign policy more and more shows the behavior of a country whose Government thinks itself to be overmatched with respect to military power. And so we have let the Russians threaten us. And now, routinely, the Soviets use force and we do not. Therefore, we accede to them.

It has been observed, and properly, that so many people who oppose these treaties fear that the United States is declining in the world, withdrawing in the world, showing itself as abject in the face of hostility.

Indeed, editorial writers in Western Europe started digging out the old Stockholm peace pledge and denouncing the capitalist bomb the United States is proposing, because it will do away with people, not property. As the distinguished Senator from Georgia (Mr. Nunn), now presiding, has said, there cannot have been as great a victory of Soviet propaganda in the postwar period as the recent reversal of the United States on the neutron bomb.

But, in the main, the victories of the Soviet Union these days are military. They are the plain consequence of force. A government with a greater military power need not resort to psychological warfare. It is still working, so they will not give way, for, obviously, they think we are afraid.

Yes, I say to the opponents of this treaty, I share your concern about how the United States appears in the world, but I cannot see that genuine and proper interests are advanced by an action here which makes us appear to be acting against a weak ally in a manner we should never act against a strong adversary.

I ask, what will the world think of us if we are seen to impose our strength against weak friends, the strength which we would never direct against strong enemies?

It is a serious question. The world will not interpret our behavior as I think we will interpret it. The world will observe that we were not prepared to help anybody else—much less fight. We would not fight at all, we would not resist the Cuban invasion of Africa, a Russian invasion with Cuban armies. We would say that the Cubans are there liberating, or doing this or that, that they will soon be sorry, that they will go away.

I say, it was not just Senators who did this. Some of the most important institutions of the United States, especially the press, were talking, as the New York Times dismissed what I said as apocalyptic.

When I gave an address on this matter here in Washington on December 2, 1975, Mr. Graham Hovey of the New York Times dismissed what I said as apocalyptic. He said that the idea the Russian invasion with Cubans in Africa poses any alarm or concern to us, why that is just nonsense. It is the sort of weakmindedness that started the cold war in the first place.

We heard the familiar excuses the Soviet-backed faction had more popular support, the other factions could not have much popular support, and so on.

At one time it was noted the United States helped them and we "know" anyone we are with has to be wrong.

We humiliated ourselves then, I think. It was not a question of involving ourselves in another Vietnam experience. It was a question of helping people in the face of Soviet aggression who asked for help. And now that Soviet aggression has become institutionalized. Any time the Soviets threaten to send Cubans, we give in.

But now, why do not the sponsors of these treaties address themselves to this question? We cannot get anywhere by imposing symbolic subjection upon the Panamanians. The Panamanians are our friends. The Panamanians are tested friends. There was a time when the Panamanians could have caused a very good deal of trouble for us in time of war.

There have been three Pacific wars in my lifetime. I joined the Navy when I was 16 years of age, in the middle of the Second World War, and there have been three Pacific wars since. In any event, the Panamanians could have caused us trouble, but they never did; they never even tried. They never took the opportunity even to suggest that they were going to exact a price. They have proved to be friends. Why vent our fears on them?

If we will not face the Cubans, why do we want to humiliate the Panamanians? I want to be clear. I do not think anyone on the other side, especially not the Senator from Kansas (Mr. Dole), wants to humiliate anyone. But they are frustrated, they know that this country is growing weaker in the world, day by day, visibly so, capable of being intimidated by the threat of force—not merely from the Russians themselves but even from their Cuban mercenaries. This is not the position of a strong and comforted Republic.

It is true surely, that the opponents of these treaties worry about that, and I share their concern. But I ask: Is their concern directed here to some constructive purpose? Will the world interpret the reservations and conditions we are imposing on this treaty as an act of strength or an act of weakness? Will the world judge that we acted from confidence or that we acted from fear—sometimes even secret fears, not publicly expressed?

Mr. President, neither I, nor any other, can speak for the world; but I have not been without experience in foreign affairs, and I suggest that the world will think we have acted from fear. The world will see in our effort to impose complex and meaningless and unnecessary conditions on our relations with Panama as the reverse of the Angola coin; because the Senate, when it faced the prospect that some serious opposition might be encountered, would have none of it. The Senate stood up and said one thing after another which at that time visibly was not so—that Angola was just having a tribal civil war in central Africa. That is what one distinguished Senator described the Soviet invasion of Angola as—a tribal civil war.

Nobody in central Africa thought it was a tribal civil war. They thought it was a Russian invasion. We would not help the people who would face it. Having shown our fear there, are we not also expressing our fear here? Should we not say we are a confident and decent people?We have a long and good relation with the decent people of Panama. We trust each other. You cannot live together

in close relation as long as we have done without knowing whether we are worthy of mutual trust.

This trust is incorporated in these treaties—not in what is not there but, rather, in what is there. Our negotiators never could have raised with any other country in the world the dense mixture of American and Panamanian rights in the Canal Zone that these treaties incorporate, except that our relations with this other nation, this small but important nation, are so good and so sound. Why exacerbate it? Why make Panama the object for expressions of fears which should be confronted on their own?

If there are people in this body—and I hope there are—who are fearful of the U.S. position in the world, fearful of the positions of the free nations in the world, concerned for freedom, let us confront that. Let us not sublimate it by imposing upon Panama—friendly, proven, trustworthy Panama—conditions which are inappropriate to a republic.

We have shown our fear of the Soviet Union. Must we vent it on Panama? Can we not speak to the reality of our situation, which is that we profoundly misled ourselves in Angola? It would have been one thing, when the Soviets invaded Africa, if we had said, "They have invaded Africa, and we are not going to do anything about it. It is not a place of interest to us, or not enough interest," or, "We will not do it," or, "We cannot do it." Instead, we said, "It is not an invasion. They are helping out anticolonial forces. It is a tribal civil war. they will soon be sorry."

Now they dominate the continent, and our policy is dictated by fear of them.

(Mr. Clark assumed the chair.)

Mr. NUNN. Mr. President, will the Senator from New York yield for a brief observation?

Mr. MOYNIHAN. I am honored to yield to the distinguished Senator from Georgia.

Mr. NUNN. Mr. President, we have been debating these treaties now for, I would say, approximately 45 days. I am certain of the exact time.

Mr. MOYNIHAN. We have grown older in the service of these treaties.

Mr. NUNN. We have grown older—and wiser, I hope.

I have heard a lot of debate on the floor and a lot of speeches on the subject, both on and off the floor, in Georgia and in other places, but I must say that it has been a real pleasure for me to be in the chair of the Presiding Officer the last few minutes; because I think the Senator from New York has more succinctly and more accurately summarized the issue with which we are faced than has anyone else I have heard—not only with respect to the Dole amendment but also with respect to the overall ratification or rejection of these treaties.

The Senator has done a masterful job of that. He also has done a masterful job of summarizing the fears and frustrations that have been evidenced regarding these treaties which really more appropriately go to the overall legitimate concern about America's role in the world. I feel that the Panama Canal debates have become the symbol or the focal point for that very legitimate frustration that the people of this land have about what is happening to

America in the world. I know that those fears and those concerns are felt be very patriotic, dedicated people.

I do not happen to believe, as the Senator from New York has expressed, that this is the appropriate vehicle at which those frustrations should be aimed.

I certainly agree with the Senator's observation about where the real challenge of the Soviet Union came in the post-Vietnam era. It came in Angola. I recall very well the night the U.S. Senate decided we would not give any aid. It was not a question of the United States intervening. It was not a question of the United States sending troops. It was not a question of the United States sending gunboats or airplanes or anything else. It was a question of the United States cutting off aid to our own friends in Africa—not white people, black people.

I recall that night very well, because I observed to some people in private that this decision was going to be looked back on with a great deal of sorrow by the U.S. Senate; because we would reap the harvest of that decision for months and years to come. I said that privately to several friends that night.

I have to say that I think the U.S. Senate that night reflected the mood of the American people at that point in history. I do not think it was a situation in which the Senate voted one way and the American people were of a different opinion. I think we correctly reflected that mood. I did not, because I voted with the minority, those who lost on that issue.

However, I believe we sowed the seeds that we are now reaping, not only in Ethiopia and Somalia but all over Africa as well.

I was briefed the other day by the Central Intelligence Agency in a classified briefing about the number of Cuban troops in the continent of Africa—looking at the map and coloring it red where there were Cuban military forces, supplied and paid for by the Soviet Union. It is astounding what is happening there.

So, the Senator, in my opinion, not only has made an outstanding speech on the overall relationship of the Panama Canal questions to the world. I believe he also has correctly identified the position in which we find ourselves in the world today.

The Senator from New York has more adeptly summarized the issues confronting us on these treaties and the issues that confront the United States in the world than any other remarks that the Senator from Georgia has been privileged to hear in 60 days of debate. I congratulate the Senator for what I think has been an outstanding series of remarks about these treaties and about the U.S. position in the world.

I must say that I also agree with the spirit of the amendment that the Senator from Kansas has sponsored, and I may very well vote for that amendment. The Senator from New York has addressed the overall issues that these treaties present, and the Senator from Kansas has talked about a specific issue on which I may very well agree with him.

So my remarks are not directed toward the Dole amendment but rather toward the outstanding, erudite, and articulate remarks that the Senator from New York has made about the position of the United States in the world today.

I thank the Senator.

Mr. MOYNIHAN. Mr. President, I could not be more moved by the statement of the distinguished Senator from Georgia who has attained to a condition of world eminence with respect to the matter of American military position in the world. I shall perhaps extend his thoughts just a moment, again trying to speak to those who are fearful of these treaties.

The Senator from Georgia mentioned the debate over Angola, and let me just read some of the things that were said by the majority on that day, and the majority did not include the Senator from Georgia.

When Africans asked our help against the Soviet invasion, one Senator said, "We must heed the lessons of Vietnam." Another Senator said, "If we learned anything from our experience in Vietnam it is the folly of permitting a cold war mentality to lead us to choose sides in an internal conflict in a remote corner of Africa which presents no real threat to our national security or our vital national interests."

That is just 2½ years ago.

Was it an internal conflict? How did a Soviet invasion become an internal conflict that did not concern us anyway?

Yet today the Secretary of State is flying to an African country to help impose an incredible settlement there, for fear of Soviet intervention into that "internal conflict."

Another Senator had said that all the Russians were doing was supporting "anticolonialism."

The most flagrant, bloody, imperialistic act of our age sending mercenary troops into Africa, murdering Africans, white troops murdering Africans and it was described as supporting anticolonialism. Yet another Senator said that if we in any way gave support to the anti-Soviet groups, we would be siding with repressive regimes in southern Africa, and so on.

My time is about to expire. May I just say, in conclusion, to the opponents of the treaties, that we have heard their voices and we share their concerns.

The PRESIDING OFFICER (MR. NUNN). The time of the Senator from New York has expired.

The Senator from Kansas.

Mr. DOLE. Mr. President, the Senator from Kansas has 8 minutes remaining, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. Let me say I share the comments and views expressed by my colleague from Georgia with reference to the statement made, and I really believe the Senator from New York has performed a service. Maybe my amendment has served some purpose in giving the Senator a vehicle upon which to express himself and I think the views of many in this Senate. I would not disagree that perhaps we are pointed in the wrong direction, but I think there is this fear, not fear of the Panamanians—they are our friends, as the Senator from New York has pointed out. We hope they remain our friends. We seek that continued friendship. But there is this fear based on the very thing the distinguished Senator from New York has pointed out:

As I measure the distance from Havana to Panama City, it is not quite as far as from Havana to all these places in Africa, some

4,000, 5,000, 6,000, 8,000, 10,000 miles, where they now have Cuban troops.

There is this fear based on a record or lack of a record by this administration, and going back even into the last administration, again not the fault of President Ford, but the fault of some who stood on this floor and made the very statement the Senator has referred to with reference to Angola.

So I suggest that the Senator is absolutely correct. There is this fear that we will turn tail and run.

The Senator from Kansas tried to take some positive initiative by introducing a resolution several weeks ago suggesting we should endorse the agreement reached in Rhodesia by moderate leaders, and we were met with silence by the administration. There was a counter-resolution introduced that we should reject the proposed settlement.

So we find it very difficult. This Senator was very disturbed last year when we were in such a rush to normalize relations with Cuba, and we had a long debate on this floor. We had a vote on an amendment, and the amendment prevailed. Then the leadership undertook to water down the amendment so it was meaningless. It became the sense of the Senate. And some of us feel very strongly there should not be this rush to normalization as long as they are exporting communism.

I must agree with the Senator from New York. It is hard for this Senator to understand where we are. We always seem to be compelled or propelled, or whatever, trying to embrace the Marxists and bring them into an agreement as we are doing now in Rhodesia.

But the seeds were sown on this floor. The seeds were sown on this floor in the Angola debate when we turned our back on our friends and said, in effect, oh, I remember all the rhetoric, and I guess as it has been pointed out the results are now becoming known, but there is this fear. Maybe it is not justified. Maybe we do not understand. Maybe the opponents of the treaty did not understand.

But I say that is one of the reasons for some resistance to the treaty. It is certainly not the Panamanian people. But who knows what may happen next year or the next year with the record we have made in this administration? General Torrijos acknowledges close friendship with Castro. So I suggest that, for whatever it may be worth, there is that problem and perhaps if we had a strong policy, perhaps if we had said no, or perhaps if we had said yes, or said something in some part of the world, had we stood up to the Russians even in the Belgrade Conference on Human Rights, maybe we would have backed away from the debate on the treaty.

So I just conclude may remarks by suggesting that I hope when the Panama Canal debate is finished—and we have had almost enough—we could perhaps debate the questions raised this morning by the distinguished Senator from New York on a bipartisan, nonpartisan basis, to discuss the American interests and the American role, or lack of American interests, or lack of American role.

I just suggest that, as I said earlier, in this amendment, because of the stories in the last few days, I tried to be very careful in my

remarks which are not designed to upset the Panamanian people, not designed to frustrate what may happen if the treaties are passed, but designed to bring about some orderly transition and designed to protect the rights of Americans.

That seems to be a responsibility that we have. Maybe again it is not justified. Maybe those fears or those concerns about the rights of Americans are ill founded.

I assume, as the Senator from New York has pointed out, the Panamanian people have the capability, the potential, and the concern, and there will be no difficulties. I hope not.

But it seems to me that it is a matter that deserves consideration.

The Senator from Kansas has tried not to offer too many amendments. I must say this is not one that I consider to be a major amendment, but I offer it to point up the concern about the transition and whether or not there will be time enough, if there is this mass exodus of Americans, for the Panamanians to take control and to operate the canal and do all the other things they will be required to do if the treaties are ratified.

Mr. President, I think the time has about expired. The Senator from Kansas is willing to yield back the remainder of his time and accept a voice vote. I suppose there will be a tabling motion.

I yeild to the distinguished Senator from Arizona.

Mr. GOLDWATER. Just a comment. When I was last in Panama I asked about the subject of pilots, and this is most interesting, and we have not talked about it during the course of this debate. There are 200 pilots who guide the ships through the canal. Of these there are only two who are Panamanians. Now, that surprised me because I thought Panama, as a seafaring nation—they are small boat people, but they did not look on themselves as seafaring although there are countless ships under the Panamanian flag.

The PRESIDING OFFICER. The Senator from Kansas time has expired.

Mr. DOLE. Mr. President, I ask unanimous consent that we might proceed for 2 additional minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. GOLDWATER. I will hurry it up.

To qualify a man to be a pilot on the Panama Canal requires, No. 1, that that man hold a master's ticket. Now, a master's ticket on the sea is not something you get overnight. I would say you spend at least 10 or 12 years, and then with that master's ticket it takes 8 more years to train you to be a pilot on the Panama Canal, and there are only 2 Panamanians out of the 200.

Yet, I have heard some rumors in the last several days that American pilots on the Panama Canal may come home to express their dislike and distrust of this treaty. This is just another point that the Senator raised that I think we should be aware of.

I have quite a bit of interest in this because I have my own captain's ticket—not master's ticket—and it took me 15 years to get it. You are not going to find an overabundance of masters beating their way down to Panama even though their pay is very, very good. This is another point I think we have to consider when

we are discussing whether or not that canal can operate, and it is one of my major worries.

I thank the Senator.

Mr. DOLE. I thank the distinguished Senator.

I have indicated to the leadership that I am willing to accept a voice vote. I think I know what the outcome will be. We have made the case and, I assume, there will be a motion to table or will it be up and down?

Mr. CLARK. Up and down.

The PRESIDING OFFICER. Is all time yielded back?

Mr. DOLE. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back, the question is on agreeing to the amendment of the Senator from Kansas. (Putting the question.)

The amendment was rejected.

Mr. CLARK. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Are there further amendments to article X?

AMENDMENT NO. 97

Mr. SCHMITT. Mr. President, I will be asking unanimous consent to consider amendment 97 which goes to articles II, III, XI, and XIII, and I believe there is no objection to the consideration of that amendment.

The PRESIDING OFFICER. (Mr. Paul G. Hatfield). Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, I ask unanimous consent that Senators Thurmond, Garn, Laxalt, Dole, Goldwater, and Domenici be added as cosponsors to amendment 97.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, this amendment is the so-called cemetery amendment. It is a matter that has been dealt with previously by this body with respect to the Neutrality Treaty. However, I will attempt to develop the arguments that it has been dealt with inadequately.

Mr. President, it seems that in the hurry to conclude the negotiations on the two treaties important issues were either not fully considered or not considered at all. One of the issues not considered during the negotiations with the Republic of Panama is that of the American cemeteries in the Canal Zone. That this issue has been brought to the attention of the Senate at all is due to the work of various veterans organizations, and whose work I commend today.

I understand the Veterans of Foreign Wars wrote to Secretary Vance about 5 months ago about this issue. It has been brought to may attention that the VFW is still awaiting a response from the Secretary.

The proponents of these treaties, the Neutrality Treaty and the Panama Canal Treaty, have not been willing to admit that the treaties do have some shortcomings, and have voted down every amendment proposed rather than examining that amendment on

its merits. This is, or course, with the exception of the so-called leadership amendments to the Neutrality Treaty.

In effect, they have been saying that the wisdom of the administration and of the previous administrations is greater than the collective wisdom of the Senate, and, therefore, should not be questioned.

Various justifications for this position are given but, fundamentally, I think that is a correct statement of the case.

The amendment before us deals not with controversial issues upon which there is considerable disagreement but with an issue that has considerable support in this Chamber and among the American people.

Mr. President, the amendment, as I said, does not deal with the issues that have polarized us in this body over the last 2 months, but with an issue that I believe most, if not all, Members of this body and of Congress agree is an issue and must be resolved in one way or another.

The amendment, Mr. President, deals with the moral obligation of this Nation to the citizens who have in the past served this Nation in various capacities within the Panama Canal Zone. In the Canal Zone there are buried in two cemeteries 909 veterans and 3,993 civilians who were U.S. citizens. About 450 of the military personnel who are buried there were war veterans. These individuals were in part responsible for the construction, operation, and defense of what, up until now, has been a vital American waterway and, in fact, a vital international waterway, a truly international public service provided by this country in cooperation with other nations.

These individuals who are buried in the Panama Canal Zone dedicated their lives to serving the United States. This great country at least has an obligation to guarantee that their final resting place will be maintained properly and protected from desecration.

Mr. President, as I stated, the negotiators of this treaty did not even consider the issue of the American cemeteries.

Richard Wyrough, Deputy Director and Senior Adviser for Treaty Affairs in the State Department, testified before the House Veterans' Affairs Committee, Subcommittee on Cemeteries and Burial Benefits, on March 1, 1978. Portions of his statement are as follows:

> I was a member of the United States delegation that negotiated the treaties, and I must say that it is a matter which was not specifically addressed during the negotiations. We first examined the question sometime after the treaties were signed in September 1977 as we began to turn our atttention to the details of planning their eventual implementation.

Mr. President, I would add parenthetically I hope that is only partly true, that the details of planning the eventual implementation of the treaties were only discussed after the treaties were signed. I am afraid from what we have seen in the discussion of these treaties that that may be all too true in many points of the treaties, not just the question of the cemeteries.

I continue the quotation:

> The Administration has explored in a preliminary way several possible solutions to the problem. We have not yet, however, approached the Panamanians with our ideas, although they are aware of the matter.

As Assistant Secretary Blumenfeld mentioned, our immediate concern has been with Mt. Hope cemetery, since it will be one of the properties turned over to Panama when the treaties are implemented. One option we have considered, inasmuch as Mt. Hope is actively being used by Panama today and would presumably continue to be so when it reverts to actual Panamanian control, is to negotiate an agreement for the maintenance of the American sector of the cemetery. Possible problems in connection with this option include funding, assuring proper American oversight reponsibilities of the maintenance work, and assuring general access to the American gravesites for relatives and friends of those who are interred in the cemetery.

Continuing with Mr. Wyrough's comments:

A second option is to offer a proposal to the next of kin of the deceased Americans buried at Mt. Hope whereby the United States Government at its expense would disinter the remains, transport them to the United States and reinter them at a site chosen by the relatives. All other costs associated with the move, such as purchase of the burial plot, headstone, etc., would be borne by the next of kin. Apart from the question of where to find the funding for our Government's portion of this proposal, there are other problems, such as the difficulty in locating the next of kin, what to do with the remains of those not claimed by next of kin, making arrangements for next of kin who claim the remains, but cannot afford the costs involved, etc.

As you can see, the problem is a thorny one, and the possible solutions I have discussed are not without their drawbacks. However, as Assistant Secretary Blumenfeld mentioned, we do have a proposal to put before you which we think presents a feasible approach to the matter. In closing, I should like to mention that the matter is not, as I mentioned earlier, something that we have discussed in detail with the Panamanians. While we do not anticipate any particular difficulties, we cannot be certain at this point as to their reaction.

Mr. President, I wish to stress Mr. Wyrough's statement that the cemetery issue "is a matter which was not specifically addressed during the negotiations." Yet, it seems that there is agreeement by the Department of State and both proponents and opponents of these treaties that the fate of the American cemeteries is an important issue. These treaties are deficient in that they do not address this issue. If this issue was not addressed during the negotiation, I wonder how many other equally important issues were not addressed.

Mr. President, it is important that this treaty be amended to provide for the continued maintenance of the American cemeteries. The distinguished Senator from South Carolina (Mr. Thurmond) offered a similar amendment to the Neutrality Treaty. While I supported that amendment, I feel that it is the Panama Canal Treaty that should be amended to provide for the protection of the final resting place of our citizens. It is this treaty which turns over the land, including the American cemeteries at Mt. Hope and Corozal, to the Republic of Panama.

My amendment, if adopted, would not change the treaty substantially. The land would be turned over to the Government of Panama on schedule. The amendment would only provide that the Government of Panama would grant the United States in perpetuity, without charges or taxation, the use of the American sector of the cemetery at Corozal. The remains buried at Mount Hope would be disinterred or reinterred at Corozal or at a National Cemetery in the United States depending on the wishes of the next of kin.

While the proponents of the treaties argued that they were in agreement with this concept, they voted against Senator Thurmond's amendment. Instead, the Senate adopted a reservation offered by the distinguished Senator from West Virginia (Mr. Randolph). I supported this reservation, but I do not feel that it can

adequately protect the interests of the American people as it relates to our citizens buried in the Canal Zone. There are now many different interpretations of the usefulness of reservations to these treaties.

This reservation, at best, obligates only our Government to undertake negotiations to accomplish what would be accomplished under this amendment. Panama may not wish to so negotiate. What if no agreement can be reached if negotiations are undertaken? What will be the fate of the cemeteries?

Mr. President, there are some very serious questions that arise with regard to this situation. First, the issue of the amendment process. We have been told by the administration and the proponents of the treaty that it would be wrong to amend the treaties because that would entail another plebiscite in Panama. I submit that it is not the obligation of the U.S. Senate to concern itself with plebiscites in Panama. We are elected by the American people, not the Panamanian people. We have an obligation to the American people to make sure that these treaties represent the best interests of the United States. The inconvenience which the Government of Panama would face should a plebiscite be needed is not our concern, and it should not be the determining factor in our voting at any rate.

Mr. President, it is not that I think we should not find a balance between the interests of the United States and the interests of the Republic of Panama, the Western Hemisphere nations, and all the nations of the world on the issue of the Panama Canal Treaty, I think I have been very clear on that point in the amendment I offered to the Neutrality Treaty some weeks ago. However, in the case of the American dead, there is no question whose national interests are paramount.

A question about the need for a plebiscite in the Republic of Panama has already been raised. The Neutrality Treaty has been amended by the leadership amendments. Yet, the administration maintains that no new plebiscite is required in Panama. Serious legal and constitutional questions in Panama have been raised with respect to this interpretation, and have been more than buttressed by the efforts of many Senators, including those of Senator Stevens in this Chamber.

On the other hand, the proponents have been willing to accept reservations and understandings to the resolutions of ratification. Senator Randolph's reservation about the cemetery issue is an example. The proponents have argued that the reservation is binding on the Republic of Panama, but also have argued that since it does not change the treaty, no new plebiscite is required. I fail, Mr. President, to understand this particular rationale. Maybe I was brought up in too logical an environment to understand it. Either the reservations are binding and change the treaties and thus require a plebiscite, or they do not require a plebiscite, since they do not change the treaties and are not binding. History will not allow the proponents to have it both ways.

Another important question is whether the Panamanian Government will accept this approach. The question involved not just this Government, but future government. To quote Mr. Wyrough again, he stated:

I should like to mention that the matter is not, as I mentioned earlier, something that we have discussed in detail with the Panamanians. While we do not anticipate any particular difficulties, we cannot be certain at this point as to their reactions.

I suspect that the administration also did not anticipate any "particular difficulties" when it decided to accept the DeConcini reservation the the Neutrality Treaty.

AMENDMENT NO. 97

Mr. President, I call up my amendment No. 97 and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The second assistant legislative clerk proceeded to read the amendment.

Mr. SCHMITT. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Before the period at the end of paragraph 2 of article H, insert a comma and the following: "except that the provisions of this Treaty shall not terminate with respect to such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America.".

At the end of the first paragraph of article III, add the following: "The Republic of Panama grants in perpetuity, without charge or taxation, to the United States of America the use of such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America, which cemetery shall be administered by the American Battle Monuments Commission.".

In the first paragraph of article XI, insert ", except for such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America," immediately after "the former Canal Zone.".

In the text above paragraph 2(a) of article XIII, immediately after "all real property," insert "except for such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America,".

Mr. SCHMITT. Mr. President, should the Senate adopt this amendment (No. 97) there would be no question as to the future of the cemeteries; none whatsoever. Either a plebiscite would be held to agree to our position, or we would retain possession and control of the cemetery and the Canal Zone under the 1903 treaty, as amended, until other arrangements can be negotiated.

I hope other arrangements will be negotiated, and that this whole controversy can be resolved through a new set of negotiations dealing with all the issues, not just the cemetery issue, and with all interested parties involved.

However, Mr. President, if the administration feels that the Government of Panama will be willing to accept this proposal, the proposal embodied in amendment 97, then there is no reason for not including it in the treaty as an amendment. It seems that there is a doubt that Panama will be willing to go along with us on this matter.

There seems to be a fear of another plebiscite. I can certainly understand some of that fear with respect to the present Government of Panama. I do not understand it, and I am afraid I never will understand it, with respect to our own Government, a government which prides itself on being a representative democracy.

If what we have done here is not acceptable to the Panamanians, then we should find out now so that further negotiations can take place. It can only worsen the situation should disagreements arise

later on this issue of cemeteries or on any other issue concerned with the treaties.

The problem with the Randolph reservation is that even if Panama accepts it as binding they are compelled to negotiate with the United States. There is no provision in the reservation stating that an agreement must be reached, nor could there by any such provision.

On December 31, 1999, the United States must turn over the present Canal Zone to the Government of Panama, even if no agreement on the cemetery issue is reached, should this treaty be ratified without the amendment I and others are proposing today.

This is unacceptable to me and New Mexicans, and I believe to the majority of the American people, particularly those who have served their country in the military forces and in the Canal Zone.

Mr. President, I urge my colleagues to carefully consider our moral obligation to those who participated in the construction, operation, and defense of the Panama Canal and who are now buried on the land they worked for and defended, or who are next of kin of these same individuals.

Only by amending the treaty can we be certain that their gravesites will receive the dignity they deserve, the dignity which we have provided all other cemeteries containing American dead.

The reservation adopted by the Senate to the Neutrality Treaty, the Randolph reservation, is not a guarantee that these gravesites will, in fact, receive the dignity they deserve. Serious questions about the legality of the reservations have been raised. The administration's interpretations of international law with regard to reservations have not been clear. In fact, they have been contradictory. We cannot allow this issue to fall by the wayside due to misinformation or misunderstanding.

Mr. President, I urge the passage of this amendment. That concludes my opening statement. I will be happy to yield to the majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. President, I ask unanimous consent that the vote occur with relation to the amendment by Mr. SCHMITT at 1:30 p.m. today. I understand this has been cleared all around.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I thank the Senator for yielding.

Mr. SCHMITT. Mr. President, I reserve the remainder of my time.

Mr. CLARK. Mr. President, I yield to the distinguished Senator from Vermont.

Mr. STAFFORD. Mr. President, I ask unanimous consent that I may proceed, as in legislative session, for not to exceed 1 minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. CLARK. Mr. President, I rise in opposition to the pending amendment for two principal reasons. First of all, it seems to me that the amendment is quite unnecessary for reasons I have tried to explain; and, second, that it does not accomplish any more, it

seems to me, than we have already accomplished by the so-called Randolph reservation in the Neutrality Treaty.

The amendment would seek to accomplish, in effect, what the Senate has already accomplished in reservations Nos. 1, 2, and 3 to the resolution of ratification to the Neutrality Treaty.

These Randolph reservations were, of course, approved by the Senate by a vote of 96 to 1. As the distinguished Senator from New Mexico has indicated, he was one who voted for that, and one of the sponsors, as I was.

This requires the United States and Panama to negotiate for an agreement which would provide for the American Battle Monuments Commission to administer that part of the cemetery encompassing the remains of U.S. citizens. The conditions include flying the U.S. flag over the cemetery. The reservations also require the President to arrange the removal of remains of U.S. citizens presently in the Mount Hope Cemetery prior to the entry into force of the treaty.

Additionally, the reservations, since they were passed, require the United States, during the first 30 months of the treaty, to transport the remains of U.S. citizens from the Canal Zone cemeteries to the United States, if desired by the nearest living relative.

Since these reservations are attached to the Neutrality Treaty, these provisions would remain in effect permanently, whereas the proposed amendment, the pending amendment, would become part of the Panama Canal Treaty which ends on December 31, 1999.

It seems to us that it is a more encompassing amendment, the reservations which were adopted in perpetuity, than would be the case with the Senator's amendment.

It is therefore questionable to us whether the rights which the amendment seeks would extend beyond the end of this century.

This possible conflict in interpretation could jeopardize the rights already set forth by the Senate in the reservations to the Neutrality Treaty convincingly passed. We have every reason to believe that the Panamanians indeed will accept this reservation.

For these reasons, we oppose the proposed amendment.

In short, Mr. President, what I am saying is just this: We have already agreed to the Senator's amendment in the so-called Randolph amendment by a vote of 96 to 1, reservations 1 through 3 of the Neutrality Treaty. This guarantees the rights of those who the Senator from New Mexico is concerned about. They have been dealt with in perpetuity.

I say finally that the Senator would get no more assurance from the Panamanians through an amendment than through a reservation. Each process is the same, insofar as its standing in law, and each process is the same insofar as the fact that the Panamanians would have to accept it. His amendment would become a part of the treaty only if Panama agreed to the amendment. The same is true of the Randolph reservation. Neither of them can stand alone. Both sides must agree.

It seems to me that we accomplish no more with this amendment than with the Randolph reservation. Each of them must be accepted by the Panamanian Government. So we see, really, no reason for the amendment, and perhaps a bit of a weakening of the issue by actually limiting the period of its effectiveness to the end of the

century; whereas, the approved reservation on the Neutrality Treaty, in fact, assures it in perpetuity.

Mr. SCHMITT. Mr. President, just so we clear up the last point first, if the Senator will look at the portion of amendment 97 that goes to paragraph 2 of article II, we have taken care of that particular problem by adding:

except that the provisions of this Treaty shall not terminate with respect to such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America.

That would provide for this aspect of the treaty to be in force in perpetuity.

Also, Mr. President, I should like to ask unanimous consent for Senator Randolph, the sponsor of the resolution to the Neutrality Treaty, to be added as a cosponsor to this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHMITT. Mr. President, the Senator from Iowa also said that the process by which amendments and reservations become effective is the same. Maybe I misunderstood the Senator, but I believe that it is correct to say that an amendment to a treaty is binding on all parties to the treaty, whereas a reservation is binding only on one party. I think, that is sound international law. I am not a lawyer, but I beleive it is.

I am also intrigued by the Senator's comment that Panama must agree to reservations and amendments. The only way that I am aware, under Panamanian law, that a change to a treaty can be agreed to is through a plebiscite. Is the Senator suggesting that all the reservations that we have added to the Neutrality Treaty and may add to the Panama Canal Treaty must be agreed to by a Panamanian plebiscite?

Mr. CLARK. The Senator will be glad to respond.

First of all, what I indicated, of course, was that whether we pass an amendment, as the Senator is proposing, or a reservation, as has been adopted by the so-called Randolph reservation, in either case, the Panamanians must, through their own procedures, accept either of those for them actually to become effective in international law.

In other words, we cannot simply pass any amendment that we please and, therefore, bind the Panamanians by our amendment. It is quite true that if we pass an amendment of this kind, which has not been previsouly discussed and negotiated, it would be my feeling that there would have to be a plebiscite. But certainly, in whatever procedure they use, whether it is by plebiscite or some other process, we cannot dictate to the Panamanians which amendment to accept, or which reservation. That is their decison. The same is true of a reservation.

All I am saying is whether we do this by reservation, as Senator Randoph has done, or whether we do it by amendment, as the Senator from New Mexico proposes, in either case, this is simply an expression of our position. The Panamanian Government must accept the amendment through a plebiscite. The Panamanian Government must accept the reservation through their own procedures. I think something less than a plebiscite. But in either case, it has to be accepted.

In other words, we cannot enforce our view on the other party to the treaty. They both have exactly the same standing in law. Both must be agreed to by the Panamanian Government, and one gains no more by one process than by another in the eyes of international law or as we or the Panamanians would view it.

Mr. SCHMITT. I appreciate the Senator's remarks. I agree that either a reservation or an amendment, to be effective, must be agreed to by the Panamanians. I submit that by their own law, that requires a plebiscite and not just the agreement of the present government.

Mr. CLARK. Speaking of the amendment?

Mr. SCHMITT. Speaking of both, I am afraid, because otherwise, I see no other way for it to be constitutionally binding, according to Panamanian law, on future Panamanian governments.

Mr. CLARK. Of course, that would be for the Panamanian Government to decide.

Mr. SCHMITT. It may be for them to decide, but by the reading of Panamanian law that we have discussed many times in this debate, I think it would be safe to assume that any future government could interpret that law as having required a plebiscite and they can negate the value of any reservation to the treaty.

If we are going to have some process—and I think by law, Panamanian law, the process required is a plebiscite—then we might as well do it as an amendment. If the amendment is not agreed to, then we revert back to the 1903 treaty and the appropriate amendments thereto, and we know exactly where we stand. If the Panamanians reject a reservation, then I do not think there is anything in international law that invalidates the treaties and we are right back where we started from with respect to the issue of the cemeteries and, unfortunately, with respect to a number of other issues, such as those addressed by the so-called DeConcini reservation.

Again, I do not claim to be a lawyer. I am a geologist, a former aviator, and now a U.S. Senator. But I do think I have some access to logic and there is a difference between a reservation and an amendment. A reservation binds only the United States. An amendment, if agreed to by plebiscite, will bind both parties.

Mr. CLARK. If the Senator will yield. I do not understand the reasoning of the Senator in saying that these reservations if passed will bind only us. Does that mean that——

Mr. SCHMITT. I think, Senator, that that is supported in international law.

Mr. CLARK. Is that the Senator's interpretation, then?

Mr. SCHMITT. My interpretation of the reservation is that it binds only the parties attached to the treaties until some other process binds the other country. I see no reason why Panama can be bound by a reservation—DeConcini, Schmitt, or otherwise—unless they go through the constitutional process of a plebiscite.

Mr. CLARK. It is quite true that whether we are talking about a reservation or amendment, at some point, it has to be accepted by the other party or it does not become binding on either side.

Mr. SCHMITT. Absolutely correct.

Mr. CLARK. Once that occurs, it is binding on both sides. We cannot make a one-sided agreement in a treaty. The whole idea of

the treaty process is that each of us will agree to all of the amendments and all of the reservations or the treaty will not stand.

I agree that there may be a difference of opinion among Panamanians in terms of their own interpretation of the laws, but whether an amendment has to go the plebiscite route or a reservation has to go the plebiscite route, that is not something we can dictate, obviously. Of course, the Senator is as entitled to interpret Panamanian laws as I am. I do not know whether it has to go to a plebiscite or not. My feeling is that, certainly, if an amendment is passed, a plebiscite would be required for an amendment of this kind, which is totally new.

It seems to me if that were the case, the Senator's chances of having his amendment implemented would probably be lessened, in view of the fact that it would have to stand the test of a vote of the majority of Panamanians. The reservation, assuming it did not have to go the plebiscite route—and that is not the Senator's assumption, it is my assumption—it seems to me it is certainly not going to be any problem for the Panamanian Government to accept. So if we are concerned about this cemetery, whether or not, in fact, these rights will be preserved, it seems to me, if anything, the chances are greater under a reservation than that it would be acceptable in a plebiscite. Although I frankly doubt that it would be defeated under either process, at least it would call into question the whole issue of another plebiscite.

Let me conclude by saying that I read here for the record a protocol of exchange signed at Washington on December 18, 1951, for the convention with New Zealand for the avoidance of double taxation. This was entered into force in 1951. I read the reservation only to make one point: That, in fact, this has to be done jointly. It is not just binding on one party:

> The text of the said reservation was communicated by the Government of the United States of America to the Government of New Zealand. The Government of New Zealand has accepted the said reservation. Accordingly, it is understood by the two Governments that the convention aforesaid, upon entry into force in accordance with its provisions, is modified in accordance with the said reservation, so that, in effect, paragraph (4) of Article IX of the convention aforesaid is deemed to be deleted.

In other words, we cannot, in any agreement, dictate to the other party what is going to be binding on the two of us. All reservations, all amendments, must be acknowledged by both sides, or the treaty, in my judgment, would never go into effect. It would have no standing in international law.

Mr. President, I ask unanimous consent to have printed in the Record the protocol of exchange just referred to.

There being no objection, the protocol of exchange was ordered to be printed in the Record, as follows:

PROTOCOL OF EXCHANGE SIGNED AT WASHINGTON ON DECEMBER 18, 1951, FOR THE CONVENTION WITH NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION ENTERED INTO FORCE, 1951

The undersigned, Dean Acheson, Secretary of State of the United States of America, and Carl Berendsen, Ambassador Extraordinary and Plenipotentiary of New Zealand to the United States of America, being duly authorized thereto by their respective Governments, have met for the purpose of exchanging the instruments of ratification by their respective Governments of the convention between the United States of America and New Zealand for the avoidance of double taxation and the

prevention of fiscal evasion with respect to taxes on income, signed at Washington on March 16, 1948, and, the respective instruments of ratification of the convention aforesaid having been compared and found to be in due form, the exchange took place this day.

As recited in the ratification on the part of the United States of America, the Senate of the United States of America, in its resolution of September 17, 1951, advising and consenting to the ratification of the convention aforesaid, expressed a certain reservation with respect thereto, as follows:

"The Government of the United States of America does not accept paragraph (4) of Article IX of the convention, relating to the profits or remuneration of public entertainers."

The text of the said reservation was communicated by the Government of the United States of America to the Government of New Zealand. The Government of New Zealand has accepted the said reservation. Accordingly, it is understood by the two Governments that the convention aforesaid, upon entry into force in accordance with its provisions, is modified in accordance with the said reservation, so that, in effect, paragraph (4) of Article IX of the convention aforesaid is deemed to be deleted.

In witness whereof, the respective Plenipotentiaries have signed the present Protocol of Exchange.

Done in duplicate at Washington this eighteenth day of December, 1951.

For the Government of the United States of America: Dean Acheson.

For the Government of New Zealand: Carl Berendsen.

Mr. CLARK. Mr. President, I am sorry for having been so long in my answer.

Mr. SCHMITT. That is fine. I think it is a very important issue, because we are not only talking about the moral obligation and of the American dead, but we are talking about the issue of reservations and amendments.

I just say, knowing the New Zealand people as I do, but not knowing the constitutional processes well enough to know exactly what may have occurred, I would suspect that the reservation to the protocol just ordered printed in the Record was consistent with their constitutional processes, without any question.

The issue here is what are Panama's constitutional processes? I think, with respect to reservations, everybody right now feels very strongly there is a question about what the process is. But there is no question about the amendment process. That is exactly why I am proposing for this very critical issue, at least critical for many people, that we have an amendment so we know exactly what is required in order to protect these cemeteries and the dead contained therein.

A plebiscite is what we need. We are going to end up, I am sure, feeling very uncertain about any other process that General Torrijos may propose for agreeing to or not agreeing to the reservations that have been entered into, on this, by the U.S. Senate.

I would also submit that there is a major difference between the Randolph reservation and the amendment that I have offered. The Randolph reservation only goes to the issue of having negotiations. It does not require an agreement. Whereas, the amendment to the treaty itself that I am proposing will require, because it is part of the treaty, the reaching of an agreement. That agreement, of course, will result when and if the Panamanians, through a plebiscite, ratify the changes to the treaties that we feel are necessary here in the U.S. Senate.

Mr. President, I think that it is clear that this amendment, and the issue raised about the differences between reservations and amendments, not only goes to the heart of the problem with the

cemeteries, but goes to the heart of the problem of the treaties in their entirety.

The reservations offered by Senator DeConcini were thought to have been, a few weeks ago, binding on Panama as well as on the United States. However, we have seen considerable disagreement arise as to whether that is so.

I, personally, because of the constitutional issue in Panama and the question of international law on the differences between reservations and amendments, never felt that we could be assured that reservations to these treaties would be binding on the Government of Panama. In particular, even if one head of state agreed to a reservation, without going through the constitutional process in Panama, it would be subject to being denied or revoked by any future head of state. I think the people of this country, certainly many Members of this body, would feel much better if the reservations and the amendments to this treaty were submitted to the Panamanian people according to their constitutional processes before these treaties enter into force. Of course, I would be remiss if I did not remind my colleagues that I think the bilateral treaty process is out of date and that we should not be entering into these treaties for much more fundamental reasons than just the questions before us here today. But that is not the issue. The issue is the treaty before us and how we can have a good treaty, a treaty that will protect legitimate U.S. interests as well as hemispheric interests.

I think it is very important that on the particular issue of cemeteries, as well as many other issues, that we amend the treaties rather than depending on reservations which, I repeat, under international law as I understand it, bind only one country until the constitutional processes of the other country have, in fact, accepted such a reservation. Whereas, an amendment binds both parties, or the treaty is not in force.

Mr. President, I reserve the remainder of my time and, if there are no further comments, I suggest the absence of a quorum.

The PRESIDING OFFICER. We remind the Senator that there is no agreement for division of time.

Mr. SCHMITT. I thank the Chair.

I was under the impression that the time was divided equally, but I will still suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk, will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CLARK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 1:25 P.M.

Mr CLARK. Mr. President, I ask unanimous consent that the Senate stand in recess until 1:25 p.m. today, at which time the Senator from New Mexico will be recognized for 2½ minutes to summarize his arguments on the pending amendment; that there then be 2½ minutes for the managers of the treaties; that in accordance with the previous unanimous-consent agreemtn, there be a vote in relation to the pending amendment at 1:30 p.m.; and

that the Senator from Alabama (Mr. Allen) then be recognized to call up his amendment.

There being no objection, at 12:54 p.m. the Senate recessed until 1:25 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. Ribicoff).

The PRESIDING OFFICER. Who yields time?

Mr. SCHMITT. Mr. President, we are scheduled to vote on amendment No. 97 at 1:30. Before that vote, I would just say once again that this amendment, the so-called cemeteries amendment, would change the body of the treaty so that the cemeteries in the Canal Zone, specifically Mt. Hope and Corozal, would be dealt with by treaty rather than by some future and uncertain negotiations.

Amendment No. 97 would amend four articles of the treaty so that this would be accomplished, and also so that the provisions added by the amendment would be in force in perpetuity.

I think, Mr. President, that the technical aspects of these amendments are not as critical, though I would submit they are properly drafted, as the moral aspects of the amendment, which represents a continued moral commitment by the Government of the United States and its people to those individuals who, in the past, in their service either in the Armed Forces or in the civil portions of the Government, have assisted in the operation and defense of the canal.

The PRESIDING OFFICER (Mr. Inouye). The Senator's time has expired.

Mr. SARBANES. I yield the Senator 30 seconds of my time to complete his statement.

Mr. SCHMITT. I appreciate the Senator's courtesy. I have completed my statement, but I certainly would urge my colleagues to put into the form of an amendment the resolution of the issue of the cemeteries in the Canal Zone. A reservation is not sufficient, in my mind; a reservation binds only the United States to the treaties. An amendment would, when properly ratified by the Panamanian people, bind both parties.

I thank the Senator from Maryland for his courtesy.

Mr. SARBANES. Mr. President, I rise in opposition to the amendment. This matter was dealt with fully and, in fact, in great detail by the reservation added to the permanent Neutrality Treaty, which passed the Senate by a vote of 96 to 1. That reservation sketched out in great detail how we would proceed. It was a reservation which ran to some 2½ pages, and addressed the matter fully. It was carefully worked out in terms of dealing with this problem, both in terms of people who wish to bring back the remains of their loved ones to this country, where the Government undertook to pay for it, and in terms of requiring administration by the American Battle Monuments Commission, which is a commission which handles comparable arrangements all over the world, with respect to our honored dead and their burial in foreign lands.

It is our view, of course, that that reservation, which has permanent application, more than adequately deals with the problem and is, in fact, a better and more constructive way in which to do so.

The PRESIDING OFFICER. All time has expired.

Mr. SCHMITT. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SARBANES. Mr. President, I move to table the amendment of the Senator from New Mexico and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maryland. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Indiana (Mr. Bayh), the Senator from Iowa (Mr. Culver), the Senator from Missouri (Mr. Eagleton), the Senator from Louisiana (Mr. Long), the Senator from Alabama (Mr. Sparkman), and the Senator from Georgia (Mr. Talmadge) are necessarily absent.

I further announce that, if present and voting, the Senator from Iowa (Mr. Culver) would vote "yea."

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Oklahoma (Mr. Bartlett), the Senator from Oregon (Mr. Packwood), and the Senator from Illinois (Mr. Percy) are necessarily absent.

The result was announced—yeas 55, nays 34, as follows:

[ROLLCALL VOTE No. 97 Ex.]

YEAS—55

Anderson	Hatfield, Mark O.	McIntyre
Bellmon	Hatfield, Paul G.	Metzenbaum
Bentsen	Hathaway	Morgan
Biden	Hayakawa	Moynihan
Bumpers	Heinz	Muskie
Burdick	Hodges	Nelson
Byrd, Robert C.	Hollings	Pearson
Case	Huddleston	Pell
Chafee	Humphrey	Proxmire
Chiles	Inouye	Ribicoff
Church	Jackson	Riegle
Clark	Javits	Sarbanes
Cranston	Johnston	Stafford
Danforth	Kennedy	Stevenson
Durkin	Leahy	Stone
Glenn	Magnuson	Weicker
Gravel	Mathias	Williams
Hart	Matsunaga	
Haskell	McGovern	

NAYS—34

Allen	Griffin	Schmitt
Brooke	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
Cannon	Helms	Stennis
Curtis	Laxalt	Stevens
DeConcini	Lugar	Thurmond
Dole	McClure	Tower
Domenici	Melcher	Wallop
Eastland	Nunn	Young
Ford	Randolph	Zorinsky
Garn	Roth	
Goldwater	Sasser	

NOT VOTING—11

Abourezk	Culver	Percy
Baker	Eagleton	Sparkman
Barlett	Long	Talmadge
Bayh	Packwood	

So the motion to lay Amendment No. 97 on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HANSEN. Mr. President, I wish to make a few remarks with regard to the deplorable treatment my distinguished colleague Senator DeConcini has been receiving in the press lately. I am especially angry after reading this morning's editorial in the Washington Post which I believe, stops just barely short of being libelous at the very least, it smacks of defamation of character.

I am appalled at the blindness of those who publicly castigate the junior Senator from Arizona in their assertions this entire "reservation" mess is his doing. The Washington Post editorial refers to the "humbling of the highest office in the land" in the administration's dealing with the Senator in trying to extricate itself from the situation.

I say the administration got itself into this situation and the administration is going to have to get itself out—if it possibly can at this point. The leadership, the administration, including the State Department, and the President himself are entirely responsible for every word in these treaties. Nothing, absolutely nothing has been added without their express approval and subsequent loud support.

This situation arose through the incompetence of those pushing ratification of the treaties, at any price, and their insensitivities to the feelings of both the American people and the citizens of the Republic of Panama. I really believe these treaties are beyond salvation at this point. This whole process has done more to alienate the people of both countries than all the years of unrest. To lay the blame on the honest and sincere intentions of one Senator, whose view, I might add, was shared by 74 other Senators, 74, is reprehensible and beneath the dignity of those who claim they represent responsible journalism.

I cannot stand by while the media attempts to extricate the administration from one of its worst foreign policy blunders of the last 15 months. The administration knew full well what would be the reaction from the Panamanian Government upon the adoption of the DeConcini reservation, yet it ignored all the signs. Whether the administration managed this through poor advisers, bad information or ineptness is uncertain. I suspect it was a combination of all three. The most generous thing I can say at this point is that the administration completely bungled the whole operation on its own. For the Washington Post, or any other supposedly responsible form of media to suggest it was the doings of one Senator is outrageous. I am really disgusted.

The PRESIDING OFFICER. The Chair recognizes the Senator from Idaho.

Mr. MCCLURE. Mr. President, I ask unanimous consent that, as in legislative session, I may introduce a concurrent resolution and make some remarks thereon.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Alabama (Mr. Allen).

Mr. ALLEN. Mr. President, inasmuch as the amendment that I have to offer would not be in order until we have gone through the articles, I wonder if we might have the Chair call the articles, inasmuch as my amendment is to article II, so it would be in order.

ARTICLE XI

The PRESIDING OFFICER. Are there further amendments to article X?

If not, the clerk will report article XI.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE XI

PROVISIONS FOR THE TRANSITION PERIOD

The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms.

1. In order to provide for an orderly transition to the full application of the jurisdictional arrangements established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone.

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.

5. The courts of the United States of America and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by an exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installations made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

ARTICLE XII

The PRESIDING OFFICER. Are there amendments to article XI? If not, the clerk will report article XII.

Mr. ALLEN. Mr. President, I ask unanimous consent that reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE XII

A SEA-LEVEL CANAL OR A THIRD LANE OF LOCKS

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

3. The Republic of Panama grants to the United States of America the right to add a third lane of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of America has delivered to the Republic of Panama copies of the plans for such construction.

4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.

5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

ARTICLE XIII

The PRESIDING OFFICER. Are there amendments to article XII? If not, the clerk will report article XIII.

Mr. ALLEN. Mr. President, I ask unanimous consent that reading of the article be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE XIII

PROPERTY TRANSFER AND ECONOMIC PARTICIPATION BY THE REPUBLIC OF PANAMA

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts except as the two Parties may otherwise agree.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in implementation of Article IV of this Treaty as such time as such units are made available to the Republic of Panama.

(d) Upon termination of this Treaty, all real property, and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements, and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar ($0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal, after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a

United States dollar ($0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars ($10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficent to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

ARTICLE XIV

The PRESIDING OFFICER. Are there amendments to article XII? If not, the clerk will report article XIV.

Mr. ALLEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The article is as follows:

ARTICLE XIV

SETTLEMENT OF DISPUTES

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter trrough consultation in the appropriate committees established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may in appropriate cases, agree to submit the matter to conciliation, mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, we have gone through all the articles, so that an amendment now will be in order to any of the articles in the treaty. Is that correct?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT 101

Mr. ALLEN. That being the case, Mr. President, on behalf of the distinguished Senator from South Carolina (Mr. Thurmond), the distinguished Senator from North Carolina (Mr. Helms), and myself, I call up amendment No 101 and ask that it be stated.

The PRESIDING OFFICER. (Mr. Cannon). The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. Allen), for himself, Mr. Thurmond, and Mr. Helms, proposes an amendment numbered 101:

Amend Article II of the treaty by striking the period at the end of Article II, section 1, substituting a semicolon, and adding the following: "*Provided, however,* That within such six-months period the people of Panama shall have approved this Treaty in a national plebiscite call by the Panamanian Government for the purpose

of ascertaining the Panamanian national will on the question of approval or disapproval of this Treaty.

Mr. ALLEN. Mr. President, this is an amendment to article II, which is the appropriate place to offer this amendment, calling for a plebiscite in Panama on this treaty. This would carry with it the other treaty, without so stating, because neither treaty can go into effect until both are put into operation.

Article II provides:

This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, 6 calendar months from the date of the exhange of the instruments of ratification.

This amendment would merely add this language to the provision stating the effective date of the treaty. It goes into effect, along with the Neutrality Treaty, 6 months from the date of the exchange of the instruments of ratification, which would be the exchange between the two heads of state. But the amendment adds this proviso:

Provided, however, That within such six-months period the people of Panama shall have approved this Treaty in a national plebiscite called by the Panamanian Government for the purpose of ascertaining the Panamanian national will on the question of approval or disapproval of this Treaty.

Mr. President, if we examine the dealings with the Panamanian people, starting with the treaty of 1903, which has been under attack in the Senate by proponents of the treaties, we will see readily that we are in fact approaching another 1903 treaty situation. The 1903 treaty with Panama, it has been averred time and time again on the floor, took advantage of the Panamanians.

We dealt with a revolutionary government in entering into this treaty. The people of Panama were not consulted, and that is true, even though the treaty providing for the Panama Canal was received with wide acclaim by the people of Panama. Yet, the people of Panama were not called upon to pass upon the treaty, and the treaty was made merely with the revolutionary government of Panama.

Today we have the same situation. We are dealing not with the people of Panama in the absence of this amendment. We are dealing with a revolutionary government in Panama, not chosen by the people, never voted into office by the people, holding office as a result of a coup d'etat at gunpoint in Panama; and without this amendment, we will be dealing with the dictator of Panama only. We will have no compact with the Panamanian people. We will have a compact between the U.S. Government, acting under its constitutional processes, and the dictator of Panama, because there is no indication whatsoever that the dictator has any intention to submit this treaty to the people of Panama.

Do we want to go through the next 22 years, the duration of the Panama Canal Treaty, with the charge made by Panamanians dissatisfied with the treaty that "You dealt with the dictator of Panama and you did not give the people of Panama the opportunity to express their opinion on this treaty?"

It has been said that there already has been a plebiscite. Well, that plebiscite took place before the treaties were submitted to the U.S. Senate—certainly before there was action on them—and there has been a vast change in the treaties, a change that has caused

riots and demonstrations in Panama, showing the strong opposition of the people in Panama to the treaties as presently shaped in the Senate.

In effect, Mr. President, there has been no plebiscite on this treaty. There was tremendous approval of the first treaty. It was approved by a vote of 2 to 1, but since then the situation has changed. The very groups who supported the treaty before are in strong opposition to the treaty now, because they feel that the reservations which were added in the Senate are an impact on their national dignity and their national sovereignty. They are willing to forego the benefits of these treaties rather than have their national sovereignty impinged upon.

So if we just deal with the dictator and allow him to accept the treaties as finally acted upon in the Senate, and if the dictator accepts them without submitting them to the people, it will forever by averred that we took advantage of the Panamanians again, that we have another 1903 treaty situation again. With all the complaints and all the criticism that have been leveled against the 1903 treaty, it certainly would lead me to feel that the Senate does not want to be a party to such a situation again.

Suppose we submit these treaties to Panama. The dictator accepts them The Panamanian people riot. The Panamanian people say, "This is something that the United States, the gringos from the north, have forced on the Panamanian people." That criticism could be voiced time and time again, as they have guerrilla attacks, as they have violence, and as they have sabotage in Panama.

Would not they have a good case when they say, "Well, we never passed on these treaties, we never agreed to them, this was a compact between the United States and dictator Torrijos," who did not represent the Panamanian people?

Why does he fear to submit the treaties to the people of Panama? Why, he knows the people of Panama would reject these treaties. That is why. So why should we force these treaties on the Panamanian people?

Let us require that they say that they want to accept and to agree to these treaties. What is wrong with that? If they want the treaties and the U.S. Senate is willing to submit them to Panama, let them so state in a plebiscite, in a referendum called for that purpose. It would be far better if they do not want the treaties to let them say so and then let us go back to the negotiating table and see if a treaty acceptable to the American people and acceptable to the Panamanian people can be agreed upon.

Mr. President, we are in a strange situation here in the Senate. These treaties have been negotiated, they have been shaped here in the U.S. Senate as the Senate has the constitutional right and duty to do, but yet, in my judgment, they do not please either the American people or the Panamanian people.

Would not this be a great safety valve to insert in this treaty that it does not become effective unless within this 6-month period before which the treaties go into force a plebiscite be called in Panama to determine the wishes of the Panamanian people? I would hope that the Senate would be able to profit by the mistakes of the past. The 1903 treaty was handled poorly by the American Government, because they should have required that the Panama-

nian people pass on that treaty. But yet we are faced with almost an identical situation to the 1903 treaty situation. Can those senators then who have been so critical of the action of the U.S. Government in 1903 dealing with the revolutionary government of Panama not see the similarity, the analogy of the 1903 situation and the 1903 action by our Government to the action that they are now suggesting that the Senate take dealing with a revolutionary government without the approval of the Panamanian people That is exactly the scenario of 1903.

The proponents of the treaties are critical of what happened in 1903. Yet they are putting in motion a scenario remarkably similar to the 1903 situation.

In the next 22 years, during the life of this Panama Canal Treaty before the canal is turned over to Panama absolutely, we are going to hear it proclaimed a thousand times in Panama, "We are not satisfied with this treaty, it was not submitted to us, we want a better deal, and to force that better deal we are going to riot, we are going to demonstrate, we are going to take every means possible to show our disapproval of these treaties."

Why do we risk that, Mr. President? Why is it not the better part of wisdom to say to the Panamanian people, "Very well, we will ascertain your wishes; if these treaties are not satisfactory with you, we will not ask that you have these treaties forced upon you."

So that, Mr. President, is the purpose of this amendment, to provide and to assure that our compact is not just with the Panamanian dictator but that it is with the people of Panama. And that is important.

Mr. President, throughout this entire debate the proponents of these treaties have tried in every way possible to keep the Panamanian people from being allowed to pass on these treaties. Is that a fair statement? The proponents of these treaties have tried in every way possible while they have been under debate in the Senate for over 2 months—they have been pending for some 6 months—to assure that these treaties will not be submitted to the Panamanian people for action, that we will deal only with the dictator of Panama and not with the people of Panama, because every single amendment that has been offered to the treaty has been rejected here on the floor, except for the two so-called leadership amendments that left loopholes big enough for a truck to be driven through.

They are the only two amendments that have been agreed to by the leadership and, of course, the leadership controls a heavy majority of the Members of the Senate on these votes.

But every time an amendment we offered one argument that would be made against it is do not accept this amendment because if you do, it will require another plebiscite in Panama. What is wrong with that? Why should not the people of Panama be consulted? Why should not these treaties be satisfactory with the Panamanian people before they go into effect?

The leadership had not thought so. They thought we should deal just with the dictator and, therefore, not allow any amendments to the treaties other than these that were agreed to by dictator Torrijos.

Mr. CURTIS. Mr. President, will the distinguished Senator yield?

Mr. ALLEN. I am delighted to yield to the distinguished Senator from Nebraska (Mr. Curtis).

Mr. CURTIS. Is it not true that the Constitution of Panama grants to the people through a plebiscite a direct role in the ratification of the treaties?

Mr. ALLEN. That is my understanding, yes. I think it is very dangerous since these treaties have been changed that they be not submitted again to the Panamanian people. Otherwise, they might rule these reservations unconstitutional under their law.

Mr. CURTIS. Just as we in our Constitution have vested in the U.S. Senate a role in treaty making, the constitution of Panama gives the people a direct role; is that correct?

Mr. ALLEN. Yes, that is correct. In other words, the people down there occupy the role, in effect, of the U.S. Senate here on this end of the line.

Mr. CURTIS. That being the case, the distinguished Senator from Alabama has offered an amendment which is far different than just a proposal that here is something the people ought to vote on.

Mr. ALLEN. That is right.

Mr. CURTIS. It is a proposal requiring that the constitutional processes in Panama be followed.

Mr. ALLEN. That is correct.

Mr. CURTIS. Is that correct?

Mr. ALLEN. Yes.

Mr. CURTIS. In other words, if there is a change in the treaty of any kind made by the U.S. Senate, and the treaty goes back to Panama, then to conform to their constitution it must be dealt with by both the executive and the people directly; is that correct?

Mr. ALLEN. That is my understanding of their constitutional provisions; yes, sir.

Mr. CURTIS. We then are in the same position if we offered a treaty to another country, and after it was transmitted to them they made changes, and it came back to the United States as a different agreement.

Mr. ALLEN. Yes.

Mr. CURTIS. Then it would be incumbent upon our executive to submit it to the Senate for consideration, would it not?

Mr. ALLEN. That is my understanding, yes.

Mr. CURTIS. I think the distinguished Senator's point is well taken. Oftentimes you hear the proposal made, "Well, let the people vote on it," and it may have merit, the idea of letting the people decide or, "Let us find out what the people want." That is worthy.

But this is far different, it is more than that. It is true it is submitting to the will of the people of Panama, but it also is a necessary step in the operation of their constitutional government; is that correct?

Mr. ALLEN. That is correct, yes.

Mr. CURTIS. I commend the distinguished Senator for his amendment; and while he has graciously yielded to me, I want to commend the distinguished Senator for his scholarship, for his indepth study of the law, the Constitution, and for his faithful attendance and his diligent, unwavering participation in these deliberations.

Mr. ALLEN. I thank the Senator.

Mr. CURTIS. It has been most outstanding. He has displayed a strength of character and a strength of mind and a brilliance that are most unusual and extraordinary. It is rather disappointing that his proposals, as well as the proposals of many other people, are usually tabled by the lash of the proponents and absentee individuals who never hear what is being proposed, to deny the right of the Senate to vote on the merits of a proposal.

But, in spite of all that, the Senator has performed his duty in a conscientious and very exemplary way, and I am sure he has earned a place in history as one of the greatest of the U.S. Senators.

Mr. ALLEN. I thank the distinguished Senator for his very kind and, I must say, undeserved remarks. I appreciate the fine contribution he has made in pointing out the defects in these treaties, how they will not be to the best interests of the people of the United States from an economic standpoint and from a military standpoint as well.

Mr. President, the distinguished Senator from Nebraska spoke of the fact that the leadership has been able to defeat every amendment other than the two leadership amendments, and so they have.

The leadership is responsible, Mr. President—the leadership and the administration together are responsible—for every single word in this treaty. Having an overwhelming majority of the Members of the Senate following their recommendations and their lead, they have had the power of life and death over any amendment.

If amendments adding reservations to the resolution of ratification were accepted—and several were—they had to meet the approval of the leadership and of the administration or they would not have any chance of passing. So if we find ourselves in the Senate today in something of an impasse, if we find ourselves on the horns of a delemma, over the fact that in the Neutrality or the Defense Treaty, which the Senate agreed to some 3 weeks ago in order to obtain passage or approval—which would be a better word—in order to obtain aproval by the Senate of the first treaty, it was necessary, they found, at the last moment to obtain additional votes for the treaty, and in order to get those they agreed with certain Senators in the Senate that they would accept the DeConcini amendment.

Now, the dictator and the President exchanged letters on March 15, the day before the vote in the Senate. The dictator was raising a question about the fact that he had heard that reservations were being considered, and he was fearful of the meaning of these reservations. These letters are in the record of the Congress and Senate action, and the President assured him that nothing would be agreed upon that would interfere with the spirit of the agreement that he and the dictator had reached.

But when the smoke of battle had cleared away, the dictator objected strenuously, I might say violently, to the DeConcini amendment which had been used to gain enough votes to pass the treaty, and the Panamanians thought so poorly of the DeConcini amendment that already they have started to try to undercut this amendment in the U.N., at the bar of world opinion, and they are

seeking to declare the provisions of this amendment illegal, unenforceable, even before the treaties have both been agreed to here in the Senate.

The DeConcini amendment has caused such consternation in Panama that if the dictator accepts the treaty with the DeConcini amendment, public opinion is so strong there that it is going to cause, in my judgment, the overthrow of dictator Torrijos. That would not be an undesirable happening in the view of the Senator from Alabama if it called for or it caused democratic forces to get back in control of the Government of Panama. But I would hate to see the dictator turned out of office because he has worked out a very fine treaty from the standpoint of Panama with the American negotiators, and through action of the U.S. Senate.

There is only one provision that has been added to these treaties that has not met with the approval of Mr. Torrijos, just one. The administration slipped up just one time. They beat down everything else, but they made the mistake of accepting the DeConcini amendment in order to pass the treaty. That is what it took, and they took a calculated risk that the dictator could go ahead and accept the treaty with that provision in it, and now they find out they cannot in light of the adverse public opinion in Panama.

But this was not just a DeConcini amendment. It had to become a leadership approved amendment, or it never would have passed, because not one single word has been added to this treaty without the approval of the administration and the leadership.

So now the administration is going to have, over the weekend, to try to resolve this dilemma that they find themselves in. Panama seems to be requiring that this DeConcini amendment be diluted or be weakened, or to have it said that it has no force and effect, or not the force and effect that it was thought to have and was stated to have during the debate, but that it means something else.

That is the problem that the administration has, stated frankly and baldly. How can they appease the Panamanians without incurring the ire of Senators who would not have voted for the treaty without the DeConcini amendment? That is the problem they have.

They have the votes. They could get any amendment passed that they want passed, but will it mean anything, and will it have the effect that they think it might have? I suggest that it will not.

The first treaty is gone. We cannot bring it up again; it is already agreed to. It would take unanimous consent to bring it back up, to work on it again, and I doubt if unanimous consent would be obtained.

Then, in trying to cut the ground out from under the DeConcini amendment with respect to this treaty, how can that be done? By adding language trying to knock out the provision in the other treaty? That is not going to work, either, because this treaty that we are on now expires at the very time the DeConcini amendment goes into effect. Come the dawn of the next century, this Panama Canal Treaty is through; it is dead; it has served its purpose; and we then proceed on to the other treaty, where the DeConcini amendment is embodied.

Why did not the supporters of the treaty see the deadly danger in the DeConcini amendment? Why did they not? The DeConcini amendment, every single word of it, was weighed, it was held in a

balance, it was studied, it was looked at minutely, its effect pondered and considered, under study by the State Department, presented to the President himself, and studied, I assume, by the leadership.

Well, they fell victim, it would seem to the Senator from Alabama, to their own reasoning with regard to procedure on a treaty.

They reasoned that no amendments must be allowed, because to amend the treaty—when I say amendments, I am talking about amendments to the treaty—no amendments to the treaty should be allowed, because to do so would require another plebiscite.

"But we can allow almost anything to come in as a reservation, because that will not require another plebiscite, and the dictator can accept it and that will be the end of it." Thus they reasoned; but it did not work out that way. They reasoned wrongly, because the reservation is so worded that it must become a part of the notes of ratification between the heads of state, and it will be written right into the final agreement between the two heads of state.

"Well," they say, "the DeConcini amendment is not too far wrong, not too far different from the leadership amendment." And they thought, well, it was not much worse than the leadership amendment. Both of them give us the unilateral right to move to keep the canal open. But the leadership amendment—and as I say, it had loopholes in it, loopholes big enough to drive a truck through—the leadership amendment, supposedly providing for unilateral action on the part of the United States to defend the canal, had a paragraph in it—and I am sure the leadership would not have put that in if they had been drafting the amendment, because the amendment did not really show any originality; it merely took the memorandum between the President and the dictator and used that word for word, transferring it over to the treaty itself in the form of the leadership amendment.

But that memorandum between the dictator and the President had three clauses inserted in it by the Panamanians—I assume by the dictator, inasmuch as it was an agreement between the President and the dictator—that gave him protection, and the DeConcini amendment did not have these three protective clauses that the Panamanian dictator inserted in the memorandum with the President which later became the leadership amendment.

Because the leadership amendment, based on the memorandum, provided that in asserting our right to intervene and defend the canal, we would not interefere with the internal affairs of Panama, we would not interfere with their territory, and we would not interfere with their independence. Those three safeguards were given the Panamanians in the leadership amendment, but not in the DeConcini amendment. That is where the Panamanians feel that their national dignity is being besmirched and their sovereignty being questioned.

The amendment got by the scrutiny of all of the proponents who bother to look at it, the State Department, the President, and the managers of the treaty, and they just embraced it. When they found that "with this amendment we are going to win the treaty fight" they all promptly embraced it.

But it did not have the safeguards in it for the Panamanians that the leadership amendment had. That is the impasse that we have.

Would it be right, would it be fair to the Senators who based their vote for the treaty on the full strength DeConcini amendment, to now seek to water down that amendment, and to say that it does not mean what it meant when it was accepted, and what the legislative history shows that it meant? They have tried to amend the legislative history by a different line of talk about the DeConcini amendment. That is not going to work, because, as Senators know and as the public knows, once a provision is written into a law, and once that law passes, you cannot think up something three weeks later and come in and say, "Look, this is what we meant when we passed this law or this amendment; we meant something else."

What counts is, what did the Senate mean at that particular time as to the meaning of that particular provision? The door is closed to having legislative history to show we did not mean what we said we meant when we passed the DeConcini amendment.

Nor can they, by amending the present treaty, do away with the provisions of the DeConcini amendment, because, as I have stated, the Panama Canal Treaty expires at the very time the DeConcini amendment takes up.

Mr. President, this will probably be the last amendment offered to the treaty. We have gone through all of the articles and now we are going back, as the rules provide, to seek to amend any of the articles that we so desire. This is an amendment to article II, which would assure us that this is a compact that we have with the Panamanian people, and that this treaty will not forever be the subject of division, criticism, the charge that we have dealt unfairly with the Panamanian people—as is the case with the 1903 treaty. Let us avoid the pitfalls of the 1903 treaty, which has been under such attack here by the proponents of the treaty. Let us not make those same mistakes. The Senate, 20 years from now, will be saying, "Why did not the Senate, in the year 1978, have a safeguard providing for a plebiscite in Panama?"

As the distinguished Senator from Nebraska (Mr. Curtis) pointed out, the people of Panama, in regard to action on the treaty, occupy the same place that the Senate has in giving their advice and consent to a treaty. They have held, as has been pointed out here on the floor by the distinguished Senator from Alaska (Mr. Stevens) just the other day in connection with his amendment, that the Panamanian Constitution provides that anything that has not been approved by the People as to a treaty is unconstitutional in Panama.

Once we let these treaties out of our hands, we are going to see a concentrated effort by Panama to knock out the DeConcini amendment, to say it is unconstitutional, because it was not in the treaty at the time of the plebiscite.

Of course, the plebiscite was called by the dictator prematurely because he knew that the U.S. Senate had the constitutional duty of giving advice and consent with respect to the treaty, and that the form that advice takes is in the form of amendments. He knew there was a likelihood that the treaty would be amended, yet he

calls for a plebiscite on the spot. One-third of the people voted against it even then, while everybody seemed to be for it. Now everybody seems to be against it, and it would not stand a shadow of a chance of passing in Panama.

Let us get to the bottom of it. If, in fact, they are for it, let them say so; if they are against it, let them say so.

Also, let us comply with the Panamanian Constitution. There is no assurance Torrijos will comply with it. There is every indication he will not. If we would have a valid treaty, one that they cannot nullify in part, we need to see that the constitutional processes of Panama are followed.

This amendment would solve several questions:

Will the constitutional processes of Panama be followed?

The answer to that would be yes, with the amendment. The answer would be no, in all likelihood, without it.

Will this amendment assure that if the treaty is agreed to, it will be an agreement not just with the dictator but with the people of Panama?

Yes; the amendment will assure that. The treaty without the amendment will not assure that.

Again, Mr. President, I say if we do find ourselves here in the Senate at an impasse, shall we please the Panamanians by undercutting DeConcini, or will we displease the Senators who voted for the treaty with the DeConcini amendment to be accepted—and it was accepted? How far can we go in pleasing the Panamanians without displeasing the Senators who constitute the balance of power on this issue? That is the quandary.

I am still of the opinion that an act of statesmanship on the part of the President would be to recall these treaties before a final vote on next Tuesday.

Admit that the treaties have been allowed to get into a position where any action would be subject to criticism. After all, Mr. President, these treaties were billed as a great good neighbor act. "If we do not do this, they are going to have riots in Panama, they are going to have demonstrations, they are going to have sabotage, possibly."

But, Mr. President, it is rather strange that on the eve of giving them this great good neighbor gesture, giving them the canal, we find that they do not want the canal under the conditions that the Senate has attached to this gift, that infringement be allowed upon the sovereignty of Panama.

Strange as it may seem, the good neighbor gesture would not be to approve the treaties and send them down to Panama, a dissatisfied recipient, an unhappy recipient. The good neighbor act would be for the President to recall these treaties, send them back to the negotiating table, and see if the negotiators can come up with treaties which meet with the approval of the American people and the Panamanian people as well.

If the President does not act in this statesmanlike fashion—and I sincerely believe that would be the best way out of this dilemma—the next best thing would be to either defeat the treaties outright, and let them go back to the negotiating table, or allow them to go through with a plebiscite amendment attached to see if these treaties really meet with the approval of the Panamanian people.

Mr. President, when these treaties first came before the Senate, the President sent them up in the order of the Panama Canal Treaty first and the Neutrality or Defense Treaty second. That was the logical order of presentation, for should we not first decide whether we were going to give the canal away before we decide how we are going to defend it in the year 2000?

Well, the leadership, as is their right, shifted this order of consideration so that we would consider first the Neutrality Treaty. They thought nobody much would object to a Neutrality Treaty. But the opponents of the treaties, or I might state those who have tried to strengthen these treaties, saw it differently. They saw the Neutrality Treaty as part and parcel of the overall question, "Shall we give the canal away?" As a result, 32 votes were cast against that treaty, just two short of the required number to defeat the treaty.

I warned at the time, Mr. President, that this action of reversing the order of the treaties, considering the Neutrality Treaty first, was going to cause many Senators to be deprived of the right to vote for the Neutrality Treaty, because I predicted that, if they took up the Panama Canal Treaty first and that was agreed to, then the Neutrality Treaty would be approved almost by acclamation. If you witnessed, there were some 86 cosponsors of the so-called leadership amendments; not that we thought it accomplished a great deal, but because they were so highly touted, so highly praised as solving some of the problems. They changed the Neutrality Treaty from a treaty that must be defeated in the Senate, according to their own words, to a treaty that was so good that you could not have any more amendments to it. That is what this leadership amendment was supposed to do. But 32 Senators had to vote against the Neutrality Treaty because it is part and parcel of the Panama Canal transfer, shall I say.

I felt so strongly that we ought to consider the Panama Canal Treaty first that I offered a motion seeking to reverse the order that the leadership had set for these amendments, requiring the Panama Canal Treaty to come up first, followed by the Neutrality Treaty, in the proper chronological sequence. That received only 30 votes. The leadership was able to defeat it. The Senate defeated it, on the recommendation of the leadership, of course.

I predicted then that that action of reversing the order of consideration of the treaties, considering the Neutrality Treaty first, would add at least 1 week to the time necessary for the consideration of these treaties. Well, that was correct, except that, instead of reducing it 1 week, I believe doing it the other way would have reduced it 3 weeks, easily, because the Panama Canal Treaty, I daresay, at that time would have been approved and then Senators would have flocked to vote for the Neutrality Treaty. It would not have been necessary to accept the DeConcini reservation in order to pass the Neutrality Treaty. There would have been over 90 votes cast for it.

So, everywhere along the line, it has not been the opponents of these treaties that have caused the confusion. All we have caused is that there be ligitimate debate and that there be a fair consideration of the points made by the opponents with respect to their desire to shape these treaties to the best interests of the American

people, to shape these treaties in a way to give the United States the strongest defense rights in the canal and the Canal Zone.

(Mr. Moynihan assumed the chair.)

Mr. ALLEN. Then every single word that has been added to the treaties has had the approval of the administration and now, at this late hour, we do not know whether the administration is going to lean toward pleasing the Panamanians and offending the Senators or pleasing the Senators and offending the Panamanians. That remains to be seen.

Mr. President, I understand that today will be the last day on which we can offer amendments to the treaty. Starting Monday, the vehicle before the Senate will not be the treaty but a resolution of ratification of the treaty, which, in itself, is amendable—not to offer amendments to the treaty, but to offer amendments to the resolution of ratification, or reservations to the resolution of ratification. So there doubtless will be reservations added.

I believe the leadership, though, is going to be cognizant of the fact that a reservation, while not rising to the dignity of an amendment to the treaty, does pose some real problems and does have a meaning. That a reservation does have a meaning, I feel, was not fully understood in the debate up to this time. I believe it is understood now and I believe that the administration is going to be a little more cautious in accepting reservations.

Mr. President, I should like to comment just briefly on a provision that has been called to my attention in the implementing legislation in connection with the treaties. You know, the treaty has certain provisions about the American citizens who are employees down on the canal and some 3,000 employees, either for the Panama Canal Company or the Canal Zone government. The treaty says that, in the first 5 years, the Panama Canal Commission, which is a U.S. Commission and is going to take over from the Panama Canal Company to operate the canal, the treaty mandates that the Commission get rid of at least 20 percent of the U.S. employees down there. Get rid of 20 percent of them—that is an American Commission, and we are supposed to have control over the canal for the next 22 years.

The treaty puts four Panamanians on the Commission and five Americans, and does not require any Senate confirmation of them. It mandates that we have to get rid of 20 percent of the American employees—I say American employees. Possibly, I should say U.S. citizen employees, because I guess, in a broader sense; we are all Americans in this hemisphere. We have to get rid of 20 percent of the U.S. citizen employees and—listen to this: This treaty that is supposed to provide for our control of the canal for 22 years says there cannot be any more U.S. citizens employed on the canal unless they have some special skill that the Panamanians do not have. How many would that be? Half a dozen?

So they are going to weed out the U.S. citizens working on the canal, some 2,000 or 3,000 of them, and not going to allow any more to be employed. This is an American Commission, mandated by the treaty.

Now, they said, well, do not amend the treaty; do not add that little trivia in there. I tried to knock out that provision, guaranteeing every U.S. citizen a right to continue to work there until they

reach retirement age, until they retire voluntarily, or until they are discharged for cause. They said, oh, no, we do not need that amendment, and they voted it down, saying, handle that in the enabling legislation.

I want to point out one of the provisions here, just to show how these treaties and the enabling legislation are stacked against the U.S. citizen.

Section 410, on page 58 of the implementing legislation, has this strange provision: It says that any Panamanian who is working on the canal down there when these treaties go into effect, he can immigrate to the United States without regard to quota or any other restricting provision.

He can just set sail for the United States. "Here I am."

Also, any Panamanian who is retired down there after 15 years of service is given special immigrant status and can move to the United States.

Now, why is that necessary? Why is it necessary to offer, shall I say, asylum, offer political asylum to Panamanians working on the canal, or Panamanians who have retired after working on the canal 15 years, and give them a right to enter the United States regardless of the quota system?

Is Torrijos all that bad? When we wipe out the Canal Zone and turn the zone and the government over to Torrijos, are his mercies so tender that the Panamanians themselves are going to want to flee?

Read the enabling legislation. They provide for, in effect, a getaway of the Panamanians working on the canal. Just consider that for a moment.

I hope, Mr. President, that we will keep faith with the Panamanian people, as well as the American people. Let us give them a right to say whether they approve of this treaty or not. Let us see that the constitutional processes of Panama are followed in order that we will have a valid treaty. Let us remove from future relations with Panama, and with the world, the possibility that Panama will say, "Well, this is an agreement worked out with the dictator, we don't feel bound by it, we want the canal now. Oh, we agreed, the dictator agreed to this. Well, we don't accept that and besides Torrijos is no longer with us."

That may well be the statement down in Panama after not too long a time after these treaties are accepted by Torrijos without submitting them to the people.

Let us not have another 1903 specter before us and before the country and before the world.

Why are the proponents of the treaties so critical of the conditions under which the 1903 Treaty was agreed to? Why can they not see that we have an analogous situation here?

Mr. President, I hope the amendment will be agreed to.

I yield the floor.

Mr. Matsunaga addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. Mr. President, last November I had the great privilege to accompany the distinguished majority leader (Mr. Robert C. Byrd), the Senator from West Virginia, and five other Senators on a study mission to the Republic of Panama for the

purpose of assessing the merits of the proposed Panama Canal treaties. That experience firmly convinced me that the ratification of the new treaties would be in the best interest of the United States.

On my return from that trip, I pledged that I would do all that I could to inform Americans of the actual provisions of the treaties now before the Senate and why they should be supported. Carrying out this pledge, I have spoken before a number of citizens' groups in Hawaii and elsewhere.

I would like at this time to submit the text of a speech on this subject which I delivered in Honolulu before the Hawaii World Trade Association on March 30, 1978, and ask unanimous consent that it be printed in the Record at this point.

There being no objection, the text was ordered to be printed in the Record, as follows:

THE PANAMA CANAL TREATY: TO RATIFY OR NOT TO RATIFY?

Honorary Consul General of Panama, Mrs. Armenia Adams de White, President Jerry Chang, members of the Hawaii World Trade Association, and friends: Aloha!

After fourteen years of service in the House of Representatives, I come before you today as one who has had the great privilege of serving his first fourteen months in the United States Senate.

There's a big difference between the two legislative bodies. In the area of foreign policy, for example, the names of the two committees are different. Until the recent reorganization in the House, its Committee was always called the Committee on Foreign Affairs, while in the Senate, its Committee has always been called the Committee on Foreign Relations. Somebody asked Alben Barkley, who was Vice President under Harry Truman why this was so. Barkley's response was that most House members are younger, so they can have affairs; but by the time they get to the Senate, they're only capable of having relations.

This afternoon I wish to address myself to an important and complex foreign relations, foreign affairs, or foreign policy matter—the Panama Canal Treaty: The question being to ratify or not to ratify.

As you know, there are two Treaties which have already been signed by the Heads of State of both Panama and the United States. One of the Treaties, the so-called Neutrality Treaty, was ratified by the Senate by a vote of 68 yeas and 32 nays on March 16. You know, of course, that all treaties must be ratified by a two-thirds majority vote. The second Treaty is expected to be voted on in the next few weeks.

I voted for ratification of the Neutrality Treaty, and intend to vote to ratify the second so-called Panama Canal Treaty. I will do so because I think it would be disastrous for both Panama and the United States if the treaties were not ratified. I would like to share with you today the reasoning behind my position.

We must bear in mind, first and foremost, that the Canal is worthless to us unless it can be kept in operation and we are able to use it.

The question then arises: In the event that the U.S. Senate rejects the Panama Canal Treaty, and hostilities between Panama and the United States should ensue, could we adequately defend the Canal and keep it in use?

In search of an answer, I went to Panama four months ago with the Senate Majority Leader, Senator Robert C. Byrd, and five other Senators. While I was there, I inspected the Canal. I took a helicopter tour of the Canal Zone, and I visited a remote island province of Panama, I talked with Americans who live in the Canal Zone and with those who live in Panama proper, with American military and business leaders, with Panamanian leaders, including General Omar Torrijos and President Demetrio Lakas, and with Panamanians who voted for, and Panamanians who voted against the Treaties in their plebiscite of last October.

My first-hand observation of the situation in Panama convinced me that General George Brown, Chairman of the Joint Chiefs of Staff, was right when he said that in the event of hostilities between the United States and Panama, we could not adequately defend the Canal and keep it in use, even with a hundred thousand troops. General Brown, of course, was speaking in the realistic expectation of guerrila type hostilities.

As a former infantry officer, while helicopting over the Canal and viewing the dense tropical jungle extending for miles, right up to the Canal on both sides, I

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came to the unavoidable conclusion that any determined band of guerrillas could keep the Canal completely shut down over extended periods of time and render it useless in the event of an emergency.

I was convinced, as were the other visiting Senators, that the operation of the Canal would be indefensible in the event of armed conflict between our country and Panama, as distinguished, of course, from hostilities between any other nation and the combined defense forces of Panama and the United States. The man-made freshwater lakes that supply the Canal's water, its complex lock system, and the locks' electric power supply are just too, too vulnerable.

Incidentally, you may be interested and amazed as I was, to know that there is not a single drop of salt water in the Panama Canal. It is operated by the use of fresh water from two lakes, Lake Gatun and Lake Madden. Fifty-one million gallons of fresh water pour into the Pacific or the Atlantic from these two lakes every time a ship sails through the Canal.

A single breach in the Lake Gatun Dam, the Canal's major water source, would close down the Canal for as long as two years, the time it would take rainfall to refill the lake. The sinking of a ship in the lock system—which would be technically easy to accomplish—would bring Canal operations to a halt for a long period of time.

We are living in a world where terrorism runs rampant. It won't take much terrorism to close the Panama Canal. Justifiably, shipowners themselves would refuse to sail their ships through the Canal so long as a real threat to their safety prevailed.

The new Treaties are the best guarantee—in fact, the only guarantee—we have to avoid hostilities and to keep the Canal open for our unobstructed use.

Every businessman in Hawaii should be aware of how the closing of the Panama Canal affect U.S. trade. Every American should know that such closing would adversely affect his or her daily living and the security of this country.

Because the new, bigger ships, including supertankers carrying Alaskan petroleum to Gulf or East Coast refineries, cannot fit into the Canal, the Canal is becoming less crucial to our trade with the passage of time. However, in 1976 sixteen percent of American trade went through the Canal. By comparison, the percentage of U.S. intercoastal trade passing through the Canal in 1924 was as much as 50 percent. Similarly, while 1,265 U.S. military vessels went through the Canal in 1949, in 1976 only 85 made the same journey.

The Canal plays a significant role in business in our State, as you may know. However, it is becoming less important with each passing year. Sixteen years ago, ten percent of Hawaii's trade went through the Canal. In 1976, this figure had dropped to 4.3%, or 729,000 long tons of a total of 16.7 million long tons of cargo which sent through Hawaii's harbors, that year.

So while the Panama Canal is not as essential as it used to be to United States trade, including that of Hawaii, the United States still needs the use of the Canal, especially in the event of an emergency. And there is every reason to expect that we will continue to have its unobstructed use—if we ratify the Treaties.

There is a further and perhaps even more compelling reason for ratification of the Treaties: Ratification would set right what is unquestionably an ugly chapter in American history. An examination of the events leading up to the signing of the 1903 Treaty, under which we now operate the Canal supports this judgment.

Up until 1903, Panama was a province of Colombia. The United States had sought a Treaty to construct the Canal with Colombia, the country that owned the land. The Treaty was negotiated with the help of a Frenchman, Philippe Bunau-Varilla, who was the chief engineer for the French company that had gone bankrupt trying to build the Canal. But the Colombian Senate refused to approve it.

Bunau-Varilla, who stood to gain $40 million under the rejected treaty, then talked the United States into sponsoring a Panamanian Revolution against Colombia, in exchange for the right to build and operate the Canal.

Bunau-Varilla, the Frenchman, planned the revolution, literally wrote the original Panama Canal Treaty of 1903, and even signed the Treaty for Panama on November 18, 1903, all before the official Panamanian delegation arrived in Washington to begin negotiations. What is even more incredible is that no Panamanian had even seen the Treaty before it was signed by the Frenchman and our own Secretary of State.

Theodore Roosevelt, who was then President, and who dispatched American warships to Panama in support of Bunau-Varilla, took credit for success of the revolution and extended official American recognition of the new nation of Panama within three days after the revolution. The hastily drawn Treaty was signed by the

Secretary of State John Hay for the United States on November 18, 1903, only 15 days after the revolution.

Before signing, Secretary of State Hay observed that the Treaty was "Vastly advantageous to the United States, and we must confess, not so advantageous to Panama," but upon the urging of Bunau-Varilla and under the instructions of President Roosevelt signed it. Here's what Bunau-Varilla told Secretary of State Hay just before the Treaty was signed: "For two years you have had difficulties in negotiating the Canal Treaty with the Colombians. Remember that [at that time] the Panamanians were still Colombians. You have now before you a Frenchman. . . . Do it now!"

Bunau-Varilla made one thing certain—that included in the new Treaty, just as it was in the proposed treaty rejected by Colombia, was a provision for the payment of $40 million by the United States to the French for equipment and materials used in the unsuccessful digging of the Canal by the French.

You can easily appreciate why the Panamanians disliked the Treaty from its very beginning. In 1936 and 1955, the Panamanians pleaded for minor changes in the Treaty for their benefit, and the United States readily consented. In 1958, riots broke out in Panama when nationalists attempted to raise the Panamanina flag over the Canal. Several Panamanians were killed in the incident.

In 1963, in an effort to calm the situation, we began flying both our flag and the Panamanian flag over the Canal Zone. But more riots ensued. Finally, in 1964, after 20 Panamanians and four Americans were killed in an incident, we consented to renegotiate the Treaty to cool the situation. That renegotiation took thirteen years, and was supported by the two Democratic and two Republican Presidents who served during that period.

In trying to decide whether or not to support the newly negotiated Treaties, we must try to understand the Panamanians' point of view. In our dialogue with the Panamanians in November of last year, we visiting Americans were told that what they want most is to regain their "national dignity". They openly expressed their hurt feelings over the fact that a foreign country has complete control over their greatest national resource and primary means of transportation through their country.

The United States operates the Canal and controls a strip of land ten miles wide that runs completely across the middle of Panama, dividing that country in two. The Panamanians feel that only with the return of the Canal Zone to their control will they be able to express genuine pride in their country, and walk with dignity as citizens of the Republic of Panama.

That's why they rioted in 1959 and 1964. That's why they pushed so hard for renegotiation of the Treaty of 1903. That's why they voted to ratify the new Treaties so overwhelmingly in last fall's plebiscite.

In fact, all of Latin America resents the old 1903 Treaty. Ratifying the new Treaties would be a major step indeed in improving our international relationships in our own hemisphere.

Let us now take a brief but close look at the objections which have been raised against the Treaties.

The opponents of the Treaties have said, "We bought [the Canal] and paid for it. It's ours just as much as the Louisiana Purchase and Alaska are ours." They call the Canal "our sovereign territory."

The truth of the matter is that we don't own the Canal. We never did. We are only leaseholders, highly-privileged as we may be.

The 1903 Treaty, under which we currently operate, says we are given the "use" of the Canal Zone. It doesn't say we own it. It, in fact, states that "the sovereignty of such territory [is] vested in the Republic of Panama". The United States is only given authority as "if it were the sovereign". The language of the 1903 Treaty makes it unmistakeably clear that the United States is not the sovereign; Panama is.

For the use of the Canal and Canal Zone we have been paying an annual rental fee to Panama. Until 1935, the fee was $250,000 a year. For sixteen years thereafter we paid $1.9 million annually. We now pay $2.3 million a year, which is less than 1.4 percent of the total tolls of $165 million collected last year.

Evidence in other areas points to our own recognition that we do not own the Canal. For one thing, under our Federal Constitution, any person born on American soil is automatically an American citizen, regardless of parentage. However, a person born of non-American parents within the Canal Zone is not a citizen of the United States. You will recall that when Hawaii was still a Territory, a person born of alien parents in Hawaii automatically became a United States citizen. This is not the case in the Canal Zone.

In addition, the Canal Zone's ports are considered foreign ports for postal-mail purposes, and goods shipped from the United States to the Canal Zone are considered a part of foreign trade.

Opponents of the Treaties are saying the Treaties propose a "give away" of the Canal. We certainly cannot give away something that is not ours!

The opponents of the Treaties have also argued that they should not be ratified because they were signed by General Torrijos—a "tinhorn dictator".

General Torrijos may be a dictator—but he certainly is not a stereotypical dictator. He has the unmistakeable support of his people, and walks among them even without bodyguards or arms. I know because I was with him on a couple of his walks. And he does not use terror and torture fo govern.

In fact, after signing the pending Treaties, he sought and obtained by a two-thirds majority vote, their ratification by his people through a plebiscite, watched over by United Nations observes.

Panamanians may not enjoy the same civil rights we Americans do. But their government under Torrijos does not systematically deny them their rights.

It is important to look, not only at Torrijos' failings, but at his accomplishments—not only at what he has not done, but what he has done.

As a "tinhorn dictator", Torrijos has done exceedingly well by his people. Since he came to power in 1968, he has doubled the number of schools. He has improved marketing facilities for small farmers, and built hydroelectric plants. He has institutionalized a low-cost housing program for poor in both urban and rural areas.

And he plans to do more. Under a provision of the second treaty we promise $50 million in foreign military sales credits to Panama over the next ten years. General Torrijos told our delegation of Senators that he does not plan to spend this money for weapons. He'll use it to send promising young Panamanians to college and to make them bilingual and trilingual so they can take over the complex operations of the Canal in the year 2000. He plans to buy helicopters and train pilots in each province of Panama to provide emergency medical aid.

Critics of the Treaties have floated the rumor that General Torrijos is a communist and that he plans to lead his country to communism.

I have been unable to find any truth in that rumor. When I was in Panama, I spoke to a cross-section of American residents and Panamanians. None of them believe Torrijos is a communist—not even his political rivals.

The President of Panama, Texas-educated Demetrio Lakas, who talks and act like a Texan, is well-known for his anti-communist position. When asked about Torrijos, he said he was sure Torrijos was not a communist and he would be willing to stake his life on it. Sen. Barry Goldwater, one of the staunchest opponents of the Treaties, has repeatedly stated that he knows Torrijos is not a communist.

During one of our conferences, last November, General Torrijos was asked whether he might turn the Canal over to Cuba or Russia once the Treaties were ratified. His response was that he didn't want to see "Panamanian waters infested by communist sharks."

At another time, he told us he had strong feelings about the issue. "If I tried to lead my people to communism", he said, "they would throw me out, and if, despite my leadership, the people espoused communism, I would leave this country!"

Consider this fact, too, that under Torrijos' leadership Panama has not even recognized the Soviet Union or the People's Republic of China. No diplomatic relations exist between Panama and the two foremost communist nations. The undeniable truth is that the United States maintains friendlier relations with the Soviet Union and Communist China than does Panama.

Despite the controversy over the Treaties, my trip to Panama convinced me that the people of Panama are fond of Americans, and they tend to follow our leadership. In fact, most of Panama's leaders today, including General Torrijos, are American educated.

Having said this about communism and the people's leanings in Panama, I don't want to leave the impression that there is absolutely no danger of a communist takeover. There is.

I believe that a negative vote by the United States Senate on the pending Panama Canal Treaty would be the greatest possible boost committing any crime, political or other-frustration that the Panamanians would feel would help the communists convince them that the United States is an imperialist nation, bent on exploiting weaker nations.

Right now the communists in Panama are the primary opponents working aginst the ratification of the Treaties. Their one issue will disappear after both Treaties are ratified. Our voting down the Panama Canal Treaty would give the Panamanian communists new life.

Let me turn now to another argument frequently raised against the Treaties—the lack of human rights in Panama. Basically, this issue is not relevant to the Treaties, except in the use of the Treaties in win concessions from Torrijos, which we have.

During our final meeting with Torrijos in Panama last November, we urged him to repeal the law that permits detention, without due process of law, of persons accused of committing any crime, political or otherwise. He said he would discuss the matter with his advisory council, and only a few weeks later he announced the law's repeal. He also promised to allow more freedom for the Panamanian press. In fact, shortly before the plebiscite last fall censorship of the press decreased significantly, a trend that has continued over the past months. Torrijos also assured us he would allow political exiles to return home after the Treaties have been ratified. I believe he will keep those promises, too.

These are major concessions. He made them because he wants us to approve the Treaties. In fact, he even said that he would be willing to resign from his present leadership position if such action would help in getting the United States Senate to ratify the Treaties.

It should be noted, too, that Amnesty International, the organization which recently won the Nobel Peace Prize for its human rights work, was not sufficiently concerned about the human rights situation in Panama to mount an effort there. There were more human rights problems in other Latin American countries. Amnesty International found few-prisoner violations in their investigation in Panama.

Amnesty International did find political exile violations. But, as I mentioned earlier. General Torrijos promised Senator Byrd and the other visiting Senators that he would allow those exiles to return to Panama after the Treaties have been ratified.

Another criticism lodged against the Treaties is that we will pay the Panamanians millions of American taxpayer's dollars to take the Canal off our hands. This is just not so.

During the period that we continue to operate the Canal, toll rates will be increased to make up for the added payments. We may be paying additional sums for the maintenance of military bases if we continue to maintain them in Panama—just as we do in Greece, Spain, Turkey, and the Philippines. In fact, we haven't paid Panama a cent for the use of our fourteen military bases there in 74 years.

We will be setting up a package of loans, loan guarantees, and credits for Panama. But most of these will promote trade and investment by American companies there, and the loans will be paid back to the United States Government.

The one legitimate question raised against the Canal Treaties as originally signed was a military one. That question was: Does the United States have a right to intervene militarily if the neutrality of the Canal is at any time threatened? To clarify the language of the Neutrality Treaty, President Carter and General Torrijos agreed to a "Statement of Understanding" that the United States will indeed have that right, along with the right to have its warships and auxiliary vessels "go to the head of the line" in an emergency. This Statement of Understanding was incorporated into the Neutrality Treaty by an amendment offered by the leadership of the Senate.

To clarify the matter beyond any doubt, the Senate adopted amendments to the ratification resolution, in the form of reservations and understandings, which specifically repose in the United States that right to "use military force in Panama" after the year 2000, if necessary to keep the Canal open and neutral. By this action, the Senate eliminated the one and only legitimate argument against the Panama Canal Treaties.

There is no denying that there is something in us as a nation that wants to stand up and say, "We've had enough. We're not not going to be pushed around by anyone any more! Let's have no more Vietnams!"

We want to take pride in the greatness and strength of our country—indeed, the greatest and strongest in the world.

But in introspection, we must remember that above all greatness and strength is the will to do that which is right.

We may not be ecstatic over the proposed Panama Canal Treaties, but we need to bear in mind that we can either ratify the Treaties, and guarantee our right to use the Canal, or we can vote them down and thereby virtually guarantee open warfare in the Canal Zone and the shutting down of the Canal.

We may not like the choice between these two alternatives. But they are the only alternatives.

I am not saying that the existing Treaty of 1903 is not valid. It is. But we must recognize that it smells of long-dead colonialism.

Since we signed and ratified that Treaty, many changes have occurred in the world. We must change with the times or pay the consequences.

To summarize:

First and foremost, we need to keep the Canal open.

Second, in our own best interest, we need to be concerned about how other nations see us. We need to be on good terms with the people of Panama, and we need to get going on a new Good-Neighbor Policy in Latin America.

Third, and even more importantly, we need to be concerned about how we see our own selves.

This great country of ours was born of a revolution for the right to self-determination. We have fought for other peoples' right to self-determination. Let us not deny that same right to the Panamanians; let us try to understand their yearning for self-determinations and national dignity.

The understanding which is demanded of us now is the spirit of liberty that was once described by Judge Learned Hand as follows:

"The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the mind of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own . . ."

I ask for your support of the Panama Canal Treaty, so that we who proudly call ourselves Americans may prove to the world that we are indeed dedicated to the true spirit of liberty.

Thank you very much.

Mr. MATSUNAGA. No, speaking on the amendment offered by the distinguished Senator from Alabama (Mr. Allen), I wonder what the Senator from Alabama would say if the Panamanians themselves would offer an amendment, the amendment just changing "Panama" to "the United States," which could read:

Provided, however, That within such 6-month period the people of the United States shall have approved this treaty in a national plebiscite called by the United States Government for the purpose of ascertaining the American national will on the question of approval or disapproval of the treaty.

We would not hear the end of it, that here is a tinhorn dictator imposing upon us a requirement that the people should approve the treaty in a plebiscite contrary to the Constitution of the United States.

Mr. ALLEN. Will the Senator yield at that point? I will be glad to answer it.

Mr. MATSUNAGA. I am happy to yield just briefly because the Senator spoke for over an hour.

Mr. ALLEN. It will be only 30 seconds.

The Panamanian Constitution requires a plebiscite. Ours does not.

All this would do would be to require that Panama complies with its own Constitution and that we do have a compact with the Panamanian people rather than with the dictator.

Mr. MATSUNAGA. Exactly. Exactly. And in accordance with article 274 of the Panamanian Constitution, the people of Panama did have the opportunity to vote for ratification of the treaties on October 23, 1977.

Let me, for the Record, read the article of the Panamanian Constitution, article 274, which says:

Treaties which are concluded by the Executive with respect to the existing canal, the zone adjacent thereto, and the defense of the canal, as well as to the construction of a new canal at sea level, or a third row of locks, must be submitted to a national plebiscite.

In accordance with that article of the Panamanian Constitution, the people of Panama went to the polls on October 23, 1974, and during the 6 weeks preceding the vote, all restrictions on political

activities were lifted and a vigorous public debate of the issue took place.

The opposition was given free rein to express its views and made the most of the opportunity, under the tinhorn dictator, so to speak, an opportunity which seldom is given even declared democracies.

For several weeks, there was more antitreaty than protreaty material in the Panamanian media.

During the last week of the campaign, however, the government effected some reduction in the amount of anti-treaty material, or the media, to be honest about the matter.

Now, the results of that plebiscite, announced on October 28, showed 66.1 percent voting to ratify, 32 percent voting not to ratify, and only 1.9 percent of the ballots were voided. Of those eligible to participate, 95 percent actually did so.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. MATSUNAGA. I yield.

Mr. ALLEN. I ask the Senator one question: Have not the treaties been changed materially since that plebiscite?

Mr. MATSUNAGA. I am glad the Senator from Alabama asked that question, because the Senator knows that the treaties have not been changed substantially to necessitate another plebiscite.

As it has been repeatedly pointed out on this floor, the leadership amendment is the only amendment which was adopted to the treaty—that is, the Neutrality Treaty—and that leadership amendment merely incorporated into the treaty a statement of understanding between President Carter and maximum leader Torrijos, which had been put before the people of Panama even before the plebiscite was held.

As a matter of fact, I was privileged to see the tape of the broadcast which General Torrijos made, in which General Torrijos said to another to read that statement of understanding to the people, so that the people will know what it is all about and will know that this is part of the treaty and the understanding of what is included in the treaty.

According to all legal scholars we have had opine on the subject of the inclusion of that statement in the treaty, we have had practically unanimous agreement that the statement put forth as an amendment by the leadership does not in any way substantially change the treaty.

Returning to the legal effects of the inclusion of the joint statement, we have the opinion of the legal adviser to the Department of State. He said that in his view, on the basis of examination of available source materials and consultations with authorities available to them:

> We have reached the conclusion with respect to the October statement that another plebiscite would not be necessitated by insertion of the October statement into the Neutrality Treaty.

Further:

> We have been advised by the Panamanian Government and Panamanian legal authorities that they have reached the same conclusion.

So that the plebiscite which the Senator from Alabama calls for in his amendment is one which already has been held and one in

which, by a better than two-thirds majority, the people of Panama indicated approval of the treaties.

Mr. ALLEN. Mr. President, will the Senator yield for a question?

Mr. MATSUNAGA. I yield.

Mr. ALLEN. This will be the last question. I appreciate the courtesy of the distinguished Senator in yielding.

I wonder whether the Senator named the counsel for the State Department who came up with that opinion. I ask if he is the same counsel who advised as to the acceptance of the DeConcini amendment on the floor.

Mr. MATSUNAGA. No. I am informed that he is not.

Mr. ALLEN. I am glad to hear that.

Mr. MATSUNAGA. Of course, the Senator from Alabama has implied that he would be forcing this treaty upon the people of Panama without a plebiscite. The truth of the matter is that unless we leave it to the people of Panama, themselves, as to how they should proceed to ratify the treaty, we are then forcing upon the people of Panama what we think is best for them.

We ratify the treaties in accordance with the provision of our Constitution. We would resent it if the Panamanians would say to us that we should ratify the treaties not by provisions of our Constitution but by plebiscite held among the people of the United States.

Likewise, we definitely are not to dictate, by treaty or otherwise, how the Panamanians should proceed to accept a treaty signed by their leaders.

As I have indicated, Mr. President, the treaties before us today have been ratified in accordance with the constitution of the Republic of Panama, by plebiscite.

I point out, further, that at the invitation of the Panamanian Government, the United Nations and 20 United States and Latin American universities sent representatives to Panama to observe the conduct of the plebiscite. Eric Sy, Under Secretary General and Legal Counsel, headed the United Nations team and subsequently submitted a report which contained the following comments:

> Thanks to the full cooperation and logistical support of the Panamanian authorities, the special representative and his team were able to perform their functions in the best conditions and in total independence. It is the feeling of the special representative that the plebiscite was extremely well prepared and took place in an atmosphere of calm and in accordance with the usual democratic standards.
>
> The special representative and his team covered as many areas and plebiscite stations as was humanly possible. They also witnessed preplebiscite campaigning and vote counting. Except for minor anomalies observed in some polling stations, which were often corrected on the spot, the special representative has come to the conclusion that the plebiscite of 23 October, 1977, took place in a normal way and that it was an example in democracy.

Probably the most significant aspect of the plebiscite was that of those who voted, 32 percent voted against the ratification of the treaties. This would seem to indicate that the claim on the part of opponents of the treaty that Panama is run by a tin-horn dictator may not be altogether true. Despite the presence of General Torrijos, 32 percent of those who voted did vote contrary to the wishes of the so-called dictator of Panama.

Mr. President, I ask unanimous consent to have printed in the Record an article on the Panama plebiscite written by Dr. Donald

G. Herzberg, dean of Georgetown University's Graduate School, and Dr. Timothy S. Healy, president of the university.

There being no objection, the article was ordered to be printed in the Record, as follows:

ARTICLE ON PANAMA PLEBISCITE

(By Donald G. Herzberg and Timothy S. Healy)

On Sunday, October 23rd, at the invitation of the Government of Panama, we were official observers at a referendum held to measure popular support for the proposed Treaties with the United States on the ownership and operation of the Panama Canal. Our fellow-observers were the rectors and presidents of 20 Latin and North American universities. Deans and other senior officials from the National University of Panama were assigned to us as guides.

In our best judgment the vote that Sunday was a fair one. The electorate was large but defined, the ballot was secret and access to the polls was adequately controlled. There was both good order and good humor throughout the process. One of the unexpected signs of honesty was that the two-to-one endorsement of the Treaties (which would be a landslide in the U.S.) was less than had been predicted by both the friends and the enemies of the Panamanian regime.

The one-third negative vote, however, ought not to be read as showing any national division at all about the Canal. After talking with hundreds of Panamanians in the Capitol, its suburbs and in the countryside, all of us were convinced that while the vote indicated several varieties of political dissent, there is still near national unanimity that the time has come for Panama to begin taking responsibility for the Canal. That conclusion was hardly surprising. Other things we learned were more so.

Panamanians have a sense of urgency about these Treaties which is totally lacking in the United States and which has not been adequately reflected in our press. The Treaties have been in the process of negotiation for some 14 years. The object of all that talk is, moreover, a source of enormous national pride in Panama. To anyone who looks at it the Canal is awesome; and the pair of us gaped as we realized that the great clockwork locks were built in 1913 with no expectation of planned obsolescence. But this engineering wonder surprises Panamanians every bit as much as it does us. They show it off with pride and obvious pleasure. They resent that in 60 years only two Panamanians have been found qualified as pilots and take exception to the Canal Company's notion that it would take 14 years to train one. But these were details. Panamanians are aware of the international importance of the Canal. They are proud of it and care for it. We met no one who did not speak of it as a national trust well worth the keeping that it takes.

The Canal Zone is a wholly different matter. It cuts a foreign swathe, from ocean to ocean, from north to south, some ten miles wide across the country. Were we to have a similar zone in the United States, it would run 1100 miles from Duluth to Galveston and slice a band 64 miles wide through seven states.

"La Zona" is really a little U.S.A. It claims more scout troops and P.T.A.'s than any parallel stretch at home. Some of its civilian population boasts that they have never set foot on Panamanian soil. The Panamanians distinguish sharply between military and civilian Zonians. With Latin grace they concede to the former the warrior's tribute of isolation, pampering, PXs and some splendor. It is against the civilians that the rancor is felt. It is staggering to pass from the deep and crowded slums on one side of Central Avenue to the suburban fronts of the Chase Manhattan Bank, the UMCA and the Provident Loan Society on the other side, with their fresh paint, awnings and deep lawns. When the high school students who led the attack on the Canal Zone in 1964 set out, all they had to do to enter the enemy's territory was cross a street and scale a fence. Panama doesn't expect both sides of the street to be the same. It does want both sides to be Panamanian.

Another surprise was that everybody who spoke to us about the much agitated defense aspects of the Treaties was reassuringly realistic. The United States is acknowledged to be a great power and expected to act like one. Any threat to the Canal would automatically provoke our intervention—and this is as understood as it is expected. Panamanians know well that there is no possibility of their defending either the Canal or themselves against a serious attack. The presence of Uncle Sam on the other end of a hotline is thus a reassurance and not a threat. Panamanians would not, indeed, much object to serving as a southern distant early warning system. One university dean remarked to us, "every now and then the little birds can warn the rhinoceros."

Panamanians are constantly reminded that the other nations of Latin America need the Canal as much as we do. Nobody gains if world trade is chased around Cape Horn. The government which did this would find both North and South America united against it. Panama is well aware of the pressures it will feel to guarantee the neutrality which both halves of the Hemisphere expect and demand of the owners of the Canal.

Every Panamanian schoolboy knows that the Canal depends not on the endless salt flow from either oceans but upon fresh water, agua dulce, in which alone the great locks can work. The fresh water can be shut off at the will of any Panamanian government. We found, however, in all our conversations with both ordinary people and with politicians, almost no posturing, no threats, no rattling of sabers or spigots. The appeal Panama makes to North America is for fair play. Perhaps it is not for nothing that one of our major exports to Panama was baseball. Again, and again, we heard the plea that the United States play the treaty game fairly and according to the best American rules. Panama has had the experience of dealing with northern bullies before and hardly cherishes the memory. One United States Senator facetiously spoke of our having "stolen the Canal fair and square." Latin Americans hear clearly the word "steal." We were repeatedly asked why in this one instance the United States could not be true to the best in our own history and tradition.

These questions took on added bite for both of us when they were presented in terms of President Carter's stand on human rights. At first our guard was up; but we soon found we were dealing not with sarcasm but with a real grasp of the reach of the President's dream. One astute Latin politician asserted that President Carter was so far out in front on this issue that the Washington establishment would try either to tame him or destroy him. When we asked which he thought would happen, he remarked, "Your new President does not seem to me to be the kind of man who tames easily." This was only one of the exchanges in which we saw how deeply the President's stand on human rights has reached and touched the hearts of many in Latin America.

In a surprisingly relaxed and salty exchange with the group of observers General Torrijos, the head of the Panamanian government also spoke of the United States and human rights. He said he hoped the North Americans would hear, behind the vote of the Panamanian people, the voice of 300 million Latin Americans. Through these Treaties he clearly feels he is dealing with the growth of a symbolic relationship and an understanding that will set the tone of North-South American conversations for years to come. For many Panamanians more is at stake in these documents than the issue of who owns the Canal or even than the righting of an historic wrong.

As each voter dropped his sealed ballot in the box he was handed a large campaign-type button. It showed two young Panamanians scaling the chain-like fence that surrounds the Zone. It was meant to remind Panamanians of the assault and the deaths of 1964. It ought also to speak to North Americans. We have built too many walls in Latin America. We would do well to remember Robert Frost:

> "Before I built a wall I'd ask to know
> What I was walling in or walling out
> And to whom I was like to give offense.
> Something there is that doesn't love a wall * * *"

Mr. MATSUNAGA. Mr. President, there is no question that the amendment is one which runs contrary to our concept of democracy and against our concept of two free states dealing with each other that one should dictate to the other how and when the treaties should be ratified.

Mr. President, no thinking American would ask that we impose upon another nation what we ourselves would never have other nations impose upon us. For this reason, I urge the defeat of the amendment.

I move to table the amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

[The second assistant legislative clerk proceeded to call the roll.]

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, I withdraw my motion to table at this time and I ask unanimous consent that the Senator from Alabama (Mr. Allen) my be allowed to proceed for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, I also ask unanimous consent that I be recognized after the Senator from Alabama has had his 10 minutes for the purpose of making a motion to table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. I thank the distinguished Senator from Hawaii for making this request.

Of course, under the rules any time an amendment is pending any Senator getting recognition may move to table. It is also customary that that motion be withheld if another Senator wishes to make brief remarks with respect to the pending question. I do appreciate his courtesy in withholding his motion to table in order that I might make brief comments on some of the points made by him.

In the first place, he used the expression as though it had been the expression of some of us opposing the treaties in referring to dictator Torrijos as a tinhorn dictator. The Senator from Alabama has never referred to dictator Torrijos as a tinhorn dictator because he believes he is a very powerful dictator and a very able dictator, for that matter, one who did work out a most beneficial treaty for his government and for Panama with the American negotiators, and further his will has pretty well prevailed here in the U.S. Senate except the one slipup on the part of the managers of the bill wherein the DeConcini amendment was accepted which was contrary, of course, to Mr. Torrijos' wishes.

Further, the distinguished Senator spoke about the regularity with which the plebiscite back in October was held. No one is questioning that the plebiscite was handled properly. But that is not the point. The point is that the treaties have been changed tremendously since that time.

The apparent view of the people of Panama has changed with respect to the treaty. That is the reason a new plebiscite is needed.

Not only that, but the distinguished Senator spoke of our imposing a requirement on Panama that was not provided for by them, or words to that effect. But we are not imposing something on them that is not part of their regular constitutional process. Their Constitution says treaties must be approved by the people in a plebiscite.

The point I am making is their court has held that anything that has not been approved by plebiscite with respect to a treaty is unconstitutional. Therefore, they may be in position of claiming that these reservations are unconstitutional under their law, and that would provide for a further difference of opinion between our two countries.

I also read the opinion of the counsel for the State Department saying that another plebiscite is not necessary. Well, what did you expect the counsel for the State Department to say if he expected

to hold his job? I just wonder if this was the same employee or same counsel to the State Department who gave advice to the administration on taking the DeConcini reservation.

If his opinion is no better on the DeConcini amendment, which has caused such a furor here in the Senate and in Panama, I would not expect too much of his opinion on whether a plebiscite is necessary in Panama.

We are not imposing, under this provision, something strange or foreign to the Panamanian people. That is part of their Constitution.

The only point is that we want to see that their constitutional processes are followed so that we will have a valid treaty.

We are not imposing something new or foreign on them but merely requiring that their constitutional processes be followed. That is all the amendment would do. It does not impose any great burden on the people, and it would give us a compact with the Panamanian people where, without that, all we have is a compact with the Panamanian dictator.

I hope the Senate will vote against the apparent motion to table the amendment.

I yield the floor, Mr. President.

Mr. MATSUNAGA. Mr. President, I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is not a sufficient second.

Mr. ALLEN. I suggest the absence of a quorum.

Mr. MATSUNAGA. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

[The assistant legislative clerk proceeded to call the roll.]

Mr. BUMPERS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BUMPERS. I ask for the yeas and nays.

Mr. MATSUNAGA. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

[The yeas and nays were ordered.]

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Hawaii to lay on the table the amendment of the Senator from Alabama. The clerk will call the roll.

[The assistant legislative clerk called the roll.]

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Indiana (Mr. Bayh), the Senator from Missouri (Mr. Eagleton), the Senator from Louisiana (Mr. Long), the Senator from Alabama (Mr. Sparkman), and the Senator from New Jersey (Mr. Williams) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Tennessee (Mr. Baker), the Senator from Oklahoma (Mr. Bartlett), the Senator from New Mexico (Mr. Domenici), the Senator from Michigan (Mr. Griffin), the Senator from Oregon (Mr. Packwood), and the Senator from North Dakota (Mr. Young) are necessarily absent.

I further announce that, if present and voting, the Senator from New Mexico (Mr. Domenici), would vote "nay."

[The result was announced—yeas 59, nays 29, as follows:]

[Rollcall Vote No. 98 Ex.]

YEAS—59

Anderson	Haskell	McIntyre
Bellmon	Hatfield, Mark O.	Metzenbaum
Bentsen	Hatfield, Paul G.	Morgan
Biden	Hathaway	Moynihan
Bumpers	Hayakawa	Muskie
Byrd, Robert C.	Heinz	Nelson
Cannon	Hodges	Pearson
Case	Hollings	Pell
Chafee	Huddleston	Percy
Chiles	Humphrey	Proxmire
Church	Inouye	Ribicoff
Clark	Jackson	Riegle
Cranston	Javits	Sarbanes
Culver	Johnston	Sasser
Danforth	Kennedy	Stafford
DeConcini	Leahy	Stevenson
Durkin	Magnuson	Stone
Glenn	Mathias	Talmadge
Gravel	Matsunaga	Weicker
Hart	McGovern	

NAYS—29

Allen	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Helms	Scott
Byrd, Harry F., Jr.	Laxalt	Stennis
Curtis	Lugar	Stevens
Dole	McClure	Thurmond
Eastland	Melcher	Tower
Ford	Nunn	Wallop
Garn	Randolph	Zorinsky
Goldwater	Roth	

NOT VOTING—12

Abourezk	Domenici	Packwood
Baker	Eagleton	Sparkman
Bartlett	Griffin	Williams
Bayh	Long	Young

[So the motion to lay amendment No. 101 on the table was agreed to.]

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CLARK. Mr. President, I move to lay that motion on the table.

[The motion to lay on the table was agreed to.]

Mr. LEAHY. Mr. President, I hope that last vote would show that the Senate of the United States recognized the sovereignty of Panama.

The PRESIDING OFFICER. Will the Senator please suspend? The Senate is not in order. Will the Senators who are conversing retire to the cloakroom?

The Senator from Vermont.

Mr. LEAHY. I thank the Chair.

Mr. President, that last vote, as I mentioned, shows that the Senate realizes the sovereignty of Panama. We realize the fact that they, alone, are masters of their own internal actions, their own laws, their own politics, their own mechanics involving treaties, or any other activity within Panama.

I hope that the people of Panama, of the sovereign country of Panama, realize that.

I mention this, Mr. President, because I wish to speak for just a few minutes regarding my friend and colleague from Arizona (Mr. DeConcini).

As the Senate knows, I strongly and totally support both Panama Canal treaties. I have spoken out on behalf of them. I have engaged in the debate which has gone on here, and I have supported them both here and in my own State of Vermont. I have spelled out my reasons: The fact that these treaties will guarantee the neutrality that we wish to see in the Panama Canal, protecting U.S. interests and world interests, and they are matters of long overdue justice.

I have expressed different concerns from those of Mr. DeConcini. I have expressed areas of concern where, if we look into the record, we can find where Mr. DeConcini and I might differ. But, Mr. President, I am extremely concerned about the naure of some of the editorial attacks on Senator DeConcini. I am extremely concerned by some of the attacks I have heard around the country regarding Senator DeConcini.

Disagreement with his amendment—or any amendment that I might have introduced to any matter on the floor, or amendments introduced by any of the 100 Senators—is perfectly all right. It is within the nature of a body such as this. It is within the nature of the debate which is going on around the country. I do not think anyone would ask that such debate or disagreement regarding an amendment of any of us should be cut off.

But, Mr. President, I will not stand here and accept, in any way, an attack on Senator DeConcini's character. I will not accept, in any way, an attack on Senator DeConcini's integrity. I will not accept, in any way, an attack on Senator DeConcini's ability. These attacks are completely unwarranted.

I have known Senator DeConcini for a number of years. We both served as prosecutors within our States. I know him to be completely honest. I know him to be a man of total and the highest integrity. I know that he is a man who has the highest motives of patriotism and has, as we all do, ultimately only concerns for the United States.

I know that he is active in this matter from his own conscience. That is a position which is not going to be changed by personal attack. Neither Senator DeConcini nor, I would hope, any Member of the Senate would ever draw back from a position of conscience or a position about which he feels strongly because of a personal attack. I know I would not. I know the distinguished Presiding Officer would not. I know that none of us would.

So, Mr. President, I am saying there are those who disagree with Senator DeConcini on the matter of his amendment. They can present their arguments, present them pro and con, and debate the

issues. It is perfectly legitimate for anyone else in the country, and all of us will be affected by these treaties, to debate the issues on the basis of merit. We are either for it or against it, but debate it on the merits. Do not use personal attacks on a man of character, a man of integrity, who is trying to do his best. I know him all too well and that is not the way to go, because I know he would not be intimidated.

Mr. CHURCH. Will the Senator yield?

Mr. LEAHY. Certainly.

Mr. CHURCH. I commend the Senator from Vermont for his statement. I associate myself with everything he has said. The Senate is a place which not only welcomes, but cherishes diversity of opinion. It is also a place where the motivation of any Senator is never subject to question. We all believe in one another in terms of our common desire to serve the best interests of the country.

I also am acquainted with Senator DeConcini. I know that his effort was motivated by his own strong sense of patriotism. Whatever difference I might have with any proposal he might make, or, for that matter, any difference I might have with any proposal which might be made by the Senator from Vermont, goes to the merits of the subject, and has nothing whatever to do with the motivation of the Senator offering an amendment.

I believe what the Senator from Vermont has said needs great emphasis in this Chamber. I am happy to join with him. I compliment him for his statement.

Mr. GOLDWATER. Will the Senator yield?

Mr. LEAHY. I yield to the distinguished Senator from Arizona.

Mr. GOLDWATER. Mr. President, I thank the distinguished Senator from Vermont for what he has just said about my junior colleague. I wholeheartedly concur in every word he has said.

I become so incensed this morning on reading the editorial in the Washington Post that I wrote a letter, not necessarily in defense of Senator DeConcini, but objecting to the Washington Post—and I will include the New York Times—taking it upon themselves to censure any Member of this body for using what in their mind is their best judgment.

I have known Senator DeConcini all of his life. Although I am a Republican, I have worked in politics with his father and his brothers, and I have great respect for them.

For the Washington Post and the New York Times to make the allegations they have made against this man today has me disturbed.

I am the first one on this floor who will defend the freedom of the press.

I long ago learned that you do not argue with newspapers; they own the typewriters. I shall defend the freedom of the press, but I am not going to defend the freedom of an editor to write what he well pleases about a Member of this body or, as far as that goes, about any other American when they are doing what they think is right.

I am opposed to this treaty, very strongly opposed. I should welcome the condition that I find the proponents in, but I do not like my junior colleague being beleaguered, especially when the President of the United States, who wants his treaty, I guess, more

than he wants a good peanut crop, knew all about this and was ready to give in and did give in.

With all due respect to the Committee on Foreign Relations, I think they must have known the implications of this reservation. When I went to Panama, that was my reason for going; I was disturbed about the ambiguities found in the defense section.

As the Senators might recall, I related one day the extreme difference in the interpretation of the word, "intervention" in Spanish and in English. "Intervention" in Spanish is a very strong, powerful word. It implies that if you have the power of intervening, you have the power of going into the home, going into the business, of making arrests; while, in this country, intervention is something that, well, frankly, we engage in at almost every minute of every day and do it in a delightful way. That is not the way they look at it.

I visited with General Torrijos about this and I thought from his answers that he would welcome the help of the United States in any defense of the canal at any time. I shall not belabor this point of view.

I do want to thank my friend from Vermont for bringing this matter up. I hope the press, particularly the two papers I have mentioned, will realize that their hand in the foreign policy of the United States in confined to reporting it. God knows the trouble we would be in had we ever followed the advice of either paper.

Mr. LEAHY. Mr. President, I shall be happy to yield the floor in just a moment.

I have mentioned, Mr. President, that it is not my intention here to debate the merits of the DeConcini amendment, so called; nor is it my intention to single out any particular newspaper. I do not do that, and I did not do that in my earlier comments. My only purpose was to say that if there were those who feel that Senator DeConcini is acting out of anything other than a history of the highest integrity, acting out of anything but the most sincere motives for his country, they are wrong.

I also wanted only to say that, from whatever source attacks might come against Senator DeConcini—and I name no particular paper, I name no particular person, I name no particular source—I would say only this: They are terribly misguided if they make them as personal attacks. I know Senator DeConcini far too well to think that any of those attacks are warranted. As I say, he is a man of the highest integrity and most complete honesty, a man who is patriotic and dedicated to his country. Let us continue the debate on the merits of the amendment itself. Let us continue the debate on the merits of the treaties themselves. Let us not get sidetracked against personal attacks that are unwarranted and unjustified.

Mr. President, I yield back the floor.

(Mr. Bentsen assumed the chair.)

Mr. HANSEN. Mr. President, earlier today, I took occasion to comment on the editorial that appeared in this mornings Washington Post. I shall refer in greater depth to that in just a moment, but first, I would be derelict if I did not join with others in expressing my appreciation to our good friend, the junior Senator from Vermont, for his expressions of appreciation and the high regard which we all share for the junior Senator from Arizona. I think we

are overlooking a very important point, and it is a point that I made earlier this afternoon.

I deeply resent the editorial in the Washinton Post for an entirely different reason than has been pointed out. It seems to me that the myopic writer of this editorial failed completely to understand the situation on the Senate floor. Let me relate, as I recall it, essentially what happened.

The administration and the President knew that it was going to be an extremely close voting situation here on the Senate floor. There was never any doubt that whichever side won would win by a very narrow margin. It was also well known, following the return of the junior Senator from Arizona, after having made the trip to Panama, I understand at his own expense, that he had misgivings about the ability of the United States to take such actions as it deemed necessary in order to insure the operation and the neutrality of the Panama Canal. This is all history. The President of the United States knew it and the people in the State Department knew it, and the leadership on the floor of the U.S. Senate, as well, knew it. No one can charge the junior Senator from Arizona with any duplicity or any mischievous intent in popping up at the last minute with an amendment. He called his shots well ahead of time.

For some very good reasons, as I shall point out, the administration, the State Department, the President of the United States agreed to accept the DeConcini resolution. They did not like it. The State Department, if I may put words into their mouth, I would suspect was rather horrified that the junior Senator from Arizona would be offering the resolution he did. But when it got right down to the bottom line, each of these groups and individuals to which I have referred accepted it. The administration accepted it, the President did—and, of course, that, for most of us, is synonymous with the administration—as did the State Department as did the leadership here on the floor. That included people on both sides of the aisle as it did my leader, the minority leader (Mr. Baker), and the majority leader, the Honorable Robert C. Byrd.

It was for one very good reason. It was crucially important that this treaty have the support of the Senator from Arizona (Mr. DeConcini) or they might not be able to pass the first treaty. That is exactly why it was accepted.

It is because of my knowledge and a very general knowledge among all of us here as to what happened, that I resent the Washington Post coming out, as it has done here, trying to say the mischief and the whims of Senator Dennis DeConcini imply for this crucially important treaty between the nations of Panama and the United States.

Let me quote what the Post says:

> Whether Mr. DeConcini can comprehend the dimensions of the mischief he has wrought is not altogether clear from his own observations.

In the first place, I wish that some of the editorial writers for the Washington Post were as perceptive as is Senator DeConcini. He knew perfectly well what his concerns were. He was disturbed that we might not have the right, if the need should arise, to move in

and take such action with the military as would be required to keep the canal open and to keep it operating. He was disturbed.

Many of us are disturbed, because, among other things, I know, as the distinguished occupant of the chair right now knows, that we are bringing oil from Alaska, and because we have said, among other things, that we cannot send any of that oil to Japan, and what moves to the east coast, for the most part, has to come through the Panama Canal. Those of us who can look back over a longer span of time know full well the important role that the canal played in World War II and in the Korean conflict by enabling ships to go from one ocean to the other.

In my office yesterday, from my State of Wyoming, was a good friend of mine, a former member of the U.S. Navy, who was on one of the islands in the Pacific Ocean. For 15 days, they had no support at all and it was only when they were able to get some shipments of supplies through the Panama Canal that they got relief there.

He lost a brother later on in the Korean conflict.

It is concerns of these kinds that impel me to support Senator DeConcini, and I know that it is concerns of these kinds that motivated Senator DeConcini to take the action he did.

I am fed up that having been apprised so long in advance as Senator DeConcini apprised the administration, apprised the State Department, apprised the leadership on this floor of his concerns, the Washington Post takes it upon itself to act like he is a bad boy. They just do not know what they are talking about.

The President signed off. He did not like it. I will grant that he did not like it. But I said a few weeks ago; "You can't have it both ways. You can't tell us on the one hand that we have the right to move in militarily, to intervene"—those were the words he used—"to take whatever actions as are necessary to secure the operation and the neutrality of the Panama Canal".

We cannot have that assurance on the one hand and then we cannot turn around on the other, as now the President of the United States and others are attempting to do, to placate Panama and say "cool it boys, forget it, we really don't mean that," and we are engaged in a very fine ploy here with words, trying to say words really do not mean what we understand them to mean.

There have been references about the Panamanians and the difficulties in interpretations between the Spanish and the English. One of the persons in Panama who has spoken out on this issue happens to be a very distinguished businessman down there. I understand he has a degree from Dartmouth University. I suspect that he understands pretty well what the English language means. He has read a lot on it. He has spoken a lot of it. These debates taking place on the Senate floor have been heard down there and no one need try to tell me, or Senator DeConcini, either one, that our friends in Panama do not understand what we are talking about or do not understand what he was talking about.

He was just as honest and forthright and perceptive and frank as anyone could be in pointing out his concerns and drawing a bottom line and saying, as he did to the President of the United States and the people in the State Department and the leadership on this floor, exactly what he wanted.

Anyone who has read the debate or who has heard it, and I have not heard all of it, but I have heard enough to know one thing, there was no doubt in the minds of anyone as to what Senator DeConcini meant.

So I am distrubed and I took the Washington Post to task. Now I have been around here for 11 years and I have not yet seen my name in print in the Washington Post. I do not expect to now, and I am not concerned about that.

What does interest me, though is that a Post that is accorded the wide readability and sometimes credibility that some people ascribe to the Post should take the bad shot at Senator DeConcini they have here.

I appreciate what the Senator from Vermont (Mr. Leahy) said in pointing out that by this last vote we know we do not want them to have a plebiscite down there. It is all perfectly clear that we do not mean to intervene in Panama.

I say that is not exactly right. I say that because I would like to read, if I may, a summary, I would like to read what this amendment says.

If I am not mistaken, I think this is the language that was added at the end of the resolution of ratification, and this is a summary of it:

subject to the condition, to be included in the instrument of ratification of the Treaty to be exchanged with the Republic of Panama, that, notwithstanding the provisions of Article V—

Prohibiting any troops, other than those of Panama, in that country after the year 2000,

or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary in accordance wth its constitutional processes, including the use of military force in Panama.

Let me repeat that, Mr President:

Including use of military force in Panama, to reopen the canal or restore its operations, as the case may be.

Now, that is not precisely the language that is in the DeConcini amendment because it has been summarized and the unnecessary words have been deleted. But this was contained in the legislative notice that comes from Senator Tower telling, essentially, what an amendment does.

Mr. President, I ask unanimous consent that the amendment as it was adopted by the Senate of the United States—and there were 75 of us, as I recall, who voted for it—be printed in the Record at this point in order that there can be no doubt in the minds of anybody as to what Senator DeConcini meant.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

Before the period at the end of the resolution of ratification, insert the following: "subject to the condition, to be included in the instrument of ratification of the Treaty to be exchanged with the Republic of Panama, that, notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of

military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be".

Mr. HANSEN. Now, we can describe or try to explain what intervention means in all of the ways we want to.

I think the important point is to read the language of the DeConcini amendment to the resolution of ratification and use those words to understand what he meant.

I have done that and I think every Member of the Senate has done that, and they were well aware—they were well aware—and they were assured in great measure, at least about three-quarters of them, as to what that meant.

Given the understanding, given that assurance, armed with the sure and secure knowledge that the United States would have the right after the year 2000, if need be, to move militarily, that first treaty passed.

I state that as an undeniable fact. I challenge the leadership here, I challenge the President, I challenge the State Department, in fact I would challenge the world, to prove on this floor that, absent that amendment to the resolution of ratification, that vote would have turned out as it did.

If there be any doubt as to our trying to fine tune what words do not mean, when we know what they do mean, let someone come forward and strike the whole thing to say that we shall not intervene, if they want to bring the treaty back up again. Try that one on for size, and I think we will find out very clearly what the Members of the U.S. Senate feel.

I know one thing, I know that the Senator from Arizona was concerned, he was disturbed, and he went to all of the right people and told them long ahead of time what he intended to do, and the President of the United States and the people in the State Department knew at least 2 weeks—at least 2 weeks—before we voted on that issue what the reaction was going to be in Panama. They had gotten the word.

As a consequence, Mr. President, I am disturbed. At least, as far as I know, no one has come forward yet. Maybe there have been, because I have not been here all day. But I am not aware—at least I should say it that way—I am not aware of the President of the United States rallying to the defense of a man who is wrongly accused, the junior Senator from Arizona, to defend him when he deserves defense, because the President of the United States knew, as he has to know, what the reaction was going to be in Panama.

I think it is high time that we observe some of those old western traits that have made Texas and Arizona and other Western States the great place it is and the proud place that people claim allegiance to, by saying a man is a man of his word; and if he finds even his enemy is falsely accused and he knows differently, he will set the record straight.

It is about time that someone set the record straight; because if I have ever seen a loused up record that maligns a man who deserves better, I have seen it today.

I yield to my good friend from Virginia Senator Harry F. Byrd, Jr.

Mr. HARRY F. BYRD, JR. I thank the Senator from Wyoming.

Mr. President, I think the Senator from Wyoming has made an excellent statement. Senator DeConcini is being blamed from many sources for the adoption of the DeConcini amendment.

It is correct, is it not, I ask the Senator from Wyoming, that one Senator cannot adopt an amendment? It takes a majority of those present and voting to adopt an amendment.

Mr. HANSEN. That is certainly my understanding.

Mr. HARRY F. BYRD, JR. In this case—I have the rollcall before me—75 Members of the Senate voted for the DeConcini amendment. Included in that 75 were the majority leader of the Senate, the minority leader of the Senate, the chairman of the Foreign Relations Committee, and the ranking Republican member of the Foreign Relations Committee.

Mr. HANSEN. And at the bottom of the totem pole, the senior Senator from Wyoming, I say to my good friend.

Mr. HARRY F. BYRD, JR. And even below the senior Senator from Wyoming is the senior Senator from Virginia.

I am pleased to have voted for the DeConcini amendment. I rise only to point out that while Senator DeConcini is getting so much blame, he alone could not adopt this amendment. It was adopted by a vote of 75 Members of the Senate, including the leadership of the Senate, including the leadership of the Senate on both sides of the aisle, including virtually every member of the Foreign Relations Committee, I believe, except one. I am sorry, two: Senator McGovern and Senator Clark. All the other members of the Foreign Relations Committee voted in favor of the amendment.

So 75 Members of the Senate must have thought it was a very good amendment. They must have thought it had merit. They must have thought there was good reason for voting for the amendment. Otherwise, those 75 would not have cast an affirmative vote.

I thank the Senator from Wyoming for his contribution.

Mr. HARRY F. BYRD, JR. subsequently said: A short while ago I made an error which I would like to correct. Inadvertently, in commenting on the 75 Members of the Senate who voted for the DeConcini amendment, I said that all but two members of the Committee on Foreign Relations supported it.

Well, in looking at the rollcall vote I was too quick in my glance. I was looking only at the Democratic side. Two Democrats opposed the DeConcini amendment as members of the Committee on Foreign Relations, but three Republicans also voted against the DeConcini amendment: Senator Case, the ranking Republican; Senator Griffin and Senator Javits on the Republican side; Senator Clark and Senator McGovern on the Democratic side.

I regret having glanced too quickly at the rollcall vote, and I wanted to immediately correct the erroneous statement that I made.

(Conclusion of subsequent statement.)

Mr. HANSEN. I thank my good friend from Virginia for his very perceptive and fair comments.

I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, the Panama Canal Treaty has been a difficult issue for Senators, as was the Neutrality Treaty. There has been a considerable division of opinion within the country, and great attention has been focused on the Senate

during our lengthy—our very lengthy—consideration of the two treaties.

I believe that all Senators have taken their responsibilities seriously. As I said on the day the vote occurred on the neutrality treaty, those who were opposed to the neutrality treaty as well as those who supported the neutrality treaty sought in their consciences to find the truth. Every Senator, when he cast that vote, whether he was an opponent or a proponent of the treaty, found that he, having searched his conscience and weighed the evidence had conscience and weighed the evidence had reached a judgment that was the right judgment.

So each side, those opposed to the treaty and those supporting it, was working for what it thought was the best interests of the United States and thought that it had reached the conclusion that was in the best interests of our country and our country's continuing good relations throughout the world. As I indicated on that occasion, those decisions that were reached respectively by the two sides were not in accord. Senators took their responsibilities seriously, and they are taking their responsibilities serious today, in trying to assure that the second treaty also reflects the best interests of the United States.

One of those who have taken a particularly active role in this regard, attempting to guarantee that the treaties do protect U.S. interests, while at the same time recognizing the legitimate need for a new treaty relationship with Panama, is the junior Senator from Arizona (Mr. DeConcini). For his efforts, the Senator from Arizona, who I believe has acted in good faith and with the best of intentions, has been subjected in recent days to considerable criticism in the press.

I am not here to find fault with anybody. I am not here to criticize anybody today. I am like the man who was on his deathbed and who was asked whether or not he was ready to accept the Lord and renounce the devil, and he said that he was not in any position to antagonize anybody. [Laughter.]

I am in much the same position. I do not find fault with the editorials of any newspapers. I have had the same newspapers at times in the past take me out behind the woodshed and lay the heavy wood on me, and perhaps for good reason—at least, in their viewpoint. They have that right. I thought I was right on that occasion; they thought I was wrong. They wrote their editorials, and they may write them again at some point. I am not one to say that those editorials did not have any impact on me whatsoever. They may have had.

So I am not here to criticize anybody or any part of the media. I am just saying that those things happen to all of us. The media differ with all of us from time to time, and I recognize their right to do so.

I speak as a strong proponent of these treaties. I am convinced that the treaties do serve the interests of both the United States and Panama, and I want to see those treaties ratified. But I do not believe that the editorial criticism of Mr. DeConcini is justified. He has to vote according to his lights. He has to vote according to his conscience. Each of us has the same responsibility. Each of us takes the oath of office, upon entering the office, to defend and protect

the Constitution. Each of us has to go back before the voters of our States. One day I will have to face mine, as each Senator will have to face his, if he asks to be reelected.

Each of us has to weigh the evidence. I cannot weigh the evidence from the standpoint of another Senator. I do not know what his viewpoint is. I do not know what standard he applies in approaching his vote on a matter; how much weight he gives to this or to that or to something else. I do know, as I have stated before, that there is no political mileage in voting for these treaties.

I know that the majority of people who have written me from West Virginia are opposed to the treaties. But I continue to think that the majority of the people in West Virginia expect me, after weighing all the evidence at hand, to vote for what I think is in the best interests of the United States. I believe most of them would agree that I probably have more information concerning the treaties, the history of the treaties, and the committee reports, as well as the testimony of administration officials, the Joint Chiefs of Staff, and the leaders of our Defense Department, than they—the people—have. In the final analysis, I think that even though they may not agree with me on a given vote, they still expect me to vote for what I think is in the best interests of the United States.

I think every other Senator has to approach his decision from his own point of view and keeping in mind his own constituency which may differ in some respects from my constituency.

So I am not going to be critical of any Senator and I am not going to look behind his reasons, and I hope that I will be accorded the same respect and courtesy when I cast a vote. I think that Senator DeConcini did what he thought was in the best interest of his country. I think what he did he did conscientiously, and he fully apprised the administration, he fully appraised the leadership on this side of the aisle as to what his reservation contained, and I was one of those who voted for the reservation. I did it with some misgivings. I would rather not have had the reservation but, nevertheless, I voted for it. And I would hope that we would all accord to each Senator the respect for his own good judgment and conscience as he views a matter and that we would not engage in further criticism of Mr. DeConcini or any other Senator on this matter.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I think he approached the matter seriously. He acted conscientiously as he consistently does in the performance of his duties as a Senator for Arizona. I think he is a very able Senator. He is a Senator with courage, and he is a Senator who has integrity. I happen to know on the basis of some other matters that Senator DeConcini is a man who carefully thinks things through. Then he makes a decision, and once he makes a decision you do not have to go back to him every day to find out if he is welching on it. I know he is a man who is able to withstand pressures. I knew that before the treaties came up, and I will not go any further into that, but I have great admiration for Dennis DeConcini and it is a personal admiration and it may be it is a personal reason that I have became acquainted to this extent with Dennis DeConcini.

So I have no hesitancy today to stand here and say what I have said about Senator DeConcini, and I say it with pride.

Yes, I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. I thank the Senator from West Virginia. Mr. President, I want to leave the subject temporarily of the Senator from Arizona (Mr. DeConcini) and make a comment in a broader context, the context of the past 9 weeks of debate in the Senate which began about February 10, or thereabouts, as I recall. Of all the 100 Members of the Senate, none had a more difficult role than did the majority leader. He had probably as difficult a role to play as any majority leader has had to play in the Senate in maybe this century—I do not know—but certainly for a long time. The Senator from Virginia has been tremendously impressed with the skill, the ability, the fairness, and the reasonableness that the Senator from West Virginia has exercised in conducting the business of the Senate over this long period of time.

The leadership, if it had wanted to do so, had many parliamentary weapons that could have been used against the opposition, but not once during that long debate did the leadership do anything except give all the Members of the Senate, regardless of their views on the treaties, a full opportunity to present their views at whatever length each Senator thought desirable and necessary.

So as this debate begins to come to a close—there are 2 more days yet, of course, before the final vote will be taken—I did want to express the admiration of one Senator for the able majority leader and the very exemplary way that he has handled a very, very difficult matter in the Senate of the United States.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Virginia makes me very humble in his words, and I am extremely grateful for his overly generous characterizations of my efforts and my work, and it is appreciated. I thank him.

Mr. ALLEN. Mr. President, will the Senator yield an additional moment?

Mr. ROBERT C. BYRD. I yield the floor.

Mr. ALLEN. Before he yields the floor, before he takes up another matter, may I ask the distinguished majority leader to yield to me on the same subject.

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. Mr. President, I, too, comment the distinguished majority leader for his fairness, his unfailing courtesy, and consideration for all Senators and certainly particularly with reference to those of us who have opposed his position on these treaties. He has treated the opposition with the utmost fairness, with unfailing courtesy and with great leniency, I will say, and though we have differed on our views on the treaties I respect him as the majority leader and I respect him for allowing us every right to present our case. I know not how the vote will come on Tuesday, but I will say to the distinguished majority leader he has given us every possible break in presenting our case not only to the Senate but to the entire country. We are satisfied with the treatment we have received, I say to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Alabama. The Senator from Alabama as always has waged a very honorable, upright, and resourceful battle. I have only the utmost respect for him and Senator Helms, Senator Hatch, Senator Byrd of Virginia, Senator Eastland, and others,

who have opposed the treaties. I always try to put myself in the shoes of those who stand on the opposite side. They have a right to speak, they have a duty to perform, and those who oppose today may be the very ones who tomorrow will support the leadership in a matter. So as we wage these battles from day to day, as far as I am concerned, they are never personal; they are always done as each Senator sees best in the good interests of our own country. We cannot all see alike. We do have to have our differences, but I respect those who differ with me. I expect them to accord me the same treatment.

I have found it to be so true so often, may I say to my good friend from Alabama, that those who oppose today may be the very ones tomorrow to whom the leadership will have to look for some help. It reminds me of a quotation which I should like to state at this point, if I can recall it:

> Fame is a vapor, popularity an accident, riches take wings. Those who cheer today may curse tomorrow. Only one thing endures—character.

I believe that that perhaps is the credo of the Senate.

The Senate has endured since 1789, and the character of the Senate, I believe, is such that it is the foundation of stone of our constitutional system, and for that Senate to have character that will endure through all of the storms, passions, and emotions of time, we who make up that Senate must always realize that the Senate is larger than the sum total of its parts.

If the Senate is going to have character those who make up its membership from decade to decade, from century to century, are going to have to demonstrate the same kind of character in their dealings with each other, first of all. Unless we do that we will not best serve the Senate or the Nation.

Mr. ALLEN. I thank the Senator.

Mr. HELMS. Mr. President, if the majority leader will yield, I think the Senator from West Virginia knows I concur in what my friend from Alabama and my friend from Virginia said about him. I might add that as I go around North Carolina I boast that we have three North Carolinians in the Senate, one of them being the distinguished majority leader.

I will say further to my friend from West Virginia not only is he a fair man, he is an enjoyable man with whom to work. I assert the privilege of saying, even though we differ, and differ strongly, or issue, that he has been entirely fair to all of us.

Mr. ROBERT C. BYRD. I thank the Senator for his very, very charitable remarks.

I am going to yield the floor, but I thank all Senators who have come to the defense of our colleague today, whether we agree with him or not. As I say, I was not happy to vote for the reservation, but I voted for it. In any event, I think we have to accord Senator DeConcini the same good faith each of us each of us claims for himself.

Mr. HATCH. Mr. President, I wrote a letter to the Washington Post, but first I would like to associate myself with the remarks of the distinguished majority leader, the distinguished Senator from Virginia, the distinguished Senator from North Carolina, the distinguished Senator from Alabama, and also the distinguished Sena-

tor from Wyoming who made such a spirited defense of Senator DeConcini.

The letter I wrote is as follows, and I just want to have it in the Record at this point:

EDITORIAL BOARD,
Washington Post,
Washington, D.C.

GENTLEMEN: I must confess that I tremendously enjoy reading your excellent newspaper. This is in spite of the fact that quite often we disagree on many principles, issues and procedures.

You probably will never print this letter, but your editorial of April 13, 1978, entitled "The Whims of Dennis DeConcini," was one of the most vicious irresponsible, and demeaning editorials I have ever read. If, as commonly comes through your pages, you truly believe in liberal principles and fairness, the person or persons who wrote the editorial ought to be seriously reprimanded.

I am a Republican freshman Senator who cannot sit idly by and see an excellent fellow freshman Senator improperly maligned. Dennis DeConcini has been one of the most active, dedicated, fair and moderate Senators in the United States Senate. He is respected on both sides of the floor. His work in the Judiciary Committee has been energetic and responsible. He has been fighting for a better and more qualified federal judiciary. His other committee work has also been impressive. Senator DeConcini is, without question, one of the most ethical, decent, fine men in the Senate. He has intellectual capacities equal to many of those you have previously glorified on the editorial pages of your newspaper.

Responsible journalism mandates that people be treated with fairness and decency. For the most part, your newspaper realizes that responsibility. However, the above mentioned editorial falls woefully short of these high standards which I have come to expect of your great newspaper. I think Senator DeConcini and the United States Senate deserve an apology.

Very truly yours,

ORRIN G. HATCH.

Then I add a P.S.:

P.S.—Incidentally, how could a supposedly responsible major newspaper in effect delegate its power, in a matter as sweeping as this, to a lightweight editorial writer whom serious editorialists should regard as an institutional embarrassment? * * * Whether your editorial writer can comprehend the dimensions of the mischief he has wrought is not altogether clear from his own observations. There are some signs he realizes that he appears, to some of your readers, as well as fellow editorialists, ludicrous and irresponsible and hopelessly out of his depth. Finally, how was it, the historians may ask, that the treaties, with their immense diplomatic and political freight, came to hinge on the ill-informed whims of an apparently freshman editorialist of no previous renown, of no known international awareness, of little experience of any kind beyond minor editorial posts in Washington?

O. G. H.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from South Dakota and expresses his appreciation for the patience with which he has sought recognition for the last 45 minutes.

Mr. MCGOVERN. I thank the Chair.

I might say, Mr. President, I have actually been here for a couple of hours trying to make a statement on the Panama Canal issue.

I want to make clear that I am not here today to comment on the moral character of the junior Senator from Arizona. It does not seem to me that is a debatable matter. There is not a single Member of the Senate whose character I would challenge or debate on this floor.

I am also not here to comment on the editorial judgment of the Washington Post. I think every reader can make his own judgment on that issue.

But it does strike me as interesting and, perhaps, all too typical of the debate on the Panama Canal issues that we have devoted most of the afternoon—at least during the time I have been here—to discussing those two personal matters, the editorial judgment of the Post and the moral integrity of Senator DeConcini.

The distinguished majority leader made a humorous observation here a while ago about which we all chuckled, that in his role he could not afford to antagonize anyone, and I suppose none of us wants to needlessly antagonize any Member of the Senate, and that is not my purpose.

But I do have some criticism to offer, and in view of the assurances we have had from numerous Senators about the greatness of the Senate, I assume it will withstand a little critical commentary as well as all the praise we heaped on ourselves this afternoon.

I have expressed before my view that the Senate has been wasting precious time in prolonged and, I think, repetitious debate on these Panama Canal treaties, the same points made over and over again, delaying amendments of all kinds very similar in content; but we have, in effect, been tied up in this endless debate while the really urgent needs of the majority of the American people and, I think, the basic concerns of our constituents have been neglected.

Mr. President, I have expressed before my view that the Senate has been wasting precious weeks of time in prolonged and repetitious debate on these Panama Canal Treaties. We have been tied up pandering to the concerns of a narrow band of extremist opinion, while the urgent needs of the great majority of Americans—inflation, unemployment, energy, health, housing, and others—have been systematically neglected.

For the past several years the Congress has been asserting its right to a bigger role in the crucial decisions of Government. Yet here we are, in the midst of the season for evaluating national priorities through the new budget process, demonstrating that the Senate does not have the self-discipline to set rational priorities in budgeting its own time, let alone the resources of the United States.

Beyond that, it has now become clear that these long and tedious days have been spent in a manner that damages the international interests of the United States.

I was frankly amazed when I was told on March 16 that the administration would not oppose a reservation, attached to the Neutrality Treaty, proclaiming a unilateral American right after the year 2000 to use military force in Panama, without regard to the wishes of Panama or the circumstances, to reopen or restore operations of the canal. I thought it was just as much a "killer amendment" as many of the others we had already voted down, in the knowledge that adoption here would necessarily cause rejection of the treaties in Panama. It plainly raised the question which is most sensitive of all to a country that is concerned about its own sovereignty and independence. No selfrespecting nation in the world could fail to resist a provision which, regardles of the purpose, gave another country the right to make a unilateral decision to send in troops.

But the reservation was adopted anyway, as if to make certain that the purpose of the treaties is to humiliate Panama rather

than to demonstrate the fairness of the United States as a great power.

As related point, I wonder who among the supporters of this amendment is going to feel comfortable in the future protesting, say, the Soviet military presence in Easten European countries as a violation of those nations' rights to independence and self-determination. Does anyone see a connection between what we condemn, quite properly, in Soviet behavior, and what we are demanding in Panama for ourselves? Certainly the circumstances are different. But I think the principle is similar.

I must say, however, that this amendment is not without precedent in our own diplomatic history. Indeed, it bears an uncanny resemblance to an amendment sponsored in connection with the grant of independence to Cuba in 1901. Senator Orville Platt of Connecticut was successful in writing in a provision that Cuba's government had to consent:

> . . . that the United States may exercise the right to intervene for the preservation of Cuban independence, (and) the maintenance of a government adequate for the protection of life, property, and individual liberty.

As long ago as 1934, however, our national leadership recognized that such a bald assertion of the power of intervention was inappropriate for the United States. It was a sign of the growing maturity of the United States when President Roosevelt abrogated the Platt amendment some 44 years ago.

In short recognized that a unilateral right of intervention is not consistent with the principles of national independence and self-determination for which the United States professes to stand.

Yet even at this late date, we apparently still feel a compulsion to show that our great Nation can, indeed, push a little country around. Never mind the fairly recent discovery that this is an interdependent world, and that the United States is dependent upon many smaller, emerging nations for commodities upon which our own prosperity depends. Never mind the widening recognition that the political contest between the Soviet system and our own centers in the smaller nations around the world that have—without exception—identified with Panama's cause. Those simple precepts of enlightened self-interest have been cast to the wind, all so we can throw out chests and proclaim that the big stick is still in operation.

From the standpoint of our international posture, it seems to me that the Senate has undone in a couple of months' time much good accomplished by 13 years of diligent negotiation.

The original treaties would have greatly strengthened the United States in the eyes of Panama and throughout the hemisphere. They declared that the United States had become a mature, self-confident society. They affirmed and secured our identification with the cause of nationalism which is the most compelling single force in the world today.

But the Senate has been trying its best to announce that none of that is true. Instead the Senate has been using these hapless treaties as a vehicle for working off frustrations over the Vietnam debacle. They have been further used as a background for ventilating exaggerated and mean-spirited assaults upon a neighboring government which has been a dependable friend of the United

States. The government and people of Panama have been insulted almost daily.

The United States has been depicted as a fearful, insecure—if not paranoid—nation shuddering at the prospect of yielding any symbol of its domination.

We do not know whether the Neutrality Treaty as it now stands can be accepted by our partner in these negotiations. Mr. Torrijos has been berated here in the Senate as an iron-fisted dictator. In reality he is in trouble in Panama, because of this change in the treaty. What kind of accomplishment is it if we succeed in generating a government in Panama that takes a much harder line toward the United States—one more in keeping with the emerging popular sentiment there?

I suspect that my Senators who voted for this reservation did so in reliance upon the administration's faulty intelligence concerning the probable reaction in Panama. Now we know better. And while we cannot admire the administration's handling of this matter, we can at least act on the basis of the more reliable information we have acquired so painfully through hindsight.

Beyond that, I have some hope that the events of the past several days will have a sobering influence on the Senate. Everyone recognizes that these treaties pose hard political choices. It is also true that the problem is easier for some of us than for others, who must face the electorate this fall. No politicians with any sense wants to offend any of his constituents—even the biggest crank—in an election year. But some risk does, after all, go with the job. As we contemplate the precarious condition of these treaties now, perhaps we will take more of our inspiration from colleagues like the Senator from New Hampshire (Mr. McIntyre), who made a courageous speech on political intolerance just a few weeks ago, or the junior Senator from Montana (Mr. Hatfield), or the senior Senator from Colorado (Mr. Haskell), or the junior Senator from Maine (Mr. Hathaway), or Mr. Biden of Delaware, or Mr. Percy of Illinois, or Mr. Clark of Iowa, and others who have made the hard choice to vote their convictions and to accept an immediate political risk. In place of profiles in political panic or opportunism, we just may see more profiles in courage such as those.

That, at least, is my hope as we move into the last few days of debate on these contentious matters. For it is the only way now that they can be properly resolved.

So let us no longer treat these amendments and abuses as harmless hazing. Let us understand now that we are dealing with a real impact on our future.

It is my hope as we move into the last days of debate on these matters that we will think as carefully as we can and as soberly as possible about the standing of our country in the eyes of the world, that we will remember as we did 200 years ago that we pledged to pay decent respect to the opinions of mankind.

I do not think it is just an accident that every government in Latin America, without exception, was here for the signing of these treaties to manifest their support for the treaties. Most of those governments are friendly to the United States. Most of them want to cooperate with us. They respect the institutions of constitutional government in this country. I would hope that we would live up to

their expectations, and, more important than that, to live up to the ideals that we ourselves possess.

STUDY MISSION TO LATIN AMERICA

Mr. President, on another related note, I had the opportunity last December to make a study mission to Central America, especially to Panama, Costa Rica, Peru, and Venezuela. I was accompanied on that trip by Mr. Jeffrey Smith, of my staff, and Barry Sklar, the head of the Latin American Affairs Division at the Library of Congress, one of the Nation's best informed men in this field.

We concentrated all of our efforts over a period of some 2 weeks' time trying to evaluate the impact of the treaties not only on Panama but on the neighboring countries to which I have referred.

In these final days of debate before we vote on the Panama Canal Treaty, I feel it is appropriate to discuss the findings of my recent visit in December 1977 to four Latin American countries as they pertain to the canal issue. The issue, of course, dominated the discussions in Panama, but significantly the presidents of Costa Rica, Peru and Venezuela spoke of the bearing the Senate's decision will have on the future of U.S. relations with the nations of Latin America and the Caribbean. Discussions with the presidents as well as with ranking government officials in each of these countries reinforced my belief that the issue of the Panama Canal treaties is more than a bilateral one between the United States and Panama. It is also an issue which affects our relationship with Latin America and the rest of the developing world.

I think any Senator who has discussed these issues with the leaders of other developing countries recognizes that there is enormous respect for our negotiators and our Government in bringing these treaties about, and great hopes that the Senate will do its part in ratifying them.

My meetings with the great patriarchs of Latin American democracy—Jose (Pepe) Figueres in Costa Rica, Romulo Betancourt in Venezuela, and Luis Munoz Marin in Puerto Rico—convinced me that we now have the opportunity to show our neighbors that the United States has shed the last vestiges of colonialism in this hemisphere and truly believes in the principle of the self-determination of peoples.

I might say on this point, Mr. President, that one of the phrases which was used by General Brown, the former chairman of the Joint Chiefs of Staff and who has now been taken ill, which impressed me very much in his testimony, was his statement that as an American and as chairman of the Joint Chiefs of Staff, the top military officer in our Government, he supported these treaties principally because he wanted to see the United States put an end to any vestige or semblance of colonialism in Latin America.

I think he said that as a military man because he realizes that it will enhance our security, that it will improve our assured access to this Panama Canal if we have a friendly political climate surrounding that canal.

That is the testimony found every place I went on this Latin American tour.

I would like to highlight the findings related to the Panama Canal called from my draft of the trip report which I will submit to the Senate Foreign Relations Committee. I request that the full text of the draft of the Panama chapter of the trip report and those sections of the chapters on Costa Rica, Peru, and Venezuela which pertain to the Panama Canal be printed at the end of my statement so that my colleagues can get the full benefit of my discussions with the Latin American leaders.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. MCGOVERN. These comments on my visit to Panama should be understood as reflections based on my study mission rather than on my analysis of the issues involved in the treaties themselves. These are my observations based on discussions with the people most directly involved with this crucial issue.

Three days of discussions with Gen. Omar Torrijos, Canal Zone Officials, including high-ranking military officers, and U.S. businessmen demonstrated to me that Senate ratification of the Panama Canal Treaty is in the best interest of the United States.

Much controversy has centered around Panamanian chief of government Gen. Omar Torrijos and the nature of his politics. After a full day with the general and his Foreign Minister, Gonzalez Revilla, as well as some time with other Panamanians and Americans, I have gained a certain perspective on this aspect of the issue. General Torrijos acknowledged that shortly after taking power in 1968, certain excesses took place, but since 1972 there has been constitutional government of a kind when a national assembly of 505 community representatives approved a new constitution and elected the President and Vice President of the country for 6-year terms.

The past few months have brought important political changes to Panama. After a moratorium of 9 years, the political parties are being allowed to reactivate themselves and hopefully the next election for the national assembly will see full participation. Just in the weeks before my arrival, the Torrijos government dropped the restrictions on freedom of assembly and freedom of expression. I feel that the fact that leaders of two opposition parties freely met with me to express critical opinions of the political situation and the government is a real indication that General Torrijos is moving in the right direction.

At separate meetings, leaders of the Panamanista Party and the Christian Democrats voiced strong suspicion and distrust of the government's recent political moves. These leaders argued that the opening toward democracy was not genuine and that it was directly tied to the Senate's consideration of the canal treaties. One of the leaders told me that this period is being termed by the opposition as "the little summer of liberty" and was designed to impress visiting U.S. officials and Senators. The opposition leaders felt that the political opening had not gone far enough and they expressed the view that political parties still felt restricted as far as freedom of expression and the press were concerned. On human rights, even the opposition leaders confirmed that there were no political prisoners in Panama and that there is an absence of violence and torture which is prevalent in other Latin American countries.

These opposition leaders felt that the larger than expected negative vote in the October 1977 referendum was an indication of dissatisfaction and lack of faith in the Torrijos government. On the treaties themselves, the opposition leaders felt that the terms favored the United States over Panama. They were especially critical of the Neutrality Treaty which they felt gave the United States the right to intervene forever. General Torrijos later told me that he believed the larger than expected negative vote was because many Panamanians do not want to wait until the year 2000 for full control. Many people in Panama feel that he has conceded too much to the United States.

The opposition leaders did not give too much weight to my arguments that Senate rejection of the treaties could result in a negative turn by the Torrijos government and that treaty ratification would permit the government to turn its efforts toward improvement of the economic situation. The argument that international considerations were part of the issue also did not seem to move the opposition leaders. After coming away from meetings with the political leaders, one has to have basic sympathy for their plight, I feel, however, that their grievances against the Torrijos government have interfered with their judgment as to what is best for the Panamanian people. They see the economic benefit which would come to Panama with the acceptance of the treaties as a factor which would perpetuate the Torrijos government in power. On the other hand, discussion I had with Archbiship Marcos McGrath and U.S. officials in Panama left me with positive feelings that the government's opening toward more democratic rule would continue with ratification of the canal treaties.

During meetings with Canal Zone labor officials and other U.S. citizens of the zone, concerns were expressed over the treaties and the authoritarian nature of the Panamanian Government. Rather than voice objection to the terms of the treaties, the labor officials were concerned with the retirement provisions in the treaties and the implementing legislation being drafted. They want a liberal retirement policy but feel that the Department of Army, fearing a mass exodus of U.S. labor, wants a stricter policy.

It was evident after my discussions with Canal Zone residents that many of them feel insecure with the new arrangements provided in the treaties. It was obvious that there is distrust on both sides. General Torrijos told me that the Americans in the zone were absolutely essential to the continued efficient operation of the canal. He is going to need the support and cooperation of the present Canal Zone work force. The Canal Zone workers and residents deserve understanding. Even though negotiations have been going on for 13 years, the pending changeover seems to have come too fast for the majority of Zonians. They feel they are going from security to insecurity. As Archbishop McGrath expressed it, one must appreciate the feeling of the Zonians but the necessity for the treaties is the greater reality. "You can't hold history back," he told me.

The day I spent with General Torrijos at his home at Farallon and then in a small village in Cocle Province gave me a great opportunity to get to know and understand the Panamanian leader. He impressed me as a sensitive leader who, although a

military officer, demonstrated a capacity for civilian leadership as well. I was impressed by comments from some, including experienced U.S. officials, that Omar Torrijos is genuinely concerned about his people and has been personally distraught over the effect of the poor economic situation on the average Panamanian citizen.

General Torrijos jested about the political labels that people place on him and he spoke seriously about his relationship with Cuba. From what I saw and heard during my stay, ideological labels simply cannot be applied to the General. He is a pragmatist implementing those measures best suitable for his country. His Cuban policy is an example.

In response to a question from a Panamanian television reporter. General Torrijos expressed admiration for what the Cubans had accomplished in the field of health care and education for the masses. He felt, however, that these gains were made at high social costs, and he would like to incorporate the best aspects of the Cuban system without incurring those "social costs." He felt that the Cuban system was not suited to the culture of Panama. One informed observer of Panamanian politics felt that the General's trip to Cuba in January 1976 turned him away from Marxism-Leninism. General Torrijos, during our discussion, was quick to point out that some of the reforms he had instituted in the fields of education and health were undertaken before his visit to Cuba. He was especially praiseworthy of those aspects of the Cuban system which benefited ordinary people. He noted that at the time of day we were talking all Cuban children had eaten a good breakfast and lunch while many children in Panama had not.

International politics did not dominate our conversations because General Torrijos was anxious to talk about both the accomplishments and problems of his government. He has brought the rural areas into the life of the nation and has worked to extend social reforms in education, health care, and other social services to all parts of the country. He mentioned infrastructure improvements such as expansion of the road system and electrical capacity. In 9 years school capacity has doubled, there are nine grades instead of six, and there are schools where previously none existed. The number of teachers has more than tripled during his government. In the health area, the Panamanian Government is attempting to provide every rural community with a nurse or paramedic.

General Torrijos took me by helicopter to see some of these accomplishments in the tiny agricultural cooperative of Coclesito in Cocle Province. Some enjoyable hours were spent there talking to students involved in work-study projects and to villagers and technicians involved in cattle and buffalo raising. In this village they are working to increase the ratio of cattle to hectare of land and also to increase the productivity of the land for raising grain, beans, yucca, corn, and other crops.

It was a treat to talk to the enthusiastic schoolchildren about the work-study system. In addition to academic subjects the students learn how to grow crops and make their own clothes. The school in Coclesito is one of 135 of its type established thus far. Eventually the government wants to make this a national system of education with 500 work-study schools.

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I was impressed as to how articulate and knowledgeable the students and workers in the village were, especially on the Panama Canal issue. They and General Torijos carried on a lively dialog to their questions regarding the chances of Senate ratification. During our talks at Coclesito, General Torrijos made an interesting comment on the use he planned to make of the $50 million military assistance package that would come to Panama as part of the arrangement. He told me that he is going to provide helicopter service in the provinces for transporting medicines and the sick. He noted during this discussion that Panama's present budget for defense is 10 percent of the national total, while the share for education is 30 percent.

My 3-day visit to Panama left me with many impressions but perhaps one of the most vivid was the realization that the solution of Panama's economic problems is so closely tied to the ratification of the treaties. I reached this conclusion after talking to Panamanian and U.S. officials as well as U.S. businessmen. The uncertainty over the question of ratification by the Senate has caused international and domestic investors to hold back the capital necessary to get the nation back on its feet. The national treasury is in bad shape and the national bank has no funds for financing other than short-term projects. The economy has been at a standstill for several years, not only because of the tenuous treaty situation but also because of the worldwide recession, the world price of oil, and the continuing problem of international commodity-pricing policies. The Minister of the Presidency spoke to me about the poor economic situation exacerbated by high unemployment. The minister said that investors from the United States, Europe, and Japan have expressed willingness to invest once the treaty issue is resolved. The investment climate will be strengthened when the treaty settlement gives the international bankers confidence that the United States will be working closely with Panama. One high-ranking free enterprise-oriented Panamanian offical related this period of uncertainty to a possible worsening political situation. He felt that if this situation remained unresolved for a long period of time, an opportunity would be presented for demagogs to turn the economic condition to political advantage.

Frankly, I left Panama with the strong impression that time is indeed running out for the Panamanian economy and that Senate ratification of the treaties this spring is not only desirable but imperative. General Torrijos said that:

> Until that time, we could make a soft landing; after that there is no more fuel.

I am strongly convinced that failure to ratify the treaties would seriously affect the economic future of Panama and have serious political repercussions.

There was much discussion during my visit of the possible effects of rejection of Panama's political life, on U.S. relations with Panama, and on United States-Latin American relations. On the bilateral level, frustrations are building so that responsible officials warn of angry and emotional reaction against the U.S. presence and ultimately the Canal Zone. The ugly prospect of bloody fighting between U.S. military and Panamanian civilians is not too remote. General Torrijos is a friend of the United States and wants

to continue being one. I believe observers close to the scene who feel that his future economic policies will be moderate and compatible with interests of U.S. business. Investment opportunities for U.S. citizens will be enhanced.

Politically, instead of utilizing a great opportunity to encourage General Torrijos to continue on the path toward opening Panama to democracy, the possibility was raised that he could react against the opposition. The General certainly has demonstrated in these past months that he is open and flexible to constructive suggestions from his friends in the United States regarding the political system.

On the international relations side the United States has the opportunity to enhance its prestige in Latin America and the developing world. Senate rejection would place our best friends in Latin America—those who have defended the United States on the treaty issue against crities in their countries—in great jeopardy. I say this with all the conviction of one who has spoken to these courageous Latin American leaders.

In Costa Rica, President Daniel Oduber himself initiated discussion of the Panama Canal question at our luncheon meeting. Oduber told me that if the Senate rejects the treaties, "I'm afraid that I will be literally stoned." He has gone so far out on the limb in support of the new treaties that he felt his leadership capability would be undercut by Senate treaty rejection. Our best friends in Latin American would have to desert us if they are to survive, according to the Costa Rican President.

During my memorable meeting with one of the fathers of Latin American democracy, Pepe Figueres, the former Costa Rican President, used the word "castastrophic" to describe the impact of Senate rejection of the treaties. Like Oduber, Figueres felt that Senate rejection would jeopardize the influence of friends of the United States.

The Panama Canal issue figured prominently in my discussions with Peruvian leaders and the press. It is interesting how the Peruvians view the issue on two distinct levels. On the international plane, they are in full support of the treaties because of the Latin American consensus and because they are in the best interests of close United States-Latin American relations. President Morales said that rejection would present serious difficulties for the United States in several countries.

On the domestic side, the Peruvians are conserved because their economy is directly affected by toll charges and other factors influencing the operation of the canal. A significant portion of Peru's foreign trade flows through the canal. The foreign minister hopes that a system of consultation could be established between Panama and the west coast countries regarding tolls and other matters.

Venezuelan President Varlos Andres Perez and his Foreign Minister were extremely supportive of the treaties. President Perez initiated discussion of the issue in our private meeting and said that Senate rejection would be a "catastrophe" and would cause violent reaction in Latin America. President Perez feared sabotage and possible U.S. retaliation which would have a negative reaction from the international community and would only benefit our Communist rivals. Former Venezuelan President Romulo Betan-

court, the architect of Venezuela's vibrant democratic system, said that the Senate's approval would strengthen the position of the United States in the hemisphere. On the other hand, he saw great security problems for the Untied States in Latin America if the treaties were rejected.

Conversations with these close friends of the United States convinced me that Senate rejection of the Panama Canal treaties would be a severe blow to the progressive forces in Latin America which have stood with us. The only beneficiaries of defeat of the treaties would be the Communists and antidemocratic forces.

My study mission to Latin America reinforced my view that there is no alternative to ratification of this treaty. Developments in Panama support this thesis and our best friends in Latin America feel this way.

I hope that my colleagues noted that the Harris Poll taken last week showed the American public in favor of the treaty. I feel I have presented evidence today warranting the Senate's support of the new treaty arrangement with Panama.

EXHIBIT 1.—DRAFT REPORT OF STUDY MISSION TO PANAMA

PANAMA

(Revision by Senator McGovern, April 1)

My three days (December 3-6) of discussions with Panamanian leaders, Canal Zone officials and residents, United States officials, including high-ranking military officers, and United States businessmen served to reinforce my belief that Senate ratification of the Panama Canal treaties is in the best interests of the United States. I am convinced that the United States and Panamanian negotiators have worked out an arrangement that is fair to both nations. Our rights of passage and defense are guaranteed and our standing in the world and in Latin America will be strengthened.

In this section of the report are reflections on my visit to Panama as they relate to the Senate's consideration of the Panama Canal treaties. It is not intended that these few pages be interpreted as my analysis of the issues involved in the treaties; rather, they should be read as observations based on discussions with the people most directly involved with this crucial matter.

The issue of the Panama Canal treaties is more than a bilateral problem between the United States and the Republic of Panama. It is an issue which affects our relationship with Latin America as well as with the entire developing world. We now have the opportunity to show these nations that the United States has shed the last vestiges of colonialism in the Western Hemisphere truly believes in the principle of the self-determination of peoples.

Aside from the major provisions of the treaties themselves, much controversy has centered around Panamanian chief of government General Omar Torrijos and the nature of his politics. Meetings with opposition political leaders, Panamanian government officials, including a full day with General Torrijos and Foreign Minister Gonzalez Revilla, as well as individual Panamanians and Americans, enabled me to gain a perspective on this aspect of the issue.

General Torrijos emerged as the dominant figure in Panama through this leadership in a National Guard coup on October 10, 1978, against Arnulfo Arias, whose presidential term began ten days earlier. General Torrijos, who now is also Commander of the National Guard, told me that the ruling elite had placed the National Guard in the position of assuring that the oppsition candidate would not win the election. It had always disturbed him that the army was used by politicians for their own personal gains. He and other Guard officers felt they were being ordered to act against the will of the Panamanian people. They moved against Arnulfo Arias becaue he began to take vengeance against his opponents and terror was beginning to sweep the country.

General Torrijos acknowledged that he ruled at first by force, jailing and exiling those who opposed his changes. Constitutional government of a kind was restored in 1972 through the election of a National Assembly of 505 Community Representatives that approved a new constitution and elected the president and vice president

of the country for six-year terms. In October, 1972, the Assembly also vested special executive powers in General Torrijos, among which were those giving him the authority to appoint Cabinet Ministers and to conduct foreign affairs. The judicial branch is comprised of a nine-member Supreme Court.

Since the coup of 1968 until a few months ago, a moratorium on political party activity had been in effect. Today the parties are being allowed to reactivate themselves—hopefully this will lead to full participation in the next election for the National Assembly. General Torrijos told me that he now realizes it is not feasible to abolish political parties by decree. He cited examples of the Peronista movement in Argentina and the Aprista movement in Peru. The General, however, did not think the political parties will be successful since the lack popular support. Party meetings are not well attended and Panamanian people despise the old political leaders. General Torrijos asserted that "the people do not want to go back to the old system".

In the weeks before my arrival, the Torrijos Government took major steps to create a more open political system. In addition to reactivation of the political parties, restrictions on freedom of assembly and freedom of expression were dropped. The fact that leaders of two opposition parties freely met with me to express their critical opinions of the political situation and the government is an indication that General Torrijos is moving in the right direction.

At separate meetings with leaders of the Panamanista Party and the Christian Democratic Party, however, strong suspicion and distrust of recent government moves were voiced. These leaders adamantly contended that the opening toward democracy was not genuine and was directly tied with the United States Senate's consideration of the Panama Canal treaties. One of the leaders stated that this period is being termed "the little summer of liberty" which began with the September 7, 1977, treaty signing in Washington. That event was designed to impress visiting American officials such as Assistant Secretary of State for Inter-American Affairs Terence Todman, Senate Majority leader Robert Byrd, and many Congressional visitors. Once the treaty is confirmed, it is felt that General Torrijos will once again adopt a repressive stance against the political parties.

The opposition leaders explained that the political opening has not gone far enough. They want popularly elected officials rather than the system which provides for National Assembly election of the president and vice president. One of the party leaders told me that the National Assembly had no power and he cast doubt on the party's participation in the National Assembly election even if General Torrijos permits it. One leader contended that the political parties still felt restricted as far as free expression was concerned. Oppostion opinion was not printed in the government-controlled press. It was noted that government intimidation was responsible for the low attendance at a political meeting in Chiriqui Province.

These opposition leaders found fault with the treaties under consideration for several reasons and gave their interpretations of the results of the October, 1977, referendum held in Panama when one-third of the electorate voted against the treaties. They felt that the larger than expected negative vote was an indication of dissatifaction and lack of faith in the Torrijos Government. The official high voter turnout of ninety-five percent was a sign that the referendum results were fraudulent since Panamanians never before went to the polls in those numbers.

Their opposition to the treaties was also based on the feeling that the treaties favored the United States and were not in the best interests of Panama. It was felt that the treaties did not reflect Panamanian opinion because the political groups were not consulted on its provisions during the negotiation process. The belief was also expressed that the treaties represented a regression from the draft treaties negotiated in 1967 and earlier attempts to reach an agreement.

The leaders were especially critical of the neutrality treaty which they felt gave the United States the right to intervene forever. I expressed the opinion that the neutrality treaty was similar to the type of mutual defense treaties which the United States maintains with other friendly nations. I also expressed the fact that without the type of provisions contained in the neutrality treaty, the treaties would not have any hope of passing the United States Senate.

General Torrijos, in a later conversation, told me that he believed the larger than expected negative vote was because many Panamanians do not want to wait until the year 2000 for full control. Many people in Panama feel that too much has been conceded to the United States. General Torrijos said the people must realize that he had to be realistic—without concessions, the Senate would never approve the treaties.

The opposition leaders did not seem to accept my statement that Senate rejection of the treaties could result in a negative turn by the Torrijos Government, or my

hope to the contrary that successful conclusion of the treaty issue would then permit the government to turn its efforts to the improvement of the economic situation and continued improvement of the political situation. Neither did these democratic leaders in Latin America, who have risked so much by siding with the United States on the Panama Canal issue, seem to accept my caution that the international as well as the domestic considersations of the issue should be weighed.

One has to have basic sympathy for the plight of these political parties, basically inactive for the past nine years, and with their leaders in exile. It seems to me, however, that their grievances against the Torrijos Government have interfered with their judgement as to what is best for the Panamanian people. They see the economic assistance which would come to Panama as a result of the treaties as a factor that would perpetuate the Torrijos Government in power. The positive results of such assistance for the Panamanian people seem lost on these leaders. On the other hand, discussions with Archbishop Marcos McGrath and others, including United States officials in Panama, left me with positive feelings that the government's opening toward more democratic rule would continue with ratification of the Canal treaties.

On the question of human rights, the political party leaders confirmed that there were no political prisoners in Panama. There is an absence of violence and torture which is all too prevalent in many other Latin American nations.

Archbishop McGrath, in response to my question regarding charges of anti-Semitism voiced by political opposition outside the country explained that Panama's 6000 persons of the Jewish faith enjoy complete religious freedom and Rabbi Klepfisz is on very good terms with General Torrijos. The Arichbishop added that at least one of the Torrijos children attended the Jewish Day School in Panama, one of the top schools in the country.

Concerns over the treaties and the authoritarian nature of the Panamania Government were also expressed during meetings with Canal Zone labor officials, as well as by other United States citizens in the Zone. Labor officials did not voice objection to the treaties as they related to the overall arrangement between the United States and Panama. Their major concerns, rather, were with the treaties' retirement provisions and the implementing legislation. They feel the Department of State favors a more liberal retirement policy, which they have been advocating, while the Department of Army favors a less beneficial retirement plan. The officials contend the Army fears that a liberal retirement policy would result in early mass resignations once the treaties and the implementing legislation are approved. They feel the Army wants to keep as much of the labor force intact as possible, while the state Department wants to reduce the amount of United States labor in the operation of the Canal as soon as possible. The labor leaders spoke of the loyalty of the Panamanian workers who came to work and guaranteed the operation of the Canal even during the bloody riots and confrontation in 1964. A large percentage of the Canal Zone work force is Panamanian, many of them born in the Zone. Organized labor feels an obligation to assure these workers fair treatment after the treaties go into force.

My discussions with Canal Zone residents left me with the impression that many of them feel very insecure with the new treaty arrangements. Talks with others, including General Torrijos and Canal Zone officials, convinced me that distrust is one of the major problems on both sides. General Torrijos, in answer to my direct question, responded that Americans in the Canal Zone were absolutely essential and necessary for the continued efficient operation of the Canal. He expressed frustration that the Zonians have been negative to his assurances of a more humane life under the treaties, with the possiblity of full ownership of their homes which they do not have now. General Torrijos stated that the Canal had to remain efficient; therefore, he is going to need the full support and cooperation of the present Canal Zone work force, including both the Americans and Panamanians.

The Canal Zone workers and residents also deserve our understanding. Panamanian control undoubtedly means some basic changes in the system. Even though treaty negotiations have been going on between the United States and Panama for the past thirteen years, the pending changeover still seems to have come too quickly for the majority of Zonians. They feel that they are going from security to insecurity. As Archbishop McGrath expressed it, one must appreciate the feelings of the Zonians, but the necessity for the treaties is the greater reality. "You can't hold history back," he told me. I was heartened to hear expressions of faith in the Torrijos Government by close observers of the situation.

I had the opportunity to hear General Torrijos' point of view and to get to know him when I spent one entire day with him at his home at Farallon—near the Rio Hato military base—and at the small village of Coclesito, about fifty miles west of

the Canal in Cocle Province. Omar Torrijos impressed me as a humane and sensitive leader who is concerned about the Panamanian people. He characterized his rule as a dictatorship of fondness and love for the people, especially the poor. This affection for the people was clearly evident during our stay in Coclesito. He related easily to the children who constantly surrounded him and followed us on a six kilometer walk on a jungle road, and to the older people of the village whom he greeted during our walk through this rural community. The General is a military leader but he also demonstrates a capacity for popular civilian leadership as well.

General Torrijos wants to make the government serve his people. One experienced United States official noted that the General spent more time with his people than any other national leader he has seen. Others told me that he is personally and emotionally torn by the effects of high unemployment on individual Panamanian families. General Torrijos is concerned with the negative effects of the current economic situation on the populace. He told me that his government was not indifferent to the suffering of the people. The Panamanian leader also said that he was not destined to be head of the nation—he was going to be chief of government only as long as the people want him to lead. If the referendum had been defeated in October, he would have stepped down.

At Farallon General Torrijos jested about the political labels that have been placed on him—from fascist to communist. He described himself as a little to the left of John F. Kennedy. From what I gathered during my three days in Panama, ideological labels simply cannot be applied to him. He is a pragmatist, incorporating into the Panamanian system those measures which he feels would be best for his country. According to General Torrijos, Panamanians of the extreme left and right live off the nation's problems, not the solutions. He said that "living off the problems is a full time job here", an expression he used several times during the day.

General Torrijos addressed himself to the question of his relationship with Fidel Castro and Cuba, especially as it relates to the type of system he wants for Panama. In response to the raising of the issue by a Panamanian television reporter, the General expressed his admiration for President Castro and what he has done in Cuba, particularly in the fields of health care and education for the masses. He underlined, however, that these gains were made at very high social costs, citing regimentation and overworking of the people. It seems that he would like to incorporate the best aspects of the Cuban system without incurring the "social costs". He felt that the system instituted by President Castro might be best for Cuba but was not suited to the culture of Panama. One informed observer of Panamanian politics thought that General Torrijos' trip to Cuba in June, 1976, turned him away from Marxism-Lenninism. The General pointed out that some of the reforms he instituted in the fields of education and health were undertaken before his Cuban trip. His visit, however, reinforced his ideas to extend social reforms. He praised those aspects of the Cuban system which benefited ordinary people and he noted that at the time of day we were discussing this issue, all Cuban children had eaten a good breakfast and lunch, while many Panamanian children had not.

General Torrijos was critical of United States policy toward Cuba, saying that the economic and technological isolation of Cuba was an injustice worthy of Idi Amin. He said you cannot have xenophobia in technology; it is out of character for the United States who is known throughout the world as a great nation that helps others.

The Panamanian leader spoke of the shame that there are tractors in Cuba which are not in working condition, sugar mills which are not working efficiently, and the possibility of a tropical sugar disease, when the United States could be doing things to help. He agreed with me that President Castro would become more flexible when the United States begins to deal with him. He also agreed with me, and I made this point at my press conference in Panama, that situations improve as leaders begin to talk to each other. The General cited Sadat and Begin.

General Torrijos mentioned that President Carter recently sent a message to Fidel Castro urging removal of Cuban troops from Africa as a test of good will for relations with the United States. I expressed my belief that we should be dealing with those issues on two different levels—with Africa on one level and with Cuba on another. On Cuba we should address those matters that were present before the African situation—property rights, reunification of families, and the release of prisoners. United States policy in Africa is a different issue.

International politics was not allowed to dominate our conversation since General Torrijos was anxious to talk about both the accomplishments and problems of his government. One of the major accomplishments has been to bring rural areas into the life of the nation. In the opinion of many observers, General Torrijos has done more for the countryside than any previous Panamanian leader. Great energies

have been expended in making social reforms in education, health care, and other social services available to all parts of the country. Infrastructure improvements have been made, such as expansion of the road system and electrical capacity. School capacity has doubled under the nine years of the Torrijos Government; no Panamanian child is without school. The number of grades has been increased from six to nine, and there are schools where there previously were none. General Torrijos told me of his long walks to school as a child and how friends drowned while crossing rivers. Now schools are no further than a thirty minute bus ride in rural areas where there used to be few schools; in urban areas, they are no further than a five cent fare. When the General came to power there were only 7,000 teachers—now there are 25,000.

In the health area, the Torrijos Government is trying to provide every rural community with a nurse or paramedic. The nursing school is producing about one hundred nurses per year, many of them from rural communities.

The government's efforts in the tiny pueblo of Coclesito epitomized what they would like to do nationwide in the rural communities. In this agricultural cooperative, experimental work is being done in cattle and buffalo raising and increasing productivity of the land for raising grain, beans, yucca, corn, tomatoes and lettuce. General Torrijos was proud of the village's success with buffaloes brought in from Trinidad and Tobago six years ago—the beginning buffalo population of twenty-one has now risen to forty-one. The buffaloes are used as beasts of burden and as providers of milk and cheese.

The cooperative has had much success with increasing the ratio of cattle to hectare of land. In this area, three head of cattle can be raised on one hectare of land, whereas in other regions of the country, only one head can be adequately raised on a hectare.

The National Guard first came into this area when Coclesito was devastated by floods in 1970. They began a type of rural electrification program as various government agencies undertook projects.

General Torrijos asked some of the school children and one of the teachers to explain the village's school system to me. Four hundred students are enrolled from preschool to ninth grade in work-study programs similar to the Cuban system. In addition to academic subjects, the students learn how to grow crops and make their own clothes. One of the students told of a typical school day which is to rise at 5:30, eat breakfast, and then go to the farm for agricultural work before beginning classes. After lunch the students continue their academic work until 5:30, then study after dinner until 9:30. Students come from other parts of the country to participate in this program. This school is one of 135 established in Panama—eventually there will be 500 of these work-study schools. The government wants to make this a national system of education.

The General asked the teacher about foreign language courses and she replied that students learn the dialects spoken in the region instead. He was a bit taken back by this response, saying he thought it was necessary for Panamanians to learn foreign languages. The teacher retorted that it was more important for them to learn the languages of the people in the region with whom they work.

I was very impressed as to how articulate and knowledgeable the students and workers of the village were. Those who spoke about cattle and buffalo raising demonstrated considerable technical knowledge. It was a delight to see how well versed they were on the Panama Canal issue and to listen to conversations on that topic between them and General Torrijos. With great concern, they asked me about my assessment of the chances for Senate ratification of the treaties, and were happy to hear my positive response. According to the General, television sets had been installed in the village so that the people could watch the treaty signing from Washington.

In one of his asides on the treaty during our talks in Coclesito, General Torrijos noted that much has been said about the $50 million military assistance package which would come to Panama over the next ten years as part of the arrangement. The military assistance would be used to attack underdevelopment and illiteracy. Helicopter service would be provided in the provinces for transporting medicines and the sick. One hundred helicopter pilots would be trained to perform this mission—the training alone would cost $5 million. The General stated during this discussion that Panama's present budget for defense is ten percent of the national total, while the share for education is thirty percent.

Although General Torrijos is proud of the accomplishments of his government, he is the first to admit that the nation has serious economic problems. One of the greatest problems is dealing with the cities. What particularly impressed me after talking with Panamanian and United States officials and businessmen is how close-

ly tied the ratification of the Panama Canal treaties is to the solution of these problems. The uncertainty created by the question of Senate ratification, with the accompanying talk of ugly and violent reaction and references to a Vietnam type situation, have caused international and domestic investors to hold back the capital necessary to get the nation back on its feet economically. General Torrijos believed that the talk of crisis and a new Vietnam have killed the impulse of private investors to take a chance on Panama until the issue is resolved. The national treasury is in bad shape, while the National Bank has no funds to finance any project for any length of time. The Panamanian economy has been at a standstill for several years because of the tenuous treaty situation, as well as the worldwide recession, the world price of oil, and the continuing problem of international commodity pricing policies.

This situation was underlined for me by the Minister of the Presidency, Fernando Manfredo, at a breakfast meeting. The Minister cited figures showing that the country has experienced no economic growth in the past several years. From 1970 to 1973 the average GNP growth was 7.2 percent; the level of unemployment was about five percent since 1975 the growth figure has been frozen. The official unemployment figure is between ten and twelve percent, reaching twenty percent in urban centers. People in the 18–25 years age range are most seriously affected. University-educated people are willing to take on the most menial jobs at the minimum salary in order to gain employment. At Farallon General Torrijos had referred to the paralyzed economy and the suffering of people as its result.

Minister Manfredo told me that the government has been in touch with investors from the United States, Europe and Japan who have expressed in writing a willingness to invest once the treaty issue is resolved. The level of foreign investment in 1973 was larger than it is today. General Torrijos had spoken of many projects in which outside bankers are ready to invest if they know that Panama's future will be a stable one. One observer mentioned a convention center project which is ready to go if OPIC (Overseas Private Investment Corporation) would guarantee the loan. This project alone would employ 1,000 people. Other projects concerned road building, housing, and Panama's copper resource.

Non-Panamanian observers close to the business community believe that settlement of the Canal issue would contribute to a feeling of confidence on the part of international bankers. Settlement will give them confidence that the United States will be working closely with Panama, thus strengthening the investment climate.

Panamanian officials believe that once the treaty issue is resolved the economy will improve, not only because of the investment situation but also because they will then have control of port facilities for trade. Panama's major port facilities are in the Canal Zone. Because of present port costs, imports are very high and export possibilities are not exploited. Minister Manfredo referred to a cement plant that is competitive with those of other nations; however, its bags have a charge of thirty-five cents added on because of port costs. Under Panamanian operation, the cost of the port will be reduced and Panama will then be more competitive in international trade.

Politically this period of uncertainty could do lasting harm, according to one high-ranking free enterprise-oriented official who said, "This worsening economic condition has served to ripen the possibility of pressures from non-capitalistic sectors to improve the lot of the masses at the expense of a sound free market system. Such a situation, if left unresolved over time, presents an opportunity for demagogues with opportunistic approaches to seize hold of this economic condition and turn it to their political advantage. Most specifically, it is an ideal circumstance for a communist government with ambitions for worldwide revolution to gain a definitive and strategic entry on the American continent."

Another factor complicating the economic picture and which is also tied into the treaty issue is Panama's sugar situation. Under the International Sugar Agreement signed in Geneva, for 1978 Panama was allotted 90,000 tons, which is considerably below its export capability. In the past two years, Panama has invested heavily in sugar production to create more jobs.

General Torrijos told me that Panama will produce as much as it can because many people can then be employed. As a result, Panama has an export capability of 250,000 tons. The United States and other nations such as Cuba, Japan, Australia, England and Brazil are working at Geneva to have additional allocations made to Panama from the emergency pool created for those countries that have capabilities beyond their allocation. The problem, however, is that the solution is not imminent. The result of experimentation on the conversion of sugar to alcohol, for which the Brazilians are providing technical assistance, also is not close at hand, nor is an international pricing agreement. The stark reality is that sugar is beginning to be

harvested now. At the end of the harvest—in four months—20,000 sugar workers will be flooding Panama City and other urban centers looking for employment.

This situation, as well as the depressed state of the Panamanian economy which is largely due to the uncertainty over the Canal treaty issue, has exacerbated the pressure on the Torrijos Government. Frankly, I left Panama with the strong feeling that time is indeed running out for Panamanian economy and that Senate ratification of the treaties this spring is not only desirable but imperative. General Torrijos said that "until that time, we could make a soft landing; after that there is no more fuel". I am strongly convinced that further delay—or worse, failure to ratify the treaties—would seriously affect the economic future of Panama and have serious political repercussions.

During my three days in Panama, there was much discussion surrounding the possible effects of rejection or delay on Panama's political life, on United States relations with Panama, and on United States-Latin American relations. The negative repercussions are clearly not in the best interests of our country.

On the bilateral level, frustrations are building to the point, after all these years of trying to work out an equitable arrangement, that responsible officials, both United States and Panamanian, warn of angry and emotional reaction on the part of the Panamanian populace against the United States Embassy, United States business and, ultimately, the Canal Zone. In such a situation, the ugly prospect of bloody fighting between United States military and Panamanian civilians is not too remote. United States "control" in a hostile environment is a situation to be avoided.

General Torrijos is a friend of the United States and wants to continue being one. observers close to the scene believe that his future economic policies will be moderate and compatible with the interests of United States business. Investment opportunities for United States citizens will be enhanced. The General realizes that one-half of Panama's trade is with the United States, major international investment is from the United States, and the economy in general is closely tied to ours. Many government officials feel close to this country and many of General Torrijos' Ministers send their children to our schools.

Politically, instead of utilizing a great opportunity to encourage General Torrijos to continue on the path toward opening Panama to democracy the possibility was raised that he could react against the opposition, or even ally himself with anti-democratic elements in the country, Recent experience has demonstrated that General Torrijos is open and flexible to constructive suggestions regarding the political situation from his friends in the United States. He acknowledged during our Farallon discussions that some recent political moves were precipitated by talks he had with Senator Robert Byrd.

On the international relations side, the United States has the opportunity to enhance its prestige in Latin America and the developing world. Senate rejection would place our best friends in Latin America—those who have defended the United States on the treaty issue against critics in their countries—in great jeopardy. The defeat of the treaties is going to grossly affect the courageous democratic leaders throughout this Hemisphere. Violent reaction against United States business, cultural representatives, and other symbols of our presence in Latin America is certainly possible.

There was no doubt in my mind upon leaving Panama that Senate confirmation of the Canal treaties is overwhelmingly in the best interests of all concerned—above all, the United States.

COSTA RICA

(Draft of Section on the Panama Canal)

To a person, and this could be said of all the officials with whom I spoke on this four country mission, there was unflagging support for the Panama Canal treaties, with some officials voicing concern over the negative repercussions that would result if the Senate rejected a new arrangement. The Panama Canal issue was the principal subject initiated by Costa Rican President Oduber and Foreign Minister Gonzalo Facio at our luncheon meetings.

If the Senate rejects the treaties, President Oduber said he would be attacked by the left wing in his country, He said, "I'm afraid that I will be literally stoned. There is no way the left wing forces can be contained if the Senate rejects the treaties." President Oduber had gone so far out on the limb in support of the new treaties that he felt his leadership capability would be undercut by Senate treaty rejection. He felt that our best friends in Latin America would have to desert us if

they are to survive; it would be difficult to support the United States if the treaties were rejected.

During my memorable meeting with one of the fathers of Latin American democracy, Jose Pepe Figueres, the former President used the word "catastrophic" to describe the impact of senate rejection of the treaties. He voiced the opinion that it was in the United States' best interests to approve the treaties. Treaty ratification would end colonial rule in the Hemisphere and give the United States the opportunity to come out and stand for something that would give the people moral encouragement. Don Pepe remarded in a serious tone, "It would be disastrous for the Western Hemisphere and the world if this catastrophe occurs in the Senate." Similar to President Oduber's warning, Don Pepe felt that Senate rejection would jeopardize the influence of friends of the United States. On the other hand, Senate passage would strengthen the hand of the United States in Latin America. In answer to a question from Ambassador Weissman, the former President replied that no country in the world would support the United States in the event of trouble over the Panama Canal if the treaties were not approved.

All the presidential condidates with whom I spoke were unanimous in their concern over the pending Senate action. Conversations with these close friends of the United States convinced me that Senate rejection would be a severe blow to the progressive forces in Latin America that have stood with us. The only beneficiaries of the treaties' defeat would be the communists and antidemocratic forces.

A final note on the Panama Canal issue: I was honored to deliver a speech on United States-Latin American relations at a Costa Rican government-sponsored forum on "Development and Democracy" at the beautiful and historic National Theater in San Jose. The most enthusiastic audience reaction came after my remarks strongly supporting Senate ratification of the treaties.

PERU

(Draft of Section on the Panama Canal)

The Panama Canal issue figured prominently in my discussions with Peruvian leaders and the press. It was, in fact, the first topic of conversation initiated by Foreign Minister de la Puente and was dealt with at the start of my meeting with President Morales. The Peruvians view the Panama Canal issue on two distinct levels. On the international plane, they fully support the treaties because of Latin American consensus and also because they feel the treaties are in the best interests of close United States-Latin American relations. President Morales felt that Senate rejection would present serious difficulties for the United States in several countries. Foreign Minister de la Puente explained that a successful conclusion to the Panama Canal issue would be interpreted as a positive sign in Latin America, whereas if the treaties are not ratified another set of problems will be opened up involving Panama and all of Latin America.

On the domestic level, the Peruvians are concerned about the Panama Canal because their economy is directly affected by toll charges and other factors influencing Canal operation. A significant portion of Peru's foreign trade flows through the Canal, as does the trade of its West Coast South American neighbors, Ecuador and Chile. Foreign Minister de la Puente expressed the hope that a system of consultation could be established between Panama and the West Coast countries in order for issues to be worked out equitably and fairly. For example, procedures could be arranged so there would be discussion over toll increases.

An interesting and different perspective on the Panama Canal issue was given by the APRA leaders. In response to my question, they answered emphatically that their party advocated many years ago that the Panama Canal should be Latin Americanized or internationalized. This is still the party's position. APRA leaders stated they are as much against Panama having full control as they were against full control by the United States. They feel that control of this vital international link is more dangerous in the hands of a small power than in the hands of a larger nation. APRA leaders also expressed concern over problems related to a possible war or dispute with Panama, underscoring this as a theoretical and highly unlikely occurrence. The Apristas would like to see the formation of an OAS commission to act as a guarantor of Canal internationalization. They referred to a recent statement on this concept by party leader Haya de la Torre.

The APRA leaders respectfully heard my arguments against their idea but they felt that eventually the world would adopt the policy of internationalization of all international straits and waterways.

VENEZUELA

(Draft of Section on the Panama Canal)

Venezuelan leaders, especially President Perez and Foreign Minister Consalvi, were extremely supportive of the treaties negotiated between Panama and the United States. In private conversations, President Perez initiated discussion of the Canal treaties, saying that Senate rejection would be a "catastrophe" which would cause violent reaction in Latin America. He feared sabotage would result from treaty rejection and that ensuing events—possible United States occupation of Panama and the negative reaction from the international community—would only benefit our communist rivals.

President Perez revealed that Venezuela played a major role in influencing General Torrijos to take a more moderate international posture, and in so doing he was able to gain the unified support of the Latin American nations. The Venezuelan President shared the feelings I had about General Torrijos after my meeting with him. He felt the Panamanian leader has great respect and feeling for his people, and that the human rights situation was improving under his leadership. President Perez demonstrated an extraordinary interest in the development of the Panama Canal debate in the United States and mentioned that he receives regular reports on the issue.

Although some Venezuelan congressional leaders expressed skepticism regarding General Torrijos' political style, it did not diminish their support for the Canal treaties. Former President Betancourt said the Canal not only dissects Panama but also Latin America. Senate approval would strengthen the position of the United States in the Hemisphere. On the other hand, he saw great security problems for the United States and Latin America if the treaties were rejected or if ideas such as internationalization of the Canal under the United Nations were implemented.

Official concern for the treaties has had a strong effect upon the Venezuelan people who are conversant with the issue. The treaties were the principal subjects of several newspaper interviews that I held, as well as one of the main topics of a popular television talk show on which I appeared.

The PRESIDING OFFICER (Mr. Matsunaga). The Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I yield to the Senator from Utah (Mr. Hatch).

Mr. HATCH. Mr. President, I would like to share with my colleagues some very important news this afternoon. As Senators will recall, the Circuit Court of Appeals for the District of Columbia recently ruled in the case of Edwards against Carter that the President of the United States has the authority to dispose of the Panama Canal by a self-executing treaty, thereby bypassing the House of Representatives. The decision was based on a 2-to-1 majority, the lone dissenter being Judge George McKinnon who wrote a 79-page dissent. Today, representatives of the Washington Legal Foundation, who are representing 60 Congressmen in the suit, informed me that Chief Justice Warren Berger of the Supreme Court has referred the appellants' application for an injunction to the full court pending a petition for a writ of certiorari.

This is highly significant, of course, because it means that Chief Justice Burger, instead of rejecting the application for the injunction, has now put the matter before all the members of the Supreme Court. This, in turn, will prepare the way for the Court's consideration of this important constitutional issue on its merits. I consider this to be most encouraging news, Mr. President, and am pleased to learn that this important case against the abuse of the President's treatymaking power is now gaining the attention of our highest Court.

As I have repeatedly stated on this floor, there are no precedents, in my judgment, after studying the matter for many months, which would authorize the President of the United States to transfer the Panama Canal to the Republic of Panama without the concurrence of both Houses of Congress. I am extremely confident

that the Supreme Court soon, and I am confident that the opportunity to study the matter.

I certainly urge and encourage that they do agree, because I think it is a matter of great importance, involving the separation of powers and an extension, in violation of the Constitution, of article IV, section 3, clause 2 of the Constitution by the President of the United States. So I think this is good news. I hope that we will have a result from the Court so on, and I am confident that the Supreme Court will agree with the contentions that we have made here on the floor of the U.S. Senate.

I am very grateful to my dear friend from Virginia, who yielded to me this very brief time.

Mr. HARRY F. BYRD, JR. I am delighted to have yielded.

Mr. President, the Carter administration has maintained that the proposed Panama Canal treaties provide the United States with adequate bases, facilities, and rights to defend the Panama Canal.

I believe, however, that these treaties are grossly inadequate in that regard. By withdrawing all U.S. military forces from Panama and surrendering to Panama control over all military bases by the year 2000, the United States would be relinquishing the capability to adequately defend the Canal.

Even before the year 2000, the treaties would require the United States to get out of many of the military facilities established to defend the canal and would also terminate the protective buffer of the Canal Zone.

So that my colleagues may have the benefit of seeing just how extensive U.S. military facilities in the Canal Zone are at present, and also how the proposed treaties would affect the future status of those facilities, I ask unanimous consent that a chart listing these facilities and their status be printed in the Record at this point.

There being no objection, the chart was ordered to be printed in the Record, as follows:

U.S. MILITARY FACILITIES IN THE CANAL ZONE AND THEIR STATUS UNDER THE PROPOSED TREATIES

[D/S—Defensite; M/C—Area of military construction]

U.S. facilities/area (service) and current use	Status under new Canal treaty	Remarks
PACIFIC SIDE		
Fort Amador (Army):		
Bde headquarters	Panama [1]	Relocate to Fort Clayton.
Troop area	do [1]	Relocate to Fort Clayton/Corozal.
Family housing	M/C [2]	
Community facilities	M/C [2]	
Fort Grant (Army): Spt activities	Panama [1]	Limited facility use retained.
Fort Clayton (Army):		
Troop area	D/S	
Tropic test headquarters	D/S	
Service support facilities	D/S	
Family housing	D/S	
Training area	M/C [2]	Slightly reduced size.
Curundu (Army):		
DOD civilian housing	M/C	
Contractor housing	M/C [2]	
Curundu Heights military housing	M/C [3]	Quarters for Panamanian military.
Military housing (BOQ)	M/C	
Pacific Area Depot	M/C [3]	Phased relocation to defense site.
Inter-American Geodetic Survey Headquarters.	M/C [3]	Relocation to defense sites.
USAF Antenna Field	M/C [3]	Relocation to Howard AFB.

U.S. MILITARY FACILITIES IN THE CANAL ZONE AND THEIR STATUS UNDER THE PROPOSED TREATIES—Continued

[D/S—Defensite; M/C—Area of military construction]

U.S. facilities/area (service) and current use	Status under new Canal treaty	Remarks
Corozal (Army):		
Engineer and industrial facilities	D/S	
Troop housing and facilities	D/S	
Former antenna field	Panama [1]	
Albrook Army Airfield, East (Army): Aviation Bn operational and maintenance facilities.	Panama [1] military Helo and commercial development.	Relocation to Howard AFB (interim to Albrook West).
Quarry Heights: Headquarters SOUTH—COM; FAA microwave; military communications; family housing.	M/C	Location combined board, post reduced in size.
U.S. Naval Station, Panama (Amador) (Navy): U.S. Naval Station Headquarters; USN Communications Station, Balboa Headquarters; housing.	M/C	
Albrook Air Force Station (West) (Air Force): 1978th Comm., Gp; Inter American Air Force Academy; long range radar, family housing; Headquarters USAFSO.	D/S	
Howard Air Force Base (Air Force): Headquarters USAFSO; Howard Airfield; 24th Composite Wing; family housing fuel storage; ammunition storage.	D/S	Curundu antenna field relocates from Curundu; Permanent relocation site 210th Avn Bn.
Fort Kobbie (Army): Tactical Bde Headquarters; training areas; troop facilities.	D/S	Slightly reduced.
Rodman/Cocoli/Farfan (Navy): USN Station (piers and Spt facilities); USN radio receiving facility; family housing; marine barracks; small craft instruction and training team.	D/S	
Empire Range (Army): Training area; firing ranges.	M/C	Small sections Panama T-Day.
Balboa West Air-to-Ground Gunnery Range (Air Force): Aircraft firing and bombing range.	M/C [2]	Transfer to Panama when alternate range is provided to U.S. Government.
Arrijan Tank Farm (Navy): Military fuel storage.	D/S	
Summit (Navy): USN Comm Station Balboa Transmitting Facility.	M/C	
Cerro Tigre/Cerro Pelado (Army): former ammo storage area.	Panama [1]	Rail ammunition transfer point retained as M/C.
ATLANTIC SIDE		
Fort Davis (Army): Atlantic Spt Facs; ITT Cable and Transisthmian Microwave SCN radio/TV; troop facilities.	D/S	
Fort Gulick (Army): USA School of the Americas (USARSA); troop facilities; dispensary and dental facilities; family housing; ammunition storage.	M/C [4]	USARSA only 5 yr except as agreed; company size area to Panama in 3 yr; family housing, ammunition storage and community service areas retained as M/C. [2]
Coco Solo South (Army): Family housing	M/C [2]	
France Field (Army): Family housing	M/C [4]	
Fort Sherman (Army): Jungle Opns Training Center; Fort Sherman Air Strip; troop housing training area.	D/S	
Fort Sherman Training Area (Army): Jungle training area.	M/C	Slightly reduced.
Fort Randolph: None (former coast artillery location).	Panama [1]	
Galeta Island (Navy): Communications facility	D/S	
Semaphore (Air Force): Air Traffic Cntl	D/S	
Gatun Tank Farm (Navy): Military fuel storage	D/S	
Isthmian Pipeline (Navy): Military fuel pipeline between Atlantic/Pacific.	D/S	Possible joint use by Panama if agreed by U.S. Navy.
Gamboa (Army): Tropic test facility	Panama [1]	Subject to separate negotiation.

[1] Transfer to Panama Treaty Day.
[2] Transfer sometime during treaty.
[3] Transfer to Panama in 3 yr.
[4] Transfer to Panama in 5 yr.

Note: Unless otherwise noted, post treaty status remains unchanged until Dec. 31, 1999.

Mr. HARRY F. BYRD, JR. Mr. President, on another subject, although it is not necessary to do so, I ask unanimous consent that I might be permitted to speak as if in legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RISKS OF U.S. RHODESIAN POLICY

Mr. HARRY F. BYRD, JR. Mr. President, as Secretary of State Vance visits Rhodesia and Russia this week, this Senator would like to express the hope that he will take a realistic rather than an emotional approach to the agreement worked out by Rhodesian Prime Minister Ian Smith and the three moderate black leaders of that nation.

That agreement would bring about by the end of this year black majority rule in Rhodesia.

But the State Department, following the leadership of our extremist Ambassador to the United Nations, Andrew Young, is demanding that Marxist-oriented, terrorist guerrillas based in countries adjacent to Rhodesia be brought into the new Rhodesian Government. These guerrilla forces have been supplied with arms by the Soviet Union.

The Communist-backed rebels also have support in the United Nations. The U.N. Security Council, with Britain and the United States abstaining, voted recently to reject the Salisbury settlement, thus giving further international encouragement to the guerrillas.

A "no" vote by the U.S. representative—which I urged both to the President and the Secretary of State—would have killed this mischievous resolution.

Given this set of circumstances, Rhodesia could be the next African country to fall into Communist hands.

Most Americans do not realize the degree of Soviet and Cuban penetration in Africa.

As chairman of the Intelligence Subcommittee of the Senate Armed Services Committee, I conducted a hearing this week where detailed presentations were made by American intelligence experts.

The Deputy Director of the Central Intelligence Agency stated categorically that there is a determined and unprecedented campaign to expand Russian and Cuban influence throughout central and southern Africa.

The fact is there are Communist military personnel, mostly Russian and Cuban, in 18 African countries.

Cuba has nearly 40,000 military personnel in Africa; and Russian military equipment has been flown into Ethiopia and Angola faster than the local forces can utilize it.

Russian fighter aircraft have been sent to Ethiopia and Russian tank deliveries to that country exceed 400. Soviet military aid commitments to Ethiopia approach $1 billion.

In Angola, tons of Russian military hardware are on the docks at Luanda, and Soviet or Cuban advisers are found at every level of government.

Elsewhere in Africa, Soviet equipment has been delivered to various so-called liberation movements and self-styled revolution-

ary regimes, with either Russians or Cubans training the recipients in its use.

Two nations friendly to the United States, Rhodesia and South Africa, are surrounded by nations which have within their borders Russian and Cuban military personnel.

It is unfortunate that the State Department permits Andrew Young to call the shots in regard to African policy. He was an able Congressman from Georgia and was highly regarded by his colleagues in the Congress.

But as Ambassador to the United Nations he has done little to reflect credit on the United States. The latest denunciation of him came just 2 weeks ago from an unlikely source, former Prime Minister Harold Wilson of Great Britain.

The former Prime Minister, a Socialist, in commenting on Ambassador Young's Rhodesian policy said:

> What is particularly dangerous is Young's repeated assertions which can only be read as meaning that any Rhodesian settlement without bloodshed and massacres won't count.

These are strong words by the former British Prime Minister. But such an appraisal of Mr. Young's activities appears to be accurate.

The United States, in my judgment, is playing into the hands of the Communists—as well as courting bloodshed—by refusing to accept the agreement worked out by Prime Minister Smith and the three moderate black leaders of Rhodesia.

Hopefully, Secretary Vance during his African trip will see the folly of Ambassador Young's position in demanding that Marxist-oriented, terrorist guerrillas be brought into the new Rhodesian Government.

The present U.S. policy serves only to encourage the guerrilla forces, and enhance their hopes for eventual dominance, by continuing to insist that these Communist-backed forces be included in the government.

THE PANAMA CANAL TREATY

The Senate continued with the consideration of the treaty.

Mr. Lugar was recognized.

Mr. LUGAR. Mr. President, earlier, the distinguished Senator from South Dakota (Mr. McGovern) has given an important statement of summary of his views on the Panama Canal Treaty debate. I should not presume to respond to all of what he has had to say. But I would simply comment that throughout his remarks he has mentioned that the people of Panama, in fact, the Government of Panama, might have felt insulted during many days of that debate by insinuations that were made about that government, about affairs in Panama.

Certainly, that has not been the intent of those who are opposed to these treaties. As a matter of fact, it seems to me that many of us who are opposed to the treaties are very much in favor of a good number of things that might help the people of Panama to boost their economy, bring about greater stability of political institutions

and, certainly, a much happier relationship with the United States of America in the years to come.

The difference of opinion, it seems to me, comes over whether this particular treaty, the route our negotiators have taken, was the most appropriate and the most propitious way of bringing about stronger friendship and, indeed, a stronger economy in Panama.

Clearly, those of us who are opposed have on occasion had opportunities to talk to Ambassadors Linowitz and Bunker, and we have appreciated those opportunities during the negotiations to express our viewpoints of where we might have headed.

I, for one, suggested that the emphasis needed to be on the economic issue, because only in the event that the Panama Canal became a more profitable venture, would significant revenues ever accrue to the people of Panama, would significant changes ever be made in the health and welfare of people who might be served by that government.

I still feel that would have been a superior route to follow and, indeed, Ambassadors Linowitz and Bunker did not disagree with the importance of that point of view.

However, the gist of the treaty that is now in front of us has dealt with other measures as more important questions of sovereignty and, indeed, of ownership, quite apart from how well the operation might prosper, regardless of sovereignty and ownership consideration that might be involved.

As a matter of fact, the economic issues have been subordinated and there is severe difference of opinion as to whether, in fact, the canal will even make a profit and be self-sustaining, although much evidence has been given both ways.

It just seems to me that the American public watching this debate, and it has been an important one, I believe, in terms of both its length as well as what has been said, the American public is still not convinced that, in a practical way, the United States of America will prosper in the event these treaties are finally ratified and, indeed, the people of Panama have felt a sense of hurt and harm as the discussion has proceeded.

It might have been the better course, as a matter of fact, to have come forward in a different way with an economic treaty and after some consensus in the American public had been found.

But what we are left now with, I think, is a severe question as to whether the American people will finally find at least some wisdom in these treaties and, indeed, there is substantial evidence that despite many weeks of debate the American public is now very skeptical, indeed, and wonders how two-thirds of the Senate could be of such a contrary view.

It just seems to me important to state that the people of the United States are not acting in a paranoid or an insecure manner, these words having been used by the Senator from South Dakota (Mr. McGovern). I see no evidence of paranoia or insecurity.

I do see evidence that many people in the United States of America simply feel that there is no particularly good reason for the giving up of property, a substantial property value created in the construction of the canal, unless there is sufficient quid pro quo for doing so, unless there are substantial reasons for the United

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States, either in foreign or economic policy, to make that type of transfer.

Those clearly have not been demonstrated. As a matter of fact, if peace was our objective, by the time we come to the conclusion of these treaties, peace appears to be as illusory in Panama at the conclusion as it was at the beginning.

Indeed, I will submit as a prediction for history that until it is apparent that the canal is a profitable operation, that flows of money are going to go to the people of Panama, that the education and welfare of those people are likely to be upgraded, there will be substantial unrest, and it will continue quite apart from the arrangements and quite apart from the transition.

I make these comments simply to reply to the Senator from South Dakota, for whom I have great respect. There are many who will agree with his position and many who will agree with mine and those of us who have opposed the treaties. We do so simply because we believe the United States of America must prosper. The Government of Panama and the people of Panama, hopefully, should prosper. We believe, as a matter of fact, that we can still do better, and many of us hope that we shall still have that opportunity.

The treaties have not been ratified as yet. It is still a possibility, it seems to me, that down the pike we could come to arrangements that would be more satisfactory for our two nations.

Mr. President, I yield the floor.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that I may proceed as in legislative session.

The PRESIDING OFFICER (Mr. Sarbanes). Is there objection? The Chair hears none, and it is so ordered.

THE PANAMA CANAL TREATY

Mr. LUGAR. Mr. President, as the Senate debates the Panama Canal Treaty, I would like to call to the attention of my colleagues a concise, well-reasoned analysis offered by Lynton K. Caldwell, Bentley professor of political science at Indiana University. I believe that Professor Caldwell had made a significant contribution to the national dialog on this issue, and I ask that his statement be printed in the Record.

The statement follows:

SOME OBSERVATIONS ON THE PANAMA CANAL TREATIES

(By Lynton K. Caldwell)

The Panama Treaties now pending in Washington offer a lesson in how not to conduct foreign policy. Little good may be expected from whatever action is taken in the Congress. Changes in existing arrangements for the Panama Canal may have been overdue, but the proposed treaties, as negotiated by the State Department, have created a situation that is divisive at home and dangerous abroad. It is, moreover, a sheer act of faith to believe that the proposed treaties will accomplish their alleged purpose or that violence will be avoided, or that the Canal will be better protected by an American withdrawal from Panama.

Three courses of action are open to the United States Senate when it considers the treaties. It may ratify, reject, or require revision. Ratification of substantially the present text appears to be the only alternative acceptable to Panamanian Supreme Leader, General Omar Torrijos. The constitutional obligation of the U.S. President to seek the advice and consent of the Senate has been perverted (as on

other occasions in the past) to lining up votes for ratification. Neither the Nation nor the Congress have been prepared during the years of negotiation to consider the issues at stake, nor to form independent judgments as to ways in which national interests in the Canal might best be served.

Whatever the merits of the treaties, the arguments for their ratification as advanced by the State Department and its supporters have been less than candid. There is only one valid argument for turning the canal over to Panama: continuing American presence can only be maintained by military force at an unacceptable cost in lives, dollars, and in ill-will against the United States. All other arguments are "window-dressing" and some—such as "seven Presidents have favored a new treaty with Panama"—are irrelevant to the present issue.

Many of the arguments for the treaties are misleading to the point of dishonesty. For example the Canal has been described as "obsolete," although more than 90 percent of world shipping can pass through it. There is in fact, a continuous flow of traffic through the Canal, but we are told that most of it is under foreign flags, little of it in American carriers. Yet this argument fails to note that American shipping is in any case a minor factor in world commerce, or in the flow of goods to and from the United States. Should the political authority controlling the Canal impede the passage of shipments to and from the United States, it would matter little what flag the goods were carried. Moreover, the controllers of the Canal could deny shipping to and from countries whose governments they wished to subvert. For example, a Marxist government in Panama might exercise its sovereign right to hinder passage through the Canal to anti-communist or non-communist governments—for example to Chile or Venezuela.

The argument that supertankers and the largest aircraft carriers cannot use the Canal is likewise misleading. The main routes for oil-carrying supertankers are *not* through the Canal, nor would they be even though the Canal could accommodate them. Oil from the Middle East is carried to Europe, North America and Japan over more direct routes. If the largest aircraft carriers cannot pass through the Canal, and do not need to, there are many other naval craft that could. And who can assess the probability that they would never need to?

Military testimony regarding the defense of the Canal may puzzle Americans who forget that the President is Commander-in-Chief of the armed forces and that the Chiefs-of-Staff and active officers generally carry out the policies of their Commander. Retired officers may express independent opinions. But surely Americans are entitled to be puzzled by assertions that the Canal either could not be defended, or defended only at an unacceptable price while American forces control the Canal Zone, yet could be defended by the United States with American forces withdrawn and the Panamanians in control. Treaty advocates warn of another Vietnam should the United States attempt to remain in Panama. But this analogy is upside-down. Americans now control the terrain and if they could not hold it against whatever subversion or violence might be attempted against them, what confidence could be placed in American defense capabilities anywhere? How could we expect American military presence to be more effective elsewhere in the world? For example, how much faith could be placed in an American promise to guarantee a peace treaty in the Middle East, if our Nation appeared unable to or unwilling to defend its lawful and fortified position in the Canal Zone?

The most misleading argument on behalf of the treaties is that they appear to "guarantee" the right of the United States to use military forces to maintain right of access to the Canal, should that right be threatened in the future. Affirmation of this "right" by General Torrijos is a condition that some senators have set for their vote to ratify. But their constituents may be pardoned the suspicion that these Senators could be trying to simultaneously guard both their political fronts and rears—to have an alibi whatever the outcome in Panama. Should they vote to reject, they may be blamed if American lives are lost in defense of the Canal. Should they vote to ratify without "guarantee" they could be held at fault if a future regime in Panama obstructs American interests in the Canal. Except, of course, if the "guarantees" were known to be of such doubtful value as to be worthless, the Senators would have taken advantage of the proverbial naivete of the American people regarding the promises of political leaders, foreign as well as domestic.

Three considerations bring any so-called "guarantee" into question. First, as a practical matter, General Torrijos cannot bind his successors, whatever the status of the treaties under international law. Second, once American withdrawal is well underway and American opinion resigned to departing from Panama, Panama could denounce the treaty as having been made under duress. General Torrijos has declared that Panama has made a great sacrifice in tolerating a gradual American

withdrawal and in acknowledging any continuing American right to modify in any way the soverign control of Panama over the Canal. Third, the treaties promise that the United States will not intervene in the internal affairs of Panama. But once the Canal is firmly under Panamanian control what action could the United States take in relation to Panama, or the Canal, that could not be construed as intervention? For once the Canal is wholly Panamanian, does not any American intrusion in defense of the Canal, unless requested by Panama, become intervention in its internal affairs?

Persons who argue that to "return" the Canal to Panama is wise and mature statesmanship might appropriately be asked to assess the historical record of wisdom, maturity or stability of Panamanian governments. How reasonable is the prospect that Panama would or could honor its treaty commitments? In theory, Panama should be able to manage the technical operation of the Canal. In fact, General Torrijos has promised Panamanians three jobs for every job now held by a gringo. The Canal could easily become Panama's principal welfare project, with jobs being bought at the price of loyalty to the Supreme Leader. But optimists argue that responsibility for the Canal would induce responsibility for the Canal would induce responsibility in Panamanian politics—that the Canal, being Panama's greatest economic asset, would hardly be mismanaged by Panamanian governments.

There are at least three reasons for doubt that Panama could be counted upon to manage the Canal efficiently, even in its own interest. First is the pressure already noted, to make the Canal a sink for unemployed and largely unskilled Panamanian labor. The excessive birth rate in Panama relative to its resources creates a continuous and mounting pressure on Panamanian politicians, and explains in large measure their efforts to divert popular discontent to hatred of the gringo, along with their anxiety to obtain control of the Canal and the Canal Zone. One needs only compare conditions within and outside the Canal Zone to understand why General Torrijos cannot afford to wait twenty-two years to oust the Americans. But Panamanian poverty and fecundity may easily expand to fully occupy the Canal Zone—and what then?

A second consideration clouding the prospect for efficient Panamanian management is the "pot of gold" that the Canal would represent. Treaty proponents regard the Canal as economically unimportant to the United States. But what a prize and power-base for politics in Panama! Control of the Canal—its jobs and its revenues—would mean absolute control of Panama. Would such a temptation make for sober, business-like responsibility, or would it become the object of subversion, intrigue, and violence—possibly at the expense of the safety and economy of Canal operations.

And third would be a temptation, not confined to Panama. With the American pressure removed, other political interests would gain opportunities hitherto unavailable. Other Latin American states with ideological or economic interests in the Canal would almost certainly have a new stake in Panamanian politics. For example, Panama was formerly Colombian territory, and the Canal is a major avenue for communication between Colombia's Atlantic and Pacific ports. Even more hazardous to international relations would be the temptation which an unstable Panama would open to adversaries of the United States. A sovereign Panama would have the right to bring in whatever technical experts it pleased to help run the Canal. These could be Cuban, East German, or Soviet—and their peaceful presence in Panama would be none of the business of the United States. They might be more acceptable to Panama than a return of gringos for whom Torrijos has cultivated a contempt among his followers.

Finally, the argument that all Latin America and the Third World resents American "imperialism" and "colonialism" in Panama is not necessarily persuasive even if it should be true [which is debatable]. Should Americans retain control over the Canal, even with Panamanian consent, the United States could be attacked in leftist and extremist nationalist presses everywhere. Resolutions against the United States would doubtless be passed by overwhelming majorities in the General Assembly of the United Nations—most of whose members are nations only by international courtesy. But would anyone love the Americans more if they voluntarily relinquished the Canal? It is easy to generalize about public opinion where little is, in fact, known about it. Whatever their private convictions, Latin American statesmen are not likely to publicly approve a United States presence in Panama. It would, however, be a misreading of Latin American politics to believe that all Latin American people or their leaders do, in fact, want to see the United States turn over the Canal to Panama. Were the Canal to be administered by the Organization of American States, or even by the United Nations Security Council, an American withdrawal might be viewed with great equanimity.

America may like to think that "world opinion" (certainly an abstraction) will admire the generous and magnanimous act of a great power turning over the Canal, which has symbolized national pride in achievement, to a poor small neighbor. World opinion, however, may as easily interpret the gesture as an act of resignation and a failure of nerve—particularly in the face of the threats and boasts of Panama's Supreme Leader, General Torrijos. And would "world opinion" support an American attempt to return to Panama by force, should American security be threatened there?

Short of relinquishing American control over the Canal and the Canal Zone, much might have been done to have accommodated Panamanian sensitivities regarding the American presence. Ultimately, however, the insecurity and cupidity of Panamanian politicians would have demanded a complete ouster of Americans. At this point, a showdown might not have been avoidable. Perhaps a firm American posture along with sympathetic consideration of Panama's real needs could have over a period of time, brought Panamanians to a more realistic assessment of alternative futures. Unfortunately for everyone, the State Department's negotiators have now all but foreclosed this option.

It appears that unless the United States is "guaranteed" the legal right to defend the Canal, the pending treaties cannot win Senate approval. But should the United States agree to relinquish the Canal Zone and the Canal to Panama, it should be understood by Americans that they must, if need be, get along without the Canal in the future. The United States cannot go back without bring about all and more of the disasters now predicted by treaty supporters should the treaties be rejected. And yet the United States cannot relinquish its claim to lawful intervention without openly inviting the indefinitely expanding influence of Cuba, the Soviet Union, or other adversaries into Panamanian affairs.

It may or may not be too late to make a better treaty with Panama. But it is not too late to prevent the State Department, on behalf of the President, from negotiating the Nation in the future into positions that its Congress and its people neither understand nor approve, and in a less tolerant age could have been regarded as treasonable. If the advice and consent of the Senate to treaties can be no more than a mere figure of speech, then perhaps a reexamination of the Presidential power to negotiate treaties is in order if treaties are to remain the supreme law of the land and if the American people are to act responsibly even though they may never be truly self-governing in relation to foreign affairs.

ECONOMIC IMPLICATIONS OF THE PANAMA CANAL TREATIES

Mr. CRANSTON. Mr. President, as I see it, many people still have two primary concerns about the economic implications of the new Panama Canal treaties.

First, will the Panama Canal be self-sustaining under the new treaty arrangement? That is, will the Panama Canal Commission be able to meet its operating expenses, make needed capital improvements and assure the payments to Panama out of its operating revenues?

Second, what appropriations will have to be made by Congress to cover treaty-related costs until 2000?

Having reviewed the studies completed by reliable, independent consultants, by U.S. Government agencies, and by the U.S. treaty negotiating team, I have every reason to believe that the Panama Canal will generate enough revenue to cover all of its operating expenses and obligations.

Modest toll increases should create the revenues necessary to cover costs. They will effect only minimally worldwide commerce and will have little, if any real impact on the delivery cost to the U.S. consumer—a small fraction of 1 percent.

A study prepared by Arthur Andersen and Co. consultants estimated that the costs of the canal—including payments to Panama

and inflation—would be somewhere between $238 and $246 million in 1980 and $237 and $262 million in 1983.

The findings of International Research Associates (IRA) on future canal traffic and revenue projections showed that tolls could be increased about 100 percent before revenues would start to fall off. IRA, a nongovernmental consulting group, found that the sensitivity of canal traffic to modest toll hikes is low. For example, losses of canal traffic, on a tonnage basis, were projected to range from 2.4 percent with a 15-percent toll increase to 11.8 percent with a 50-percent increase. Our U.S. negotiators estimate than an initial toll increase of only 30 percent would be sufficient to meet all costs and would generate about $250 million in revenues in 1980 and $254 million in 1984.

Even without the new treaties, of course, toll increases would be required to meet rising costs. Governor Parfitt, in testimony before the Senate Armed Services Committee, said that toll increases in fiscal year 1981 and 1984 amounting to 19.1 percent would be necessary. He estimated that additional increases of 10 to 11 percent every 3 years after 1984 would be needed under the present treaty.

An independent consultant to the Senate Armed Services Committee, American Management Services, concluded that:

> The commission needs to raise its toll rates as its costs are rising (by cutting costs or increasing tolls). If it does this, there are ample opportunities for the commission to remain solvent and to run a small surplus even if very pessimistic traffic projections prove correct.

What about the costs to the United States under the new treaties? Will appropriated funds be necessary to cover the transition in the U.S. role over the life of the treaty? The administration has testified that there will be some budgetary implications associated with the changing U.S. role through 1999, although all payments to Panama will come out of toll revenues. One-time costs, such as the relocation of certain defense installations and the transfer of health facilities and functions to DOD plus recurring requirements such as the early retirement program for Canal Zone employees and incremental costs for DOD schools and hospitals, will be factors in the U.S. budget. But the total projected appropriations impact is not likely to go much above $350 million over 21 years—an annual average impact of about $17 million.

To give perspective to these figures, the Defense Department has confirmed that after 1999, when U.S. forces under the terms of the proposed treaty would have been withdrawn from Panama, that DOD should save approximately $76 million a year in operational costs (in fiscal year 1978 dollars) as a result of shifting these forces from Panama to CONUS. The money saved in the first 5 years alone after 1999 would exceed the total appropriations requirements estimated over the entire treaty period.

In addition, cost savings should be realized during the life of the new treaty as the Canal Zone government is phased out as are the commercial and retail facilities on which the government has relied. The annuity payments to Panama will also cease under the new treaty arrangement. American Management Services, the consultant to the Senate Armed Services Committee, has suggested that even larger cost reductions would be realized under the new

treaties than those savings foreseen by the Panama Canal Company.

As a member of the Senate Budget Committee, I, too have been concerned about the possible financial impact of the new treaties. With the best information available today, I am satisfied that the Panama Canal will be able to generate sufficient revenue to meet its obligations under the new treaties while continuing to operate as a viable link for world commerce. The financial impact on the United States will be small over the 21-year period, particulary compared with what we will save in just a few years after the treaty ends.

[From the Congressional Record—Senate, Apr. 17, 1978]

Professor Emeritus of History Arthur Bestor Concludes An Act Of Congress Is Necessary To Relinquish U.S. Property to Panama

Mr. Goldwater. Mr. President, I have just received a very important document which I wish to share with my colleagues in the Senate concerning the original intent of the framers as to the exclusive power of Congress to dispose of U.S. property to a foreign nation.

Professor Emeritus of History Arthur Bestor of the University of Washington has just completed and sent to me a thorough discussion of the intent of the framers in arranging the treaty power and imposing particular limitations on that power. I am very interested in his conclusion that the original intent of the Constitution was, as I have contended in earlier debates, that an act of Congress is necessary to the relinquishment of national property. He believes, as I do, that the Panama Canal Treaty alone cannot carry into execution the transfer of U.S. property to Panama.

Mr. President, Dr. Bestor has written a masterful paper, which is illuminated by considerable background explanation of the setting in which the Federal Convention of 1787 took place. He has reconstructed as well, I believe, as anyone could, the frame of mind of the makers of the Constitution and the important details which were well known to them, but are long forgotten to all but a few present-day scholars.

Mr. President, Professor Bestor's paper is the most original and authoritative discussion of the question which has come to my attention. Instead of straining for gnats, Dr. Bestor has kept his eye on the only decisive matter involved: The original intent of the framers. He has not attempted to discuss this or that treaty, which may be a possible precedent or not for the Panama Canal Treaty; nor has he waded through the thicket of dicta in court cases whose holdings are not directly on point.

Rather, Dr. Bestor focuses on the only question that really matters: How did the makers of the Constitution apportion the power to make treaties among the different departments of the new Federal Government and what limitations did they put on this power?

In brief, Professor Bestor distinguishes between the making of treaties and the execution of treaties. It is true the House of Representatives was excluded from direct participation in the making of treaties, but as Dr. Bestor writes, this "was never expected or intended to deprive them of the powers explicitly granted them in the Constitution."

In fact, Dr. Bestor finds:

> The exclusion of the House of Representatives from treaty-making meant that safeguards against usurpation of legislative powers must be obtained through making even firmer the requirement that powers vested in the legislative branch should not be exercised in any other way than by Act of Congress.

In other words, Mr. President, the very fact that the framers omitted the Congress from a role in the making of treaties is all the more reason why the role of Congress must be protected in carrying out treaties that touch on legislative powers.

It is the treatymaking department, the President with the advice and consent of the Senate, who treats with foreign countries. The Congress itself cannot negotiate and enter into agreements with foreign nations. Thus, a treaty is required to make the initial agreement with another country to perform a certain act. But, that agreement cannot be completed—it cannot be carried into operation—unless Congress performs the act necessary to execute the treaty.

As Professor Bestor reminds us, one of the outstanding characteristics of the Constitution, a characteristic that is too often taken for granted:

> Is the specificity with which it assigns each of the powers or functions of government to a particular branch, and the care it takes to safeguard these distributions of power both against usurpation by other agencies and against attempts by one agency to by-pass another when joint action is required by the Constitution.

Thus, in vesting the powers of Congress, Dr. Bestor writes:

> The framers proceeded on the assumption that the best guarantee against usurpation of legislative power was to specify as completely as possible the various powers that they intended to delegate to Congress, expecting this to suffice as a bar to their exercise in any other way than by a law enacted in accordance with the legislative procedure carefully spelled out in the Constitution.

Finally, Dr. Bestor states, that article IV, which assigns to Congress the power to disperse of the territory or property belonging to the United States, "is a delegation of power to Congress exactly like the delegations of power in article I, section 8."

He concludes:

> It is thus a power that the framers expected to be exercised by act of Congress, according to the legislative procedure minutely specified in the Constitution. There seems to be nothing in the contemporary evidence to suggest that this power, anymore than the power to collect taxes or make appropriations, was intended to be exercisable by treaty alone, in the absence of complementary legislative action.

Mr. President, I might add that Professor Bestor is well-qualified to give an authoritative opinion on the constitutional question before us. He is unquestionably among the top rank of historians in the country and has devoted a lifetime of deep study to American history, especially the formation of the Constitution.

Without question, he is recognized as one of the preeminent living professors of history in America.

Dr. Bestor received his doctorate degree from Yale University in 1938, and also possesses an honorary law degree from Lincoln University. He has been an active professor since 1930 and was the recipient of the Albert J. Beveridge Memorial Award of the American Historical Association in 1946.

Professor Bestor has authored numerous highly acclaimed books and articles and has contributed to many others. At present, he is undertaking a monumental work on the separation of powers, which is the precise subject before us.

Mr. President, I believe Dr. Bestor has made a significant contribution to the present proceedings of the Senate and because of the high merit of his work and the fact that we are in the closing hours of debate on the treaty, I have had a copy of his paper placed on the desk of each Senator. I hope that my colleagues will consider the painstaking discussion of the Constitutional Convention

which is set forth in Dr. Bestor's paper and heed his counsel as to the intent of the framers.

It is possible a declaration or a reservation to uphold the original intent of the framers will be offered before the final vote on the treaty tomorrow, and I hope that my colleagues will have an opportunity to review the paper by Dr. Bestor before we act on that declaration or reservation.

Mr. President, I ask unanimous consent that Dr. Bestor's paper may be printed in the Record.

There being no objection, the memorandum was ordered to be printed in the Record, as follows:

RELINQUISHMENT OF NATIONAL PROPERTY BY TREATY ALONE: DID THE MAKERS OF THE CONSTITUTION CONSIDER AN ACT OF CONGRESS ALSO NECESSARY?

(An historical memorandum of Arthur Bestor)

(Prepared at the request of Senator Barry Goldwater)

APRIL 12, 1978.

DEAR SENATOR GOLDWATER: I am happy to give my opinion on the constitutional questions raised in your letter of the 14th of March with regard to the necessity of an act of Congress before property of the United States within the Panama Canal Zone is transferred to Panama.

I should preface this memorandum with certain disclaimers. I am offering my opinion as an historian, not a lawyer. My concern, moreover, is with the original intent of the Constitution, in so far as that intent can be documented from the records of the Federal Convention and the State ratifying conventions, from the writings of the framers, and from actions taken in the years immediately following the inauguration of the new government. References to later court decisions, legal commentaries, and opinions of political leaders will be entirely incidental. This memorandum will not attempt a systematic study of developments that have taken place and interpretations that have been offered since the end of the founding period—that is, for present purposes, since the end of the eighteenth century.

I should add that I do not wish to express any opinion, pro or con, on the merits of the pending Panama Canal treaties themselves, but will confine myself entirely to procedural questions.

In my judgment, the original intent of the Constitution with respect to the matter under discussion, as understood by the majority of those concerned in its making, was summed up accurately in the first of two resolutions adopted by the House of Representatives on the 6th of April 1976. The grounds on which this opinion rests will be developed in the memorandum that follows. First, however, the text should be given in full:

Resolved, That it being declared by the second section of the second article of the Constitution, that the President shall have power, by and with the advice [1] of the Senate to make Treaties, provided two-thirds of the Senate present concur, the House of Representatives do not claim any agency in making Treaties; but, that when a Treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, it must depend, for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or inexpediency of carrying such Treaty into effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good. [2]

This resolution was drafted by James Madison,[3] in many respects the most active and influential member of the Federal Convention of 1787 which had drawn up the Constitution. It was introduced by Thomas Blount, brother of another member of that Convention. The resolution was adopted by a vote of 57 yeas to 35 nays. Among the absentees were 6 congressmen who were considered favorable, and one who was presumably opposed.[4] The House at that time included four persons who had been members of the Federal Convention. One (Jonathan Dayton) was the speaker and did not vote. All three others voted for the resolution (Abraham Baldwin, Nicholas Gilman, and James Madison).

The resolution of 1795 expressed the sense of the House of Representatives only, for it was not a concurrent resolution. In subsequent years, however, the Senate has generally acquiesced in the principle enunciated in the resolution, in so far as treaty provisions requiring the appropriation of money or the alteration of tariff

arrangements were concerned. The situations in which the Senate has indicated such an acceptance lie beyond the scope of the memorandum, but are adequately summarized by the Congressional Research Service of the Library of Congress in its compilation *The Constitution . . . , Analysis and Interpretation* (1973 ed.), pp. 487–498, and are more fully discussed in the Samuel B. Carandall (1904) and Elbert M. Byrd, Jr. (1960).[5]

Resolutions recently proposed in the House of Representatives differ from the one adoped in 1796 in that they have been drawn up as concurrent resolutions. In reaffirming the principle of the earlier resolution, moreover, the new ones apply it not to appropriations or tariffs but to the transfer or alienation of territory and other property belonging to the United States. For a proper understanding of the constitutional issues to be discussed herein, it will therefore be well to lay before the reader the text of one of these. House Concurrent Resolution 347, introduced on the 9th of September 1977 (a resolution that is identical in wording with a number of others that have also been filed) reads as follows:

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress of the United States that any right to, title to, or interest in the property of the United States Government agencies in the Panama Canal Zone or any real property and improvements thereon located in the zone should not be conveyed, relinquished, or otherwise disposed of to any foreign government without specific authorization of such conveyance, relinquishment, or other disposition by an act of Congress.

The constitutional issues to be discussed in the present memorandum involve three points:

(1) Whether the framers of the Constitution intended to treaty power to be subjected to the requirements that certain kinds of provisions would not be self-executing but would become operative only through action (previous or subsequent) by both houses of Congress;

(2) If so, whether the kinds of provisions that would require an act of Congress before becoming operative comprised (as the resolution of 1796 asserted) "regulations on any of the subjects submitted by the Constitution to the power of Congress";

And (3) Whether the framers intended to include, among the "subjects" requiring an act of Congress, the specific power "to dispose of * * * the Territory or other Property belonging to the United States," a power delegated to Congress by Article IV, section 3, clause 2 of the Constitution.

The three questions are intertwined, and can only be answered by tracing the development of the treaty clause in the context of the development of other clause of the Constitution that in some way impinge upon it. To do this is the aim of the present memorandum, but limitations of time have prevented me from projecting the same kind of analysis forward into the debates over ratification.

I. THE FEDERAL CONVENTION OF 1787

Under the Articles of Confederation (drafted in 1776–77 and ratified in 1781) the federal government consisted simply of a single-chambered Congress, with no separate executive and no system of independent courts. The present Constitution, of course, provides for two houses of Congress and for three branches of government, legislative, executive, and judicial. The Philadelphia Convention that drew up the Constitution in 1787 was therefore obliged to decide how the varied powers that had thitherto been concentrated in a single body, the old Congress—to say nothing of powers to be newly added—ought to be distributed among the several agencies of the complex government about to be established. Both the old and the new, moreover, were governments of limited powers. Hence the Convention had also to decide the particular limitations that should be carried over or newly added and the particular powers upon which they should operate.

Under the Articles, the old Congress possessed "the sole and exclusive right and power of determining on peace and war."[6]

This included, of course, the power of making treaties, and the latter was subjected to limitations of two sorts. In the first place, commercial treaties might not be made that would interfere with the power of each state to "impose such imposts and duties on foreigners, as their own people are subjected to," or with each state's power to prohibit "the exportation or importation of any species of goods or commodities whatsoever."[7] In the second place, treaties could not be entered into except with the assent of nine states—that is, the affirmative vote of two-thirds of all the states then in the union.[8]

Answers to three questions must be sought in examining the records of the Federal Convention. How did the framers of the Constitution distribute the power of

making treaties among the several agencies of the new government? What limitations did they impose directly and specifically on the treaty power itself? Finally, how did they expect or intend the treaty power to be limited by provisions of the Constitution other than those dealing explicitly with treaties?

Detailed questions like these came under discussion mainly in the final part of the Convention. During the first nine weeks of the sixteen-and-a-half-week meeting the debates dealt primarily with general problems of governmental structure, with the extent of the powers to be granted, and with federal-state relations. When the time finally came for drawing up specific provisions to carry out the broad decisions already reached, the task was put into the hands of a committee of Detail, and the Convention recessed to give the five members a solid week (plus the weekends before and after) to prepare a draft. The Committee reported on Monday, the 6th of August, precisely six weeks before the Convention finished its work and adjourned. Most of the major debates on foreign affairs occurred during this final stage of the Convention.

Within the Committee of Detail a first sketch of the projected Constitution—actually a detailed outline rather than a draft—was prepared by Edmond Randolph of Virginia.[9] At a mid-point in the document came a section that itemized the "legislative powers." In connection with each of its nineteen numbered clauses, space was provided for a listing of "certain exceptions" and another listing of "certain restrictions." Three consecutive clause out of the nineteen are relevant to the present discussion.

The second item in the catalogue was the power "To regulate commerce," and three "Exceptions" were enumerated: "1. no duty on Exports. 2. no prohibition on Importations Inhabitants [a euphemism for slaves]. 3. no duties by way of such prohibition." Next came two "Restrictions," to wit: "1. A navigation act shall not be passed but with the consent of eleven states in the senate and 10 in the house of representatives. 2. Nor shall any other regulation—and this rule shall prevail wherever the subject shall occur in any act."[10]

The next two items were concerned with treaties, and two types were separately discussed. The power "To make treaties of commerce" constituted item 3, and limitations were indicated simply by cross-reference: "Under the foregoing restrictions." Item 4 was the power "To make treaties of peace or alliance." Here there was both a cross-reference and an amplification: "Under the foregoing restrictions, and without the surrender of territory for an equivalent, and in no case, unless a superior title."[11] The matter of territory seems to have been much on Randolph's mind, for he got ahead of himself in composing the preceding clause (item 3). He first wrote the words "The lawful territory," and then, realizing that territorial questions belonged in the next clause, he scratched out the three words and proceeded to list the making of commerical treaties as item. 3.[12]

It is difficult to fathom the exact meaning of these rather cryptic phrases about "lawful territory" and "a superior title." But it is not at all difficult to recognize the importance that Randolph attached to adequate safeguards where use of the treaty power might involve transfer of territory. Concern about this matter became one of the important themes in the ensuing discussion of the treaty power on the floor of the Convention.

In the draft constitution finally submitted to the Convention on the 6th of August 1787, the Committee of Detail followed Randolph's lead by vesting the treaty power wholly in the Senate, with no provision for participation by either the President or the House of Representatives. So far as domestic legislation was concerned, the committee also recommended virtually the same restrictions that had been in Randolph's original sketch. Thus the committee's draft constitution forbade duties on exports and laws impeding "the migration or importation of such persons as the several States shall think proper to admit"—slaves, again. And for navigation acts it required a two-thirds vote—a slight relaxation of Randolph's stringent eleven-state requirement.[13] But the draft constitution applied none of Randolph's restrictions (or even the now obsolete restrictions of the Articles of Confederation) to the making of treaties, and thereby empowered the Senate to make treaties on its own unshared authority and by simple majority vote.[14]

Opposition to this weakening of the safeguard surrounding the treaty power began to form as soon as the Committee of Detail presented its draft. In his margin of the printed copy, George Mason of Virginia wrote: "As treaties are to be the Laws of the Land & commercial Treaties may be so framed as to be partially injurious, there seems to be some necessity for the same Security upon this Subject as in the . . . Section [which read: 'No navigation act shall be passed without the assent of two thirds of the members present in each House']."[15] Mason voiced his misgivings on the floor as early as the 15th of August, long before the Convention actually

reached the treaty provision of the course of its clause-by-clause consideration of the draft constitution. Under discussion was a provision denying the Senate power to originate money bills. Mason supported the motion in a speech which Madison described as follows: "He [Mason] was extremely earnest to take this power from the Senate, who he said could already sell the whole Country by means of Treaties."[16]

This remark precipitated a debate—the very first on the newly formulated treaty clause—and the central issue in it proved to be the possibility that territory might be ceded by treaty alone without aproval by the legislature as a whole. John Francis Mercer agreed "that the Senate ought not to have the power of treaties," which he was willing to transfer to the executive, on the seeming ground that the latter's role would be simply that of a negotiator. But, Mercer went on, "Treaties would not be final so as to alter the laws of the land, till ratified by legislative authority. This was the case of Treaties in Great Britain; particularly the late Treaty of Commerce with France."[17]

Mason concluded the discussion on this particular day with an elaboration of his views. He "did not say that a Treaty would repeal a law; but that the Senate by means of treaty might alienate territory &c. without legislative sanction. The cessions of the British Islands in W[est] Indies by Treaty alone were an example. If Spain should possess herself of Georgia therefore the Senate might by treaty dismember the Union."[18]

To explain three of the allusions in those speeches, a brief digression is in order. The "late Treaty of Commerce with France," to which Mercer referred, was the treaty of commerce and navigation signed at Versailles on the 26th of September 1786, which provided for significant reductions in British import duties on French wines and other products, with reciprocal benefits to British goods exported to France. Article XIV, however, recognized parliament's final authority in the matter by providing: "The advantages granted by the present treaty, to the subjects of his Britannic Majesty, shall take effect . . . as soon as laws shall be passed therefor securing to the subjects of his most Christian Majesty [i.e., the king of France] the reciprocal enjoyment of the advantages which are granted to them by the present treaty."[19]

When Mason countered with a reference to British cessions in the West Indies "by Treaty alone," he was presumably alluding to the treaty of peace between France and Great Britain at the end of the War of the American Revolution. This treaty, signed at Versailles on the 3rd of September 1783, provided for a reciprocal return of islands conquered during the war, but at the same time it also ceded to France the island of Tobago, which had been British before the war.[20]

In warning against the possible surrender of Georgia (to explain the third of the allusions) Mason was referring to the still-unsettled southern boundary of the United States, where Spanish claims, if they came to be recognized in a treaty, would strip Georgia of all but a small coastal area and relinquish vast territories in the west that were claimed by other southern states.[21]

On the 17th of August 1787 occurred a second brief debate on treaty-making, two days after the one just described. The subject that day was the war power of Congress and whether it should be defined as the power "to make war" or the power to "declare" it.[22] At the end of the day a motion was made (by Pierce Butler of South Carolina) "to give the Legislature power of peace, as they were to have that of war"—in effect, to give the House an equal share with the Senate in the making of peace treaties. Elbridge Gerry of Massachusetts seconded the motion, raising again the spectre of territorial cessions without full legislative approval. Gerry pointed out that as few as eight senators (or fourteen if all should be present) could exercise the treaty power, and he argued that they "may consequently give up part of the U[nited] States." Because the numbers were so few, he argued, "[t]he Senate are more liable to be corrupted by an Enemy than the whole Legislature."[23]

Full-scale debate on the treaty clause finally came about in the succeeding week, on the 23rd of August. The clause as drafted by the Committee of Detail still stood unchanged, with its exclusion of the House and the President from participation, and with a simple majority of the Senate empowered to make treaties. At the end of the day the section was referred back to the Committee of Detail, but only after a debate that focused mainly on the role of the House of Representatives, and in the course of which, as Randolph observed, "almost every Speaker had made objections to the clause as it stood."[24]

The first suggestion made was so uncontroversial that it occasioned no discussion and involved no motion and no vote. It seems instead to have been silently adopted, almost as if the arrangement had been assumed from the beginning without ever being spelled out. The remark was by Madison and his notes alone reported it. He "observed that the Senate represented the States alone, and for this as well as other

obvious reasons it was proper that the President should be an agent in Treaties." [25] By the end of the day Madison was referring to the power of the President & Senate to make Treaties," [26] and the Convention seems thereafter to have thought always of treaty-making as a joint responsibility. Far from representing a transfer of power from the senate to the president however, the change signifed the introduction of the president into the process as a nationally-minded counterbalance to the state-oriented membership of the Senate.[27] This was clear in Madison's initial statement, and two speakers on later occasions could refer to the president as a check upon the senate, not (as many commentators today would have it) the senate as a check upon the president. Comparing treaty-making procedure under the proposed Constitution with practice under the old congress, Nathaniel Gorham of Massachusetts said "There is a difference in the case, as the President's consent will also be necessary in the new Gov[ernmen]t." [28] Rufus King actually used the word "check," remarking "that as the Executive was here joined in the business, there was a check which did not exist in [the old] Congress." [29]

The burning issue in the debate of the 23rd of August was not the draft constitution's exclusion of the president from treaty-making, however, but its exclusion of the House of Representatives. Gouverneur Morris of Pennsylvania made the first actual motion for amending the claause, proposing to add "but no Treaty shall be binding on the U.S. which is not ratified by a law." Madison questioned the wisdom of so sweeping a provision, arguing that "treaties of alliance for the purposes of war" ought not to be exposed to so open a procedure as legal ratification by the two Houses.[30] He was reviving the distinction that Randolph had made in the Committee of Detail between "treaties of comnmerce" and "treaties of peace or alliance." During the further course of the debate, Madison explained his own view more fully. He "hinted for consideration, whether a distinction might not be made between different sorts of Treaties—Allowing the President & Senate to make Treaties eventual [i.e., treaties that would go into effect in case of certain eventualities] and of Alliance for limited terms—and requiring the concurrence of the whole Legislature in other Treaties." [31]

At a later session (on the 7th of September) Madison offered a similar proposal for differentiating treaties by subject. A revised treaty clause had been reported out by committee, and it provided for approval of treaties by two-thirds vote. Madison moved an exception whereby a simple majority would suffice to approve treaties of peace, "allowing those to be made with less difficulty than other treaties." [32] In opposing the motion, Elbridge Gerry of Massachusetts raised again the spectre of a relinquishment by treaty of territorial and other rights. Madison reported the speech as follows:

"Mr. Gerry was of opinion that in treaties of peace a greater rather then less proportion of votes was necessary, than in other treaties. In Treaties of peace the dearest interests will be at stake, as the fisheries, territory etc. In treaties of peace also there is more danger to the extremities of the Continent, of being sacrificed, than on any other occasions." [33]

Despite this objection, Madison's amendment was accepted.[34] But the issue did not die. Madison himself immediately prepared a draft that he hoped would meet the objections. It read as follows:

"But no Treaty shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the U.S. may be contracted, or by which the common rights of *navigation* or *fisheries* recognized to the U[nited] States by the late treaty of peace, or accruing to them by virtue of the laws of nations may be abridged." [35]

Madison did not actually present his proposal on the floor. Instead two delegates from North Carolina, High Williamson and Richard Dobbs Spaight, moved an amendment of their own, providing that "no Treaty of peace shall be entered into, whereby the United States shall be deprived of any of their present Territory or rights without the concurrence of two thirds of the Members of the Senate present." [36] To New Englanders, concerned about the fisheries, this did not seem quite adequate, and Rufus King immediately spoke up, saying: "It will be necessary to look out for securities for some other rights, if this principle be established; he moved to extend the motion to—'all present rights of the U[nited] States.'" [37]

Argument on the same theme continued the next day (the 8th of September) after Rufus KIng moved to strike out the exception to the two-thirds rule that had just been voted for treaties of peace.[38] Gouverneur Morris favored retaining the exception, employing a rather involved argument which did at least high-light "the Fisheries" and "the Mississippi" as "the two great objects of the Union." Williamson added another, "the Western Territory." Finally Roger Sherman of Connecticut brought the discussion to a conclusion with a speech in which he announced that he

"was ag[ain]st leaving the rights, established by the Treaty of Peace, to the Senate, & moved to annex a 'proviso that no such rights sh[oul]d be ceded without the sanction of the Legislature.'" [39] His motion, though seconded, seems not to have been put to a vote. But the Convention did vote to rescind the exception to the two-thirds rule which it had made in favor of treaties of peace.[40] This ended all attempts to treat differently from other treaties those that involved territorial and property rights.

The tracing of this theme to its negative conclusion has taken us ahead of certain other parts of the story. It is time to recur to the debate of the 23rd of August 1787, when Madison originally moved to distinguish between different sorts of treaties.

Before the Convention on that date was Gouverneur Morris's motion that "no Treaty shall be binding on the U.S. which is not ratified by a law" [41]—that is to say, by action of both Houses. James Wilson of Pennsylvania, a future justice of the Supreme Court, supported the motion with the following argument, as reported by Madison:

"In the most important Treaties, the King of G[reat] Britain being obliged to resort to Parliament for the execution of them, is under the same fetters as the amendment will impose on the Senate. It was refused yesterday to permit even the Legislature to lay duties on exports. Under the [treaty] clause, without the amendment, the Senate alone can make a Treaty, requiring all the Rice of S[outh] Carolina to be sent to some one particular port.[42]

Doctor William Samuel Johnson of Connecticut opposed the amendment,[43] and a debate ensued, the substance of which is clearer (in this instance) in the notes of James McHenry than in those of Madison. Wrote McHenry:

"It was motioned that no treaty should be binding till it received the sanction of the legislature.

"It was said that a minister could not then be instructed by the Senate who were to appoint him, or if instructed there could be no certainty that the house of representatives would agree to confirm what he might agree to under these instructions.

"To this it was answered [by Wilson] that all treaties which contravene a law of England or require a law to give them operation effect are inconclusive till agreed to by the legislature of Great Britain.

"Except in such cases the power of the King without the concurrence of the parliament conclusive.

"Mr. Maddison [sic], the King's power over treaties final and original except in granting subs dies or dismembering the empire. These required parliamentary acts.[44]

In this speech, Madison (in concurrence with Wilson) was asserting as a rule of the British constitution the very same principle that he would apply to the American Constitution in his House resolution of 1796—the principle that treaties are not self-executing when they involve appropriations or tranfers of territory, or (if Wilson's views are assimilated to Madison's) when they require a law to give them operation.

The Convention concluded the day's session by voting overwhelmingly against giving the House a role in treaty-making.[45] At the same time, however, the treaty clause was sent back to the Committee of Detail, which meant that the question could be raised again when the committee reported a revised provision.

It was a successor committee that actually reported, on the 4th of September 1787, a revised text which read: "The President by and with the advice and consent of the Senate, shall have power to make treaties: . . . But no Treaty shall be made without the consent of two thirds of the Members present."[46] The two-day debate of the 7th and 8th of September has already been pretty fully discussed, for these were the sessions in which distinctions among various types of treaties were urged and rejected. The one point of importance that remains to be noted was the second and final rejection of the move (this time initiated by Wilson) to include the House as well as the Senate in the treaty-making power. The vote was even more decisive than the first, 10 states to 1, with none divided.[47] There followed a succession of attempts to make the two-thirds rule more stringent, by requiring the consent of two-thirds of all the Senators instead of two-thirds of those present.[48] None of the proposals were accepted, however, and the treaty clause emerged in the final Constitution with only verbal changes from the version reported on the 4th of September.[48]

The decision of the Convention to exclude the House of Representatives from direct participation in the making of treaties was deliberate and unmistakably clear. The reason, equally clear from discussions in the Convention and afterwards, was that the Senate was expected to act, more or less continuously, as a body of

confidential counselors to the President, advising him on foreign policy at every stage, from the initial formulation of instructions to negotiators, through the final giving of consent to their handiwork. In performing a function like this, secrecy and dispatch are considered indispensable, and would not have been the case had the Senate's role been thought of as nothing more than debating the merits of, and giving final approval to, an already fully formulated treaty. The framers of the Constitution excluded the House of Representatives from the making of treaties because they did not see how the process they envisaged could be made to work if two separate bodies, comprising a large number of persons, were expected to serve as confidential advisers on delicate negotiations with foreign powers.

On domestic matters, where secrecy was neither necessary nor desirable, the makers of the Constitution intended the House of Representatives to be full partners with the Senate in the exercise of power—indeed to have certain stated responsibilities in money matters. To exclude the House from participation in the making of treaties was never expected or intended to deprive them of the powers explicitly granted them in the Constitution. And though some members of the Convention feared that this might happen, none of those who advocated the arrangement made by the Constitution ever argued that it *should* happen or was intended to happen.

An outstanding characteristic of the Constitution as we have it—a characteristic that is too often simply taken for granted—is the specificity with which it assigns some of the powers or functions of government to a particular branch, and the care it takes to safeguard these contributions of power both against usurpation by other agencies and against attempts by one agency to bypass another when joint action is required by the Constitution. To take one example, the Constitution requires the concurrence of the two Houses of Congress and the President to make a valid law, it spells out in detail the procedure involved in a presidential veto, and it goes on, in article I, section 7, clause 3, to prevent any by-passing of the President by attempts to legislate in any other way, such as by order or resolution without presidential action.

Now the last-mentioned precaution was first proposed in the Convention on the 15th of August 1787,[49] just a month and two days before it completed its work. Indeed, the task of distributing the powers of the federal government among its several branches can be said to have begun only with the Committee of Detail. The resolutions referred to it on the 26th of July were mostly in general terms;[50] the Randolph sketch (discussed above) was primarily an outline of the detailed powers that would be needed and the hands into which they should be put;[51] and the draft reported by the committee on the 6th of August emphasized detailed enumerations and specific distributions of power.[52] These were debated, modified, strengthened, and surrounded with safeguards throughout the final six weeks of the Convention, at the very same time that warnings were being sounded on the floor against the dnager that the treaty power might encroach upon or usurp the normal legislative authority of the two Houses of Congress.

The exclusion of the House of Representatives from treaty-making meant that safeguards against usurpation of legislative powers must be obtained through making even firmer the requirement that powers vested in the legislative branch should not be exercised in any other way than by act of Congress.

It is possible to do this by including both a positive delegation of power and a negative restriction on its exercise by others. Such a double-barrelled precaution is employed by the Constitution in connection with the distribution of powers between the states and the federal government.[53] It is employed once to prevent usurpation of the financial powers of Congress. Besides delegating such powers to Congress in Article I, section 8, the Constitution makes assurance doubly sure in Article I, section 9, clause 7, which begins: "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law."

The inclusion of this clause cannot possibly be construed as permitting the exercise of the rest of the powers of Congress in other ways than by law. Such a construction would be monstrous. The power of Congress "[t]o lay and collect Taxes" is certainly as exclusively in congressional hands (so far as federal taxation is concerned) as if another clause were present saying that no taxes shall be levied or collected except in accordance with law.

Except for the special provision regarding appropriations (the presence of which is explicable historically by reference to the special power of the House to originate bills for raising revenue), the framers proceeded on the assumption that the best guarantee against usurpation of legislative power was to specify as completely as possible the various powers that they intended to delegate to Congress, expecting

this to suffice as a bar to their exercise in any other way than by a law enacted in accordance with the legislative procedure carefully spelled out in the Constitution.

Among the powers added to the legislative enumeration during the weeks when the treaty clause was under critical scrutiny was the one that now constitutes article IV, section 3, clause 2, beginning: "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." No such clause had been in the Articles of Confederation, but the old Congress had nevertheless proceeded to exercise the power in question by providing for the sale of lands in the west and the establishment of territorial governments there. The Committee of Detail failed to fill the gap in the extensive enumeration of powers it included in its draft of the 6th of August. On the 18th (three days after the first discussion of the treaty provision on the floor of the Convention) James Madison proposed a list of powers "proper to be added to those of the General Legislature." First in the catalogue was the power "to dispose of the unappropriated lands of the United States."[54]

Madison's proposals were referred to the Committee of Detail, but before the latter could report, Gouverneur Morris moved on the 30th of August a provision on the same subject that was much more far-reaching, employing the same phrases as those ultimately adopted. It gave the legislature power not merely to handle the unappropriated lands in the West (as Madison proposed) but the power "to dispose of . . . the territory or other property belonging to the United States." [55] The clause was adopted after very little discussion.

The proposal was made and adopted in the immediate context of a debate on the admission of new states. It came, however, just a week after its mover, Gouverneur Morris, had precipitated a debate on the treaty clause by moving to include the House in the procedure. It came, moreover, a day before a new committee undertook to sift and make recommendations concerning the various parts of the proposed constitution that had been postponed, including those relating to treaty-making. The issues under debate in this final period of the Convention were all interrelated. In particular the relinquishment of territory and of rights equivalent to property had figured prominently in the debate over the treaty power, as excerpts quoted above have shown. The clearest assignment to Congress of the power "to dispose of . . . the territory or other property belonging to the United States" had therefore a direct bearing on matters that had been central in discussions of the treaty power.

Despite its placement in Article IV (in juxtaposition with the section on the admission of new states), the territorial clause is a delegation of power to Congress exactly like the delegations of power in article I, section 8. It is thus a power that the framers expected to be exercised by act of Congress, according to the legislative procedure minutely specified in the Constitution. There seems to be nothing in the contemporary evidence to suggest that this power, any more than the power to collect taxes or make appropriations, was intended to be exercisable by treaty alone, in the absence of complementary legislative action.

FOOTNOTES

[1] The words "and consent" are omitted in the original.
[2] *Annals of Congress,* 4th Cong., 1st Sess. column 771.
[3] Madison, *Writings,* ed Gaillard Hunt (9 vols., New York, 1900–1910), VI 263–164n.
[4] *Annals of Congress, cols.* 782–783.
[5] Samuel B. Crandall, *Treaties, Their Making and Enforcement* (New York, 1904); Elbert M. Byrd, Jr., *Treaties and Executive Agreements in the United States* (The Hague, 1960).
[6] Articles of Confederation, art. IX; in Winton U. Solberg, ed., *The Federal Convention and the Formation of the Union* (Indianapolis, 1958), p. 46.
[7] *Ibid.*
[8] *Ibid.,* p. 49.
[9] Max Farrand, ed., *The Records of the Federal Convention of 1787,* 1937 revised ed. (4 vols., New Haven, 1937), IV, 37–51. The draft, in the handwriting of Edmund Randolph, was apparently used as the basis of the first discussions in the committee, for there are numerous alterations in the margin and elsewhere, including the notation "agr[ee]d" opposite certain clauses and the lining-out of others. Many of the emendations are in the hand of John Rutledge, the chairman of the committee, who would be expected to hold the manuscript at a marking-up session. A facsimile of the manuscript is in William M. Meiga, *The Growth of the Constitution in the Federal Convention of 1787* (Philadelphia, 1900), plates I–IX, following p. 316.
[10] Farrand, *Records,* IV, 43–44; Meiga, *Growth,* plate V. Quotations in the text above are from manuscript as originally penned, without the committee emendations.
[11] *Ibid.*
[12] *Ibid.*
[13] Report of the Committee of Detail, 6 Aug. 1787, art. VII, secs. 4 and 6; in Farrand, *Records,* II, 177–189, at 183.

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[14] *Ibid.*, art. IX, sec. 1.
[15] Farrand, *Records,* IV, 53; with cross-reference to II, 183.
[16] *Ibid.*, II, 297.
[17] *Ibid.*
[18] *Ibid.*, II, 297–298.
[19] George Chalmers, ed., A Collection of Treaties between Great Britain and Other Powers (2 vols., London, 1790, I, 517–544, at 528. On the background, see Samuel B. Crandall, *Treaties, Their Making and Enforcement* (New York, 1904), pp. 151–168, esp. 152–154.
[20] Chalmers, ed., *Collection of Treaties,* I, 495–504, at 499 (art. VII). When Great Britain recognized the independence of the United States by treaty of 1783, an act of parliament had previously approved the making of a peace or a truce and had authorized an annulment of the statutes that had related to the American colonies. See Sir William R. Anson, *The Law and Custom of the Constitution,* 3rd ed. (3 vols. Oxford, 1908), vol. II, Part 2, pp. 104; Crandall, Treaties pp. 160–167.
[21] See maps in Samuel Flagg Hamis, *Pinckney's Treaty* (Baltimore, 1926, esp, map III, opposite p. 77).
[22] For a full discussion of the alternation and its significance see the present writer's article "Separation of Powers in the Domain of Foreign Affairs," *Seton Hall Law Review,* V, 527–665, esp. 602–613 (Spring 1974).
[23] Farrand, *Records,* II, 319.
[24] *Ibid.*, II, 393.
[25] *Ibid.*, II, 392.
[26] *Ibid.*, II, 394.
[27] The eventual rephrasing, incorporated in the Constitution as art. II, sec. 2, clause 2, provides that the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur." The phrase "advice and consent" was a long-familiar one in British statutes, colonial charters, etc., and signified continuous consultation ("advice") and, at the final point, approval ("consent"). As a constitutent of the enacting clause of all British statutes it was simply shorthand for the entire process of legislative deliberation and decision. This point is treated at length in the article by the present writer already cited (in note 22 above). "Separation of Powers in the Domain of Foreign Affairs," esp. pp. 540–547, 652–660.
[28] Farrand, *Records,* II, 549 (8 Sept. 1767).
[29] *Ibid.*, II, 540 (7 Sept. 1787). See also noted 34 below.
[30] *Ibid.*, II 392.
[31] *Ibid.*, II, 394.
[32] *Ibid.*, II, 540.
[33] *Ibid.*, II, 541.
[34] Without dissent, according to Madison, *Ibid.*, II, 540. On the same day Madison made another motion, "to authorize a concurrence of two thirds of the Senate to make treaties of peace, without the concurrence of the President," arguing that the latter "would necessarily derive so much power and importance from a state of war that he might be tempted, if authorized, to impede a treaty of peace." Gouverneur Morris objected "that no peace ought to be made without the concurrence of the President, who was the general Guardian of the National interests." When put to the vote, Madison's amendment was rejected, 8 states to 3. *Ibid.*, II 540–541 (Madison's notes; in editing the Journal, Farrand has confused the actions taken on the two motions of Madison, pp. 533–534).
[35] *Ibid.*, IV., 58. Madison first wrote "no Treaty of peace," but than scratched out the last two words, thus making the provision applicable to all sorts of treaties. The House, in other words, would have to concur whenever any treaty might have the result of surrendering territory or fishing rights or rights of navigation.
[36] *Ibid.*, II, 534; see also 543.
[37] *Ibid.*, II, 543.
[38] *Ibid.*, II, 547.
[39] *Ibid.*, II, 548.
[40] *Ibid.*, II, 549. The vote was 8 states to 3. Immediately thereafter the Convention voted to retain the two-thirds rule for all treaties, rejecting by 9 states to 1 (with one divided) a motion to strike it.
[41] *Ibid.*, II, 392.
[42] *Ibid.*, II, 393.
[43] *Ibid.*
[44] *Ibid.*, II, 395.
[45] *Ibid.*, II, 383, 384, 394. The vote was 8 states to 1, with one divided. Only Pennsylvania (whose delegates included Gouverneur Harris, the mover, and Wilson) voted in favor. The state with an evenly divided delegation was North Carolina.
[46] *Ibid.*, II, 495, 498–499.
[47] *Ibid.*, II, 532, 534, 538.
[48] Constitution, art. II, sec. 2, clause 2.
[49] Farrand, II, 295, 301–302, 303, 304–305.
[50] *Ibid.*, II, 129–134.
[51] *Ibid.*, IV, 37–51, cap. 43–48.
[52] *Ibid.*, II, 177–189, cap. 181–183, 186–187.
[53] U.S. Constitution, art. I, secs. 9 and 10.
[54] Farrand, II, 321, 324.
[55] *Ibid.*, II, 459, 466.

CROSSROADS IN HISTORY

Mr. ROBERT C. BYRD. Mr. President, we stand at a crossroads in history—not just the epic history of the Panama Canal, but the history of the U.S. Senate and the two nations which are the parties to these treaties. Approval of these treaties would be another step in America's proud history of world leadership, a proud moment for the Senate, for our country, and for Panama.

Rejection of these treaties would be contrary to our national principles and purpose, and would damage and undermine Panamanian national dignity.

Today marks the 37th day of debate in the Senate on the treaties. The debate which began here on February 8 was preceded by lengthy hearings by the Committee on Foreign Relations and additional hearings by other committees.

Further, many Members of the Senate visited Panama in order to become better informed about the issues involved in the treaties.

The debate in the Senate has been one of the lengthiest and most thorough in history. In Senate consideration of treaties, only the Treaty of Versailles in 1919 and 1920 consumed more time. This debate has also been historic in that, for the first time, the Senate's proceedings have been broadcast across the Nation by national public radio.

Prior to and during the debate on the treaties, serious and legitimate concerns have been raised about their content and meaning. We have attempted to deal with these concerns through amendments to the treaties and to the resolutions of ratification. This is totally consistent with the Senate's constitutional role and our responsibility to insure that the treaties are in the best interest of the United States.

That, in the final analysis, will be the basis for each Senator's decision—whether, in that Senator's perception, the treaties are in our best interests.

NATIONAL INTEREST

As Benjamin Franklin wrote long ago:

> There is no science, the study of which is more useful and commendable than the knowledge of the true interest of one's country.

In describing the treaties as being in our best national interests, I am talking about a time-honored concept in American foreign policy. It was Franklin, our first Ambassador and one of our earliest statesmen, who said that our foreign policy should be based on the principles of mutuality and equity.

It is a matter of determining our mutual interests with other nations and acting together to protect those interests. This is what has sometimes been referred to as enlightened self-interest. As Franklin said, "In every fair connection, each party should find its own interest."

Those are the principles upon which this treaty, and the Neutrality Treaty, are based—mutuality and equity. These are sound principles, in the best American tradition; they represent the best interests of the United States and are the best means of assuring

that the Panama Canal will continue to serve the nationas of the world.

Under this treaty Panama would have an increased stake in the canal and in its efficient and unimpeded operation. However, the United States would retain a high degree of control over the canal through 1999, plus defense rights thereafter, as provided under the Neutrality Treaty. Thus, these two treaties will fully protect U.S. interests for both the near and the more distant future.

There has been a tendency by some to overlook this and to overlook the fact that treaties are between sovereign powers, not between individuals. Thomas Jefferson spoke to this point in 1793 when a treaty the United States had signed with France in 1778 was questioned. That treaty had been negotiated with the French Monarchy under Louis XVI. Subsequently, of course, the monarch and Louis XVI were replaced. Jefferson said:

> . . . The treaties between the United States and France were not treaties between the United States and Louis Capet (Louis XVI), but between the two nations of America and France; and the nations remaining in existence, though both of them have since changed their forms of government, the treaties are not annulled by these changes.

We would all do well to keep in mind Thomas Jefferson's point: Treaties are between nations. This is the case regardless of changes in the individual leadership. It should also be remembered that throughout the 75 years of our treaty relationship, the Panamanians, despite longstanding resentment in Panama of the 1903 treaty, have consistently honored it.

PANAMA

Let me turn for a moment to the Panamanians. In this lengthy and wide-ranging debate, numerous comments have been made about Panama, Panamanian history, the Panamanian people, and their government.

Pamama, unlike our own richly endowed Nation, is not blessed with great natural resources. Its greatest assets are its people and its geographic location—the isthmus through which the world's two largest bodies of water have been linked.

A translated verion of some of our debate has been broadcast on Panamanian radio and there has been extensive coverage in the Panamanian press. The canal is, of course, a matter of vital importance to Panama; it is the very lifeblood of that country. It is a subject about which Panamanians have felt strongly for decades. The Panamanians have taken understandable offense at some of the remarks made here, and some, I fear, have been misinterpreted or misunderstood.

I believe the Panamanians have exercised remarkable restraint, and want to commend them for maintaining their equanimity in this situation. The American people know, and I hope the people of the world understand that, in the tradition of the Senate, our debate has been free, open, and unrestrained. This is the genius of our system, which presumes that no individual, no group or party has sole access to the truth. Rather, through debate and argument, through the competition of ideas, we hope to arrive at a decision which serves the principles and the interests of this country. But when the vote is taken, when the decision has been made, we

present to the world an undivided front: we speak with one voice abroad, although at home—before the time for decision—we not only tolerate but also encourage the free expression of differences.

INTERNATIONAL IMPLICATIONS

In addition to the intense interest in Panama, these treaties are viewed throughout Latin America as matters of great importance, and as symbolic of the United States' attitude toward its neighbors. The Senate's vote on this treaty may well determine the course of United States-Latin American relations for decades to come. Approval of these treaties is critical to our future relationships with the rapidly developing Latin American countries—countries whose destinies are closely intertwined with our own.

Furthermore, implementation of these treaties would be consistent with our role as a world leader. These treaties are evidence of wise and judicious use of power, of an attitude of compassion and cooperation, by the most powerful nation in the world.

Thus, the treaties not only serve our own world interests, but they also serve the interests of the rest of the world. A bilateral treaty, such as the one before us, attempts to reconcile the interests of both nations, as I believe this one does. However, these treaties serve the interests not only of Panama and the United States, but also of all the other nations of the world.

Let us not forget that the Panama Canal is an international canal—open to all nations. Construction of such an international canal was the goal of the original Senate resolution of 1835, requesting President Andrew Jackson to negotiate with nations of Central America for the purpose of opening "a communication between the Atlantic and Pacific Oceans, by the construction of a ship canal across the isthmus which connects North and South America, and of securing forever * * * the free and equal right of navigating such canal to all such nations, on the payment of such reasonable tolls as may be established."

This is the purpose of the Panama Canal. This was the motivation for that monumental effort to construct the canal. This is the purpose of these treaties: an international waterway open to peaceful transit by the vessels of all nations. And the actions taken by the Senate to improve the treaty have been with that same purpose in mind. Our actions have been directed at assuring that the canal will remain open, secure, and accessible. It is the canal, not the internal affairs of Panama, which is our concern.

These treaties are evidence of a maturing partnership, a constructive partnership, a relationship based on mutuality and equity. These treaties reflect the world of today and tomorrow—not the world of yesterday. We have an opportunity to show wisdom and foresight, to exercise forward-looking leadership. We must consider the needs of future generations.

It is a time for vision—a time for courage.

No matter how long one may serve in the Senate, there are few rollcalls that have greater portent than that which will occur tomorrow. Both the short- and long-term consequences of our actions will have momentous impact. It is not an overstatement, it is not an overdramatization to say that our action tomorrow may

well influence the course of world affairs for years, indeed, for generations.

We are at a crossroads. We face a critical decision. I am hopeful that the Senate will choose the road that will bring credit and honor to this body and to this country. Approval of this treaty will be a proud moment for us, for our Nation, and for Panama.

Mr. President, I yield back such time as I may not have consumed.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Tennessee (Mr. Baker) is recognized as in legislative session for not to exceed 15 minutes.

Mr. DANFORTH. Mr. President, it is my understanding that the Senator from Tennessee has yielded that time to me.

The ACTING PRESIDENT pro tempore. Without objection, then, the Senator from Missouri is recognized for 15 minutes.

SETTING THE RECORD STRAIGHT

Mr. DANFORTH. Mr. President, I wish to address some attention today to one of the most frequently heard comments I have received from my constituents about the Panama Canal treaties. Repeatedly, people have said to me something on the following order:

> We do not mind giving Panama our canal, but why do we have to pay them to take it from us?

As a matter of fact, a radio commercial which was run in my State put the point this way:

> If you agree with Senator Danforth and Jimmy Carter that we should pay Panama billions of dollars to take our canal, that is your privilege.

That is the point that I would like to address myself to today, because, in point of fact, that is not correct. Under the treaties, we are not paying Panama any money at all to take the Panama Canal, much less billions of dollars. As a matter of fact, under the existing treaty, the 1903 treaty, the United States is obligated to pay out of its Treasury to the Republic of Panama $2.3 million a year. That would be $50.6 million between now and the year 2000, that we, the American people, are obligated out of our Treasury to pay the Republic of Panama between now and the year 2000.

By contrast, under the treaty that is now under consideration, the so-called Panama Canal Treaty, the United States does not obligate itself to pay anything out of the Treasury of our country to the Republic of Panama. It is true that Panama will receive revenues pursuant to these treaties, but they will not be revenues paid out of our Treasury; they will not be revenues paid to Panama by the American taxpayers. They will be revenues derived from tolls, tolls charged to shippers who are using the Panama Canal. They will be tolls paid by shippers in some 65 countries.

Last January, when I visited the Panama Canal. there were numerous ships going through the canal at that time, many of them Japanese ships. I was told that one of the ships going through the Panama Canal during the day that I was there was a Cuban ship. Ships from Germany, ships from all over the world are using the Panama Canal. The additional revenues that would go to

Panama under these treaties would be from tolls charged to those shippers.

It is true that American shippers also use the Panama Canal. However, we are not talking about Joe Doakes, the ordinary taxpayer in this country who is coughing up the money himself. We are talking about tolls that are being charged to Texaco, to Occidental Petroleum, to Atlantic Richfield, and to United Brands, which are four of the major users of the Panama Canal.

The United States will incur, pursuant to this treaty, certain incidental costs. The costs will take the form of interest which we would forgo, which is now payable from the Panama Canal Company to the U.S. Government. The Panama Canal Company is, itself, an instrumentality of our Government. But it is true that we would forgo certain interest payments.

It is also true that the U.S. Government would incur certain other costs, most importantly the cost of providing early retirement for certain employees of the Panama Canal Company.

And these costs equal at the outside about $720 million over the period between now and the year 2000, or about $34 million per year on the average.

But the fact of the matter is that this $720 million or $34 million a year is not money we are paying to the Republic of Panama to take the canal from us. These are incidental expenses that are incurred. Not a penny of it is money that is payable to the Republic of Panama.

It is my understanding that Senator Percy will make some remarks later in the day which will take the view that a good portion of this $700 million or so will be recouped or can be recouped out of tolls.

So it is highly doubtful that this full amount of potential increased loss to the Treasury, which in no event would go to Panama, it is highly doubtful all of that would, in fact, be realized by the taxpayers of the United States.

However, looking at the worst case, looking at the absolute outside of the highest projected cost to the Treasury of the United States, what are we talking about?

We are talking about an average of $34 million per year. What does $34 million per year mean? What does it amount to?

It sounds like such a colossal figure, but we are looking now, next year, at a Federal budget for the United States of a half a trillion dollars.

Would that we would be able to debate every item in that budget as we have debated this particular item over a period of 2 months. Thirty-four million dollars in a budget of half a trillion dollars, that equals, Mr. president, 7/1000 of 1 percent of our 1979 budget. Not 1 percent or a tenth of a percent or one hundredth of a percent, but 7/1000 of 1 percent of our 1979 budget.

In this Government, the Federal Government, we spend money at a rate of $1 million every 63 seconds, 24 hours a day, 7 days a week, 52 weeks a year. We in the Federal Government are spending the taxpayers' money at a rate of $1 million every 63 seconds. That means that the $34 million that we have directed such terrific attention to over the past 2 months, and that radio commercials have been bought to advertise, we are now in the business of

spending $34 million every 36 minutes and, again, 24 hours a day 52 weeks a year.

Mr. PERCY. Will my distinguished colleague, at some point in his comments, yield?

Mr. DANFORTH. I certainly will. I would like, for the matter of sequence, to finish a few points and then I will be happy to yield.

The $720 million which would be spread over 22 years would take the Federal Government 12 hours and 36 minutes to spend.

To put $34 million in context, I would just like to cite some other things we are spending money for in this place.

The State Department will spend $31.8 million just moving people around the world. The State Department will spend $40.1 million just moving the belongings of people around the world.

It costs $184.6 million to operate the U.S. Senate for a year, and that excludes the cost of postage, it excludes the cost of printing, it excludes the cost of maintenance and utilities; $184.6 million a year just to operate the U.S. Senate. How long do we go on debating that? Certainly not for a period of 2 months.

The Capitol police, the people who are in charge of pushing the tourists around will cost us next year $20 million. The cost just for routine maintenance of two Senate office buildings is $10.3 million. The Government Printing Office next year will spend $74 million just for printing things for Congress; $73 million will be spent by the National Archives primarily to file and save tons of bureaucratic paperwork.

So it seems to me that if we want to talk about $34 million for 2 months, that is just fine. But maybe we are straining at gnats and swallowing camels.

If we can recoup a good portion of that $34 million, as the Senator from Illinois, as I understand it, will suggest later today, that is a very fine solution.

But the one point that I would like to close with before yielding to my distinguished colleague is that even this $34 million, out of a half trillion dollar Federal budget, even that $34 million does not consist of one single penny that is payable out of the Treasury of our country to the Republic of Panama.

Mr. PERCY. I thank my distinguished colleague for yielding.

I first would like to say that I think he has put in perspective a very important point, the most important point being that all of those people that confronted me on this over a period of months now to say, "Why are we paying Panama for us to give this away to them?" just do not understand. We are not paying Panama anything out of the U.S. Treasury. I think my distinguished colleague from Missouri has made that point very well.

The payments to Panama do come out of user's fees, and the shippers, and 65 nations actually make those payments.

What we are doing is just righting a wrong of 75 years standing and starting to pay them something close to the real worth of the rights they gave to us years ago. Because even today, after we negotiated those rates up three times, they still are less than 1 percent of the toll revenue of the canal.

But when my distinguished colleague mentions all these figures of $34 million and $720 million over a period of 22 years that we will continue to operate the canal, I am certain as a member of the

Finance Committee he is in no way minimizing the value of money, even though it is just a few million or three-quarters of a billion.

I recall that my distinguished former colleague, Senator Dirksen, made the comment on the floor of the Senate one day: "A billion here and a billion there, and pretty soon you're talking about real money."

We are talking about real money—three-quarters of a billion dollars of cost which, as my distinguished colleague has said, we will be able to recover and should be able to recover, and it should not come out of the taxpayers' money. It should not come out of the Treasury.

That is broken down by the cost of these treaties: $276 million in civil service early retirement benefits. There is no reason why that money should come out of the Treasury.

I think the gesture we are making to the whole world now is a generous and a gracious gesture, but the right gesture for this country. However, we have costs involved in these treaties, and we should say that those costs will be absorbed over the next 22 years by the users of the canal and paid out of these fees.

The other costs we have, in a sense, are not what the State Department calls costs. However, as a former businessman, I say it is a cost of these treaties. We now get $22 million in revenue. We are losing that $22 million. I will speak later about how we can recover that $22 million a year, because that is $440 million over 20 years, and that is real money.

The ACTING PRESIDENT pro tempore. The time of the Senator from Missouri has expired.

THE PANAMA CANAL TREATY

The Senate resumed the consideration of Executive N, 95th Congress, 1st session.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the resolution of ratification of executive N, 95th Congress, 1st session, Calendar No. 2, which the clerk will report.

The assistant legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Panama Canal Treaty, together with the Annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-fifth Congress, first session).

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from Louisiana (Mr. Long) to call up an amendment.

AMENDMENT NO. 99

Mr. LONG. Mr. President, I call up my amendment No. 99 to the resolution of ratification.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Louisiana (Mr. Long), for himself and others proposes an amendment nunbered 99:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the condition that the instruments of ratification to be exchanged by the United States and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under paragraph 2 of Article XII.".

Mr. President, on behalf of myself and Senators Nunn, DeConcini, Talmadge, and Cannon, I offer this "condition" in the form of an amendment to the resolution of ratification of the Panama Canal Treaty.

This "condition" requires that the instruments of ratification to be exchanged between the Government of the United States and Panama shall contain provisions whereby each party agrees to waive its rights and release the other party from its obligations under article XII, paragraph 2 of the Panama Canal Treaty.

As presently drafted, article XII, paragraph 2 unduly restricts the options of both the United States and Panama with respect to the construction of a sea-level canal until the year 2000.

It is my understanding that the Senate leadership, the administration, and the Government of Panama have each reviewed this proposed waiver of the reciprocal rights and obligations under this provision and have agreed to accept the "condition" I now propose.

Last week, Senator Dole had offered an amendment to the text of the treaty that would have stricken article XII, paragraph 2. While I fully agreed with Senator Dole's analysis that this provision is not in our best interest, nevertheless, I respectfully disagreed with the method he chose to accomplish his purpose. An amendment to the text of the treaty is objectionable to Panama and simply unnecessary in this case since article XII specifically allows the United States and Panama to make a subsequent agreement relating to each party's rights with respect to a new interoceanic canal. As the treaty contemplates, the "condition" I propose is such an agreement to cancel the rights and obligations imposed in this article at the time of the exchange of the treaty documents.

Mr. President, this provision is purported to contain restrictions on both the United States and Panama with respect to the construction of a sea-level canal. These restrictions are supposed to be a mutually beneficial quid pro quo. I submit that these provisions are more advantageous to Panama than to the United States.

Paragraph 2(a) purports to give the United States the option to build a sea-level canal in Panama until the year 2000. Our negotiators have interpreted this section to mean that the United States has the sole authority to build a sea-level canal in Panama until 2000; we would have to waive this option before a third nation could construct a canal. However, the language of paragraph 2(a) is less than precise and may be subject to a different interpretation. General Omar Torrijos has been quoted as saying this article gives the United States only a "first option" to build a new canal in Panama.

On the other hand, the United States' obligation under paragraph 2(b) is unequivocal by stating that the United States "shall not negotiate with third states for the right to construct an interoceanic canal on any other route in the Western Hemisphere" without the consent of Panama.

The logic escapes me which would illustrate the wisdom of renouncing our right to negotiate for a new canal. Apparently, based on the 1970 Interoceanic Canal Commission Study, our negotiators felt that Panama was the only economically feasible route for a new canal, and they wanted to prevent Panama from inviting another country to construct a canal. In return, we relinquished our right to build a canal elsewhere without Panama's consent.

It has been reported that these provisions were an 11th hour addition to the treaty at the suggestion of President Carter. With all due respect to the President, in my view, this language is simply a "bad deal" for this Nation. It is objectionable for the following reasons:

First, the imprecise language creating a dubious obligation on the part of Panama juxtaposed with the crystal clear restriction on our right to negotiate with third nations is totally unacceptable.

Second, even if Panama continues to be the most economically viable location for a sea-level canal, these provisions give up our much-needed leverage with Panama. By giving up our right to negotiate with our other Latin neighbors, the United States has placed itself in an extremely poor bargaining position; thus, since we could not build elsewhere, Panama could demand a high price from us and give us little voice in the operations of a new canal or a third lane of locks.

Third, this arrangement obligates the United States for 22 years into the future based on recommendations of a technical study completed 8 years ago—the 1970 Interoceanic Canal Commission Study. What if the relative feasibility of routes is restudied and a better route is found? Circumstances can change. Technological and engineering advancements can occur. Political conditions can alter. Is it wise to rest our policy totally on this sort of technical evaluation which may become dated?

To show how opinions can vary, I noted some remarks in the Congressional Record of last Monday, April 10 by Senator Griffin, citing a 1967 study sponsored by the Council on Foreign Relations. The study surveyed various options for a new canal and concluded at that time that the preferred route would be through Nicaragua and Costa Rica.

The study observed:

> Although the cost of construction bears on the final choices, it should not be the prime factor in making a decision on a new canal. A waterway which is less expensive in dollars may be most expensive in political consequences.

I agree with Senator Griffin that even if Panama appears to be economically and technically the best location for a new canal, this Nation should not relinquish its right to approach Nicaragua, Costa Rica, or Colombia. Former Secretary of State, Henry Kissinger, in his testimony before the Senate Foreign Relations Committee, raised the question of whether it would be wise to place two canals in the same country. Dr. Kissinger stated that although reasonable men could differ on this question, if we did build a sea-level canal, we might want to consider having it in another country.

Finally, there are practical realities which would discourage any hostile foreign power from building a new canal in Panama. Under the proposed treaty arrangement, any canal built in Panama would

be covered by the provisions of the U.S. Panamanian Neutrality Treaty. Thus, the United States and Panama would be the guarantors of the neutrality of the new canal no matter who built it. Also, our historic influence in Central America would make it difficult for a foreign government to build a new canal in Panama unless we agreed. The United States is the overwhelmingly prevailing naval power at both the Atlantic and Pacific entrances to any interoceanic canal built through Central America.

Mr. President, I am of the belief that any treaty that is unfair to Panama is also not in the best interest of this Nation in the long run. Under the "condition" I am proposing, Panama and the United States are merely waiving their reciprocal rights and obligations under article XII, paragraph 2 of the Panama Canal Treaty—a waiver explicitly contemplated by the language of the treaty.

This change is fair to Panama; it is fair to the United States; and it is a far better arrangement for the entire Western Hemisphere.

Mr. President, I ask that Senator Hatfield of Montana be added as a cosponsor of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRIFFIN. Will the Senator yield for a question?

Mr. LONG. I yield.

Mr. GRIFFIN. The Senator said the waiver was specifically contemplated in the treaty. In what respect is that so?

Mr. LONG. The treaty says: "During the duration of this Treaty, the United States and Panama shall not negotiate with third parties for the right to construct an interoceanic canal on any other route in the Western Hemisphere except as the two parties may otherwise agree."

Well, by this condition in the exchange of documents we would agree that the two parties may negotiate with other countries. It just has the effect of agreeing as the section I have read specifically contemplates. It says unless the two parties agree. In this case, we would agree. In the ratification of the documents we would agree to waive the restriction that each places on the other in connection with that article.

Mr. GRIFFIN. Mr. President, I find this proposal by the distinguished Senator from Louisiana to be very interesting. Of course, I appreciate his reference to my earlier expressions of concern about article XII, particularly section 2 thereof. I must say though, that I am somewhat at a loss to understand why we would seek to correct the situation by reciting the waiver as an amendment to the resolution of ratification. With all due respect to the Senator from Louisiana, I do not understand why we would seek to waive something in advance of actually arriving at an agreement. It seems to me the appropriate thing to do here would be to change the agreement.

I am concerned about two things. I would like to express myself and perhaps the Senator from Louisiana would care to respond.

One, would the waiver, so-called, be binding on successor governments to Mr. Torrijos, or is this something that we would just be doing in connection with this regime? I guess part of really the same question is, Is it contemplated that this waiver would be approved by the people of Panama in a new plebiscite? If it is not

to be approved in a new plebiscite, then it seems to me that it reinforces the concern that I have that all we are doing here is trying to waive in advance with the person who temporarily happens to be in power down there, Mr. Torrijos, a very, very crucial and important article of this treaty.

The Senator from Louisiana is so correct in his arguments article XII. However, I am really concerned about the way he seeks to remedy the situation. I am at a loss to understand why it should be done in this way.

Mr. LONG. Let me just say to the Senator I do not have only doubt that if this treaty had been agreed between the United States and Panama, either the United States or Panama could waive this condition to permit the other to negotiate with anybody they care to negotiate.

This is something that the Government of Panama can agree to and it does not require a plebiscite. The Dole amendment would have acquired a plebiscite. It seems to this Senator that there is no point in requiring a further plebiscite in Panama when all we would need would be an agreement between the heads of state of the two countries. In this particular case, we do not change the documents, but both sides agree that we will waive the right to hold the other party to that particular provision. We would achieve what Mr. Dole sought to do, but we would simply do it without requiring a plebiscite in Panama to bring that about.

I have looked into this matter myself, and I have also been advised by the legal authorities in the State Department and elsewhere that this is all we need. I do not see any point in insisting on a plebiscite in Panama if we can achieve the same result by a simple agreement between the two countries.

It is my understanding that Panama never asked for this provision to begin with, but this was an idea that came from the American side. I must say whosoever's idea it was, it seems to me like it was a very poor idea. While some think it is a good idea, including some in this body, to me it does not help at all. I think we could get a much better deal if we are going to go in and spend many billions of dollars building another canal, or even to expand upon what we have—I think there would be a far better deal if there was the power to negotiate among several different groups, looking at several routes. It would be a tremendous economic asset to a country through which the canal would be built in the future. Look at what we have to offer. I think that being the case, we could make a better deal.

I believe the Senator from Michigan believes so as well, does he not?

Mr. GRIFFIN. I think article XII puts us in a terrible position. It is one of the major concerns I have had about the treaty throughout.

The Senator from Louisiana has responded very forthrightly, indicating that a plebiscite by the people of Panama is not contemplated. One of the reasons it is offered in this way is to avoid a plebiscite.

Let me ask again the other question that I asked before. Is a waiver at this time by General Torrijos, who may not be in power forever in Panama, is the Senator from Louisiana satisfied that a

waiver executed and accomplished in this way will then be binding on a successor government in Panama?

Mr. LONG. I would say it is. Keep in mind that, as far as we are concerned, what we want in this country is the right—which we have right now minus this treaty—to negotiate with anybody about a new canal. Here is a treaty that proposes to say that we do not have that right unless the two parties agree that we have that right. Well, we just agree right here and now that we do—that is, in the exchange of the documents. That being the case, we have the right to negotiate with anybody.

Having done so, unless we should agree later on—which we would be very foolish to do, because this is a provision that has the sanctity of the Congress, a condition in this ratification that we have a right to negotiate with others—that right could not be given away without the consent of Congress; that is, the Senate.

Mr. GRIFFIN. If I may respond, it is interesting that the Senator from Louisiana is recognizing that, on our side of the agreement, the concurrence of the Senate is necessarily involved, which is true under our Constitution. I might point out to the Senator from Louisiana that, under the Constitution of the Republic of Panama, their ratification process includes not only the head of state, but the people themselves, who act in the place of the Senate through a plebiscite. It seems to me what is sought to be accomplished by the Senator's amendment here is substantially and significantly to change the treaty without subjecting it to the ratification process of the Republic of Panama.

As much as I agree with the objection of the Senator from Louisiana to article XII, paragraph 2 thereof, I think this is the wrong way to go about correcting it and I am going to have to vote against his amendment. What needs to be done, of course, is to have a renegotiation of these treaties where Panamanians and Americans are on equal footing at a bargaining table. This particular provision, as well as other provisions, needs to be corrected. I think all the way through, the effort here, in the Senate, to rewrite the treaties and send them to Panama on a take-it-or-leave-it basis, as the Senate is seeking to do with respect to the DeConcini amendment, is the wrong way to go. We ought to send the treaties back for renegotiation. I think that was the proper course in handling the first treaty and ought to be the course that the Senate will follow in handling this treaty.

I thank the Senator from Louisiana for yielding.

Mr. LONG. Mr. President, I certainly hope that the Senator will not vote against what conditions and amendments make this a better deal for the United States merely because he hopes to defeat the treaty itself. It is my view that, insofar as we can improve on the treaty and can change it, something that is more appealing and more acceptable to the American people, then something that the people of Panama would be willing to accept, and then something the Government of Panama would be willing to accept, the better off we all will be. In my judgment, this corrects what I believe to be one of the most objectionable features of the treaty. I have no doubt that if this is agreed to, the Panamanians will go along with it and that will solve one of the serious problems involved.

Mr. ALLEN. Mr. President, I support this amendment to the resolution of ratification even though I believe it does not go far enough. Further, it should have been an amendment to the treaty rather than an amendment to the resolution of ratification. However, the time for offering amendments to the treaty has expired and all we have left is the opportunity to offer reservations in the form of amendments to the resolution of ratification.

Indeed, the reservation will leave us in worse shape than we are now before these treaties are agreed to because, under the 1903 treaty, we did have the right and we do have the right to negotiate with any other nation for another canal and to build that canal anywhere that we deem fit.

We also had and we still have the right to veto any further canal construction in Panama. We have a monopoly, as set forth in the 1903 treaty, and the 1955 treaty, for that matter. During the course of the debate on the treaty, when amendments were in order to the treaty, I offered an amendment which was defeated, as were all amendments to the treaty, that provided that the United States did not relinquish its right to negotiate with another nation for the construction of another canal outside of Panama and to actually construct and to operate and maintain that canal.

So, Mr. President, as the situation exists now, we can negotiate outside Panama and build a canal outside Panama—in Nicaragua, Mexico, or elsewhere. We have that right. We also have a monopoly on canal construction, isthmian canal construction, in Panama. Under the treaty before us, we canceled the 1903 treaty and the 1955 treaties, so that there are no prohibitions of any sort. Then, in order to get back our veto power on the construction of other canals in Panama, we had to give up our right to negotiate with other nations for the construction of a canal and to the actual construction and operation of a canal.

So, we already have a right and, under the treaty, we give up that right. In order to get it back, we have to agree not to negotiate for another canal in another country. A very sloppy job, I must say, by our negotiators.

We failed to amend the treaty to give us the right to negotiate for another canal outside Panama. Those amendments were defeated at the behest of the administration and the leadership. My amendments would have retained our veto right on other canal construction in Panama and would have given us the right to negotiate outside of Panama for another canal. What the amendment setting up a reservation to the resolution of ratification offered by the distinguished Senator from Louisiana (Mr. Long) does is strike out the prohibition on the United States from negotiating outside Panama for a canal.

But it also removes our veto power over the construction of another canal in Panama. In other words, we give up our monopoly under the treaty provision.

The amendment or reservation, as it might be called, of the distinguished Senator from Louisiana (Mr. Long), knocks out both of these provisions in the treaty. It allows us to negotiate elsewhere and it removes our monopoly from canal construction in Panama, thus giving Panama the right to negotiate with any other nation

besides the United States and, indeed, including the United States, for the construction of a canal.

So even with the amendment of the distinguished Senator from Louisiana (Mr. Long), we will be in worse shape than we are now, because now we can negotiate elsewhere and we can also forbid any other country from building a canal in Panama. We give up that latter right even under the amendment of the distinguished Senator from Louisiana (Mr. Long). But it is better than the treaty, and that is the reason I support it.

It does return to us that which the treaty deprives us of. It does return to us the right to negotiate elsewhere for a canal.

But it gives Panama the right to negotiate with another country for the construction of another canal in Panama.

Mr. President, frankly, I do not believe another country is going to want to build a canal in Panama based upon the experience of the United States after creating an investment that is worth $10 billion and then be required to give it to Panama. I do not believe other countries, being somewhat more realistic and more pragmatic than the United States is, I do not believe there is any danger of their coming in and building a canal in Panama.

So I do not see that giving up that veto power is giving up too much. But the Long reservation does return to us the right to negotiate with other nations for the building of a canal.

I regret that it is being done in the form of a reservation. As the distinquished Senator from Louisiana pointed out, this reservation will not require another plebiscite. I wish they would hold another plebiscite because I believe that we need a compact with the people of Panama rather than a compact with Dictator Torrijos.

But, as I say, the time for filing amendments has expired. We have turned now to the resolution of ratification. Though I had an amemdment that would return this right to us and retain the veto, it was defeated.

Personally, I wish an amendment had been adopted that would have called for another plebiscite. But with the present status of things, I believe this is the best that we can get for strengthening the treaty.

I would certainly agree with the distinguished Senator from Michigan that the preferable way to handle both treaties would be to return them to the negotiating table and to see if a treaty could be negotiated that would meet with the approval of the people of the United States and the people of Panama.

Right now, I do not believe either people approve this treaty and I would prefer to return both treaties to the negotiating table. That can be done under the parliamentary situation that we have.

But I say to the distinguished Senator from Michigan (Mr. Griffin), I do not believe we can wait to see that that is going to be done because I have serious doubts as to whether the Senate is going to vote to send this back either to the committee or back to the President for further negotiations and we have to take each step as we come to it.

So I do believe the Long reservation would be an improvement over the treaty as we now have it before us, and I do plan to vote in favor of the Long reservation.

Mr. GRIFFIN. Will the Senator from Alabama yield?

Mr. ALLEN. I am glad to.

Mr. GRIFFIN. Of course, I highly respect the views of the Senator form Alabama. As he knows and I can understand, even though we are on the same side of the issue, I can see that reasonable people can differ as to what is the best thing to do in terms of the disposition of the Long reservation.

Let me just ask the Senator from Alabama, and I would direct the question to the Senator from Louisiana, but he is temporarily absent from the floor, could we go down through this treaty and change other provisions of it as well by having a reservation that would waive our right to enforce this and that, other provisions in the treaty?

Mr. ALLEN. I question whether that can be done, I state to the distinguished Senator form Michigan. But an amendment would have been preferable, and how by reservation can we go contrary to the express provisions of the treaty? This is all we have before us, I would point out to the distinguished Senator from Michigan.

Mr. GRIFFIN. Yes.

Mr. ALLEN. All that I feel the leadership will accept. Of course, they are in full charge of the amendments to the treaties. They can accept them or reject them.

I am pleased that they are willing to go this far because they failed in reference to past amendments.

I say that I do not believe we can risk waiting to see if the Senate is going to send the treaty back to the negotiating table or to return it to the committee. We have to face the situation as we find it. I would much prefer an amendment to the treaty. But this is better than nothing in my judgment.

Mr. GRIFFIN. I thank the Senator from Alabama.

I think he put his finger on it when he said that he would much rather have a treaty with the people of Panama than just a treaty with the temporary ruler of Panama.

Mr. ALLEN. That is correct.

Mr. GRIFFIN. I not only would prefer that, I thing it is essential that we have a new treaty relationship with the people of Panama, and that if we settle for a treaty only with the temporary ruler of Panama I do not think we are solving the problems that we have in our bilateral relations with the Republic of Panama at all.

I think we are creating new and more serious problems when we settle for a waiver or a change in the treaty that is effective only with the dictator in Panama.

This is a serious, substantial revision of the treaty. It goes to one of the most important articles in the treaty, and for the Senate to engage in a maneuver here that will circumvent by design the ratification processes of the Republic of Panama so that a very important article is, in effect, deleted, without giving the people of Panama any say in it, I think is going to create more trouble than it will solve.

Second, I seriously question whether any waiver under this procedure that General Torrijos gives us would be binding on a successor. And I wonder if any one can answer the question of how long General Torrijos is going to be the ruler of Panama. It could be a short period of time. It could be a longer period of time.

But I do not think this is the way to proceed and I just respectfully have to register my views in the strongest way.

Much as I believe that article XII is wrong, this is not the way to deal with it; and, as I said before, I will have to vote against the reservation.

Mr. ALLEN. I thank the Senator for his comments. I agree with him.

I feel that if this reservation is added to the Resolution of Ratification, if the time ever came that we wanted to negotiate with Nicaragua or Mexico for another canal route, this reservation could well justify our entering into those negotiations because we could point to this reservation as being a valid reservation and as authorizing us to negotiate.

I believe that world opinion certainly would support that effort on our part.

I seriously doubt that we are going to build another isthmian canal. I believe this is the last one that anybody will build. With the charge being made of unfair treatment toward Panama or any other Central American nation, with the demand for the facilities to be given to the country in which the route is located, I think that will effectively prevent the United States or any other nation from building another canal in the isthmus. It just would not pay.

Still, I believe we should reserve our right to enter into negotiations with another nation for the building of another canal, because we do not know what the future will hold. I do believe that the Long reservation, with its shortcoming, leaves us better off than we are today under the present treaties, because we now have the right to negotiate with other nations for a canal and we have a right to veto Panama from allowing another nation to build a canal in Panama. I do not believe we are giving up a great deal there; because if another nation wants to build a canal there and would agree to operate it on the same nonprofit basis that we are operating the canal, I would see very little objection to that. I certainly do not want to compete with any other nation to build a second canal in Panama. If we build another one, I would rather have it outside of Panama.

For these reasons, I hope the reservation will be agreed to.

I yield the floor.

Mr. LEAHY. Mr. President, in the course of the past few weeks, we in the Senate, and the people of the United States as a whole, have engaged in a debate over the future of the Panama Canal and the future of the relations between this country and our long-time friend and ally, the Republic of Panama. These debates have assumed a central focus in the discussion of American foreign policy that they do not, in reality, merit. We have used as an example, on the floor the fact that we have spent almost 3 months on this treaty. Yet when we set up the NATO alliance, the most significant military alliance in recorded history, the Senate spent all of 12 days on it. I think the American people might question why so much time has been spent on this matter, when we have so many far greater matters facing this country.

Last Thursday, the Senator from New York (Mr. Moynihan) pointed out that our concerns, and predominately those concerns the opponents to these treaties have tried to include in these

documents, signify a deeper anxiety regarding our role in the world today and in the years to come. The canal is important; this treaty is important. However, neither should occupy this vast amount of attention at the center of American foreign policy today.

Our national will is not in the process of being tested solely today, but rather, it is tested every day. Panama is our friend, and has been our friend since the birth of its Republic in 1903. We are not called upon to abandon the Panama Canal, but to redefine its operation and to act in the spirit of our long friendship with Panama. Mr. President, we are not being blackmailed or challenged by our friend; but rather, we are asked to rethink our relationship, to set things right. Our friends in Panama do not intend to stab us in the back. They realize how fruitless and dangerous such an action would be.

They have known for decades that the step we contemplate today is the just and honorable step that has been put off for so long. Panama takes comfort in knowing that we are committed by these treaties to underwrite the defense of the canal's neutrality, but our friends ask us to limit our interest to that possible future action and not to an unnecessary interference in their sovereign affairs. Panama's true interest in the canal is synonymous with our own—its neutrality, its continued unimpeded operation, and its legacy as a testament to the monumental effort of our two countries. Panama may very well not have been able to build the canal without us, but we could never have built it without Panama.

Mr. President, I wish to emphasize the points so eloquently expressed last week by my friend and colleague, Daniel Patrick Moynihan. Our recent history—Vietnam, Watergate, Angola (indeed, Africa itself, and our dependence on foreign energy resources—has raised a number of questions for all Americans, and with these questions, fears as well. We are called upon, and will be called upon again and again in the years directly ahead, to define our role in the world, to resolve critical problems here in the United States, and to help resolve just as critical problems facing our fellow people throughout the world.

America, a great and powerful nation, may very well be called upon to commit her prestige and power to preserve this world and those nations which have strived with us toward freedom and prosperity. At the same time we are not called upon to exert our considerable power against our trusted friends in Panama. Let us make no mistake: Panama is in our camp, and has been for the entire duration of her independence. Let our two nations work together and let the United States exert her power where it is so desperately needed. Let us not waste her attention and her prestige in the way we seem to have been trying to do in over the past several months.

If we are to exert our strength, let us not manufacture a conflict which need not exist. We must direct our attention and our energies to the resolution of serious problems here and we must assist our friends in Panama with the resolution of their problems. The ratification of the treaty before us is a monumental step toward both of these goals. We cannot set our house in order until we accurately define the direction in which our power and influence

must flow. Panama cannot set her house in order until she is able to exercise sovereignty over her entire territory.

We must not fall into the trap that many would argue we have already succumbed to. We must admit to ourselves and to the world that we know from which quarter we are treatened, that we know where our security interests lay, and that we will not tolerate unnecessary interference within the established limits of our security. The canal can run if we have troops there, and the canal can run if we do not have troops there. We can use the canal if we operate it, and we can use the canal if Panama operates it. We can defend the canal from bases in Panama, and we can defend the canal from bases in America. We can defend the canal by declaring to the world through ratification that we intend to turn the operations of the canal over to Panama, our friend and partner, and to no one else—no one else. We are insuring the smoothness of this transition by ratification of this treaty today just as we stated our intention to maintain the neutrality of the canal with the help of our friend by ratification of the previous treaty in March. We, the United States, need only make it clear to the world, that we will not tolerate any action, covert or overt, that threatens the determination that we, together with our partner, Panama, have laid down in these treaties.

Mr. President, we cannot expect to protect the freedoms that we enjoy in our great republic at the expense of a sister republic. If we restrict another people's freedom, we undermine our own. This treaty is in the best interest of both countries. We have operated the canal for three-quarters of a century. By the end of this century, it will clearly be time to transfer canal operations to Panama. After a century, it must be right, It is a just symbol of our greatness and our generosity—not our weakness. These treaties seal our friendship with a proven friend who has stood by us throughout this century of conflict.

To those who would liken these treaties to a curtain falling on America's greatness, I will say today, and I will always say, that it is just the opposite. As I have said in Vermont, the curtain is rising on a new American era, one in which this great republic assesses her problems as well as her strengths and goes forward to resolve those problems, and in confidence, helps her friends resolve theirs. We are saying to the world through these treaties today:

> We know what our true interests are, and we know where those interests are threatened. We will not be confused by symbolism any longer. We will make a stand in Panama—with our friends in Panama.

Mr. President, there was an article in the Washington Post last week by Mr. Robert Kaiser. It is entitled, "What Is (and Isn't) Said in Canal Debate."

Mr. President, I ask unanimous consent that that article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post, Apr. 12, 1978]

What Is (and Isn't) Said in Canal Debate

(By Robert G. Kaiser)

If the Senate debate on the Panama Canal treaties had to sell tickets to stay in business, it would have closed weeks ago.

Sen. Patrick Leahy (D-Vt.) says the proceedings "resemble the plot line of a television soap opera. You could listen to the debate for several days, leave for a week or two, and come back to it having missed very little. All the arguments are being forwarded again and again."

As a literal description, Leahy's is impossible to fault. But in fact, the arguments that have been repeated again and again for almost two months do not cover many of the strongest senatorial emotions that appear to be covertly at work in the debate—judging from private conversations with senators.

Off the Senate floor, numerous senators acknowledge that the formal debate has often been a symbolic substitute for deeper issues that have rarely been addressed directly: the true lessons of the Vietnam War and the proper world role for the United States in the post-Vietnam era.

Sen. Robert C. Byrd, the majority leader, alluded to all that on the second day of the debate, nearly two months ago. Byrd spoke of those who feel that "we are sliding down the mountain of greatness that the Vietnam War—and now the possibility of what some of the opponents refer to as 'giving up' the Panama Canal—are signs that our national fiber is being peeled away, that we are soft."

As usual, Byrd had a good sense of what was behind many senators' positions on the canal treaties. The hard core of opposition (20 to 25 senators) is obviously convinced that these are bad treaties, not in the best interest of the United States. But many of them are even more upset about the *symbolism* of giving up the canal.

For example, Sen. Orrin Hatch (R-Utah), a freshman member of the "new right" bloc in the Senate, said the other day—not in debate but in the Senate cloakroom—that "this is the culmination of the pattern of surrender and appeasement that has cost us so much all over the world."

Hatch, Sen. Jesse Helms (R-N.C.), Sen. James B. Allen (D-Ala.), and others in the hard core of opposition share a deeply pessimistic view about the course of U.S. policy and even the fate of the republic in the hands of its present leaders. That pessimism has an emotional flavor—it comes from more than political analysis. "Is America really going the way of Rome?" Hatch asks.

That pessimism sets the opponents apart from a large majority of their Senate colleagues. But the diehards are numerous enough to work coherently to prolong the debate.

They also have support in the treaty votes from Senators who do not share their world view, though exactly how many is hard to say. Sen. Charles Percy (R-Ill.) has told colleagues that he reckons a secret ballot would result in 85 affirmative votes. (The first treaty got 68.) Other senators privately put the number at 75 to 80. But even some of the opponents ackowledge that they have "political" votes on their side from senators who are nervous about reelection or who want to position themselves on "the right" in this fight.

Byrd has said publicly that three senators who voted against the first treaty had promised to vote for them had they been needed for two-thirds approval.

Publicly the opponents' protracted opposition to the treaties has been accepted with good manners by the majority and the Senate leadership. But privately their tactics—and the time they are consuming in a busy legislative year—have angered many senators. Some are furious at the amount of time being "wasted"—a word used by Sen. George McGovern (D-S.D.).

The anger has emerged vividly just once, in an impromptu exclamation of frustration from Sen. Daniel Patrick Moynihan (D-N.Y.). Moynihan was ignited by an amendment offered by Sen. Malcolm Wallop (R-Wyo.), another of the "new right" senators.

Wallop's amendment said, in effect, that if Panama failed to live up to the terms of the new treaties then the existing treaties of 1903 and 1936, giving the U.S. virtually unlimited rights in the Canal Zone, would come back into force. That contradicted the first article of one of the new treaties, which explicitly declares that their adoption nullifies the 1903 and 1936 treaties.

The amendment was tabled, 50 to 37, and Moynihan rose soon after the vote. He noted that the Senate was then in its sixth week of the Panama debate:

"By comparison the North Atlantic Treaty occupied 12 days of the Senate's time. And we begin to enter into a period where standards are collapsing. The senator

from Wyoming [Wallop] this afternoon * * * submitted an amendment to this treaty which was so inane, so devoid of intellectual competence or even rhetorical merit, as literally to silence the supporters of these treaties."

Moynihan was enraged by Wallop's attempt to ignore ther first article of the treaty. "Now we are all at least supposed to have learned to read before we come into this chamber," he said.

"Are we to reduce this United States Senate to a playground, a playpen of juvenalia? * * * Are we going to ask the world to look down upon us as persons who have no standards of the integrity of an argument, of the logic of a sentence, of the empirical basis of an assertion of fact? * * * there is the reputation of the Senate involved * * *"

Moynihan is a newcomer to the Senate, and his impatience is not shared by many of his senor colleagues. (Moynihan himself realized he had broken the rules, and his diatribe was toned down for publication in the Congressional Record, which is less a record of what is said in Congress than of what members wish they had said.)

Wallop and his colleagues on the opposition side are not intimidated by remarks like Moynihan's. They realize that President Carter and the Senate's treaty backers failed to sell the treaties in the country as an unassailably good idea for the United States. So they have a license to assail the treaties—which happen to be the handiest available symbol of the "weakness" they deplore in American policy.

The length and repetitiveness of the debate are a measure of the proponents' failure to win over public opinion decisively. The issue of America's post-Vietnam world role is still an open one, at least in the U.S. Senate, and that gives the debate its importance, and even its legitimacy—boring and irrelevant as the discussion sometimes is.

Mr. LEAHY. Mr. President, the article points out, quite rightly I might say, that not all of the debate has taken place here on the floor of the Senate. The article points out, quite rightly, that there have been discussions within the cloakrooms and off the floor about whether somehow the ratification of these treaties spell a decline of America's greatness.

I cannot help but think, Mr. President, of the reaction in the country and other places after the end of the Vietnam war, the time when we somehow seemed to be able to take enormous pride here because we had had an indecisive clash with part of the Cambodian Navy at the end of that time. We seemed to indulge ourselves almost in self-flattery by ignoring the realities of the situation, ignoring the fact that when we left Vietnam we did something we should have done years before. We also were ignoring the fact that our true allies, in the areas where we had the greatest concern, such as in Western Europe with our NATO alliance, were all strongly in favor of the fact that we finally disengaged ourselves from a losing situation and could once more put our attentions back to the areas where America's influence and America's power is most greatly needed.

I think that that is certainly one of the best examples that we can give, the fact of the NATO alliance itself, the enormous strength that we have united there. And I wonder, Mr. President, how many of our allies who face the very real possibility of nuclear war on this planet, a nuclear war that they hope the United States will be able to preclude from ever happening, must feel when they see us so tied up over a matter that is on such minuscule moment as compared to the constant life-and-death-of-this-planet choices facing us in other areas.

Mr. President, I hope that the people of this country realize that the choice before us is of reaffirming the greatness of the United States or of showing, in effect, a pettiness and a failure that is not in keeping with this great country.

Mr. President, I yield back the floor.

Mr. Gravel addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. GRAVEL. Mr. President, I compliment my colleague from Vermont, the distinguished Senator, Mr. Leahy, for a very, very fine statement and putting the matter before us in good perspective.

Before I launch into it I yield to my colleague, Senator Church, the manager of the bill, for a comment.

I yield to Senator Church.

Mr. CHURCH. Mr. President, I very much appreciate the Senator yielding to me.

First of all I want to commend my good friend, Pat Leahy, for a remarkably fine statement. Second, I ask permission of the distinguished Senator from Alaska if I might put three questions to the sponsor of the reservation in order to better understand its meaning and to develop a legislative history that I believed should form a part of the Senate's consideration of the reservation.

Mr. GRAVEL. I am happy to yield to my colleague for that purpose.

Mr. CHURCH. I thank the Senator very much.

First of all, addressing the able Senator from Louisiana, does the reservation mean that the restrictions contained in paragraph 2 of article XII are nullified?

Mr. LONG. The reservation requires, as a condition to ratification of the treaty, that both the United States and Panama agree to waive the constraints with respect to negotiating with other parties for the construction of a sea-level canal. Specifically, it means that Panama is free to negotiate with any other country, including the United States, for the construction of a sea-level canal in Panama, and the United States is free to negotiate for the construction of a sea-level canal in any other country. There would be no bar in the treaty to the construction of a new canal in Panama or by the Untied States elsewhere.

Mr. CHURCH. How is it possible that the reciprocal constraints expressed in paragraph 2 of article XII can be voided in a reservation?

Mr. LONG. Paragraph 2 of the article XII provides that the United States and Panama may waive the respective restriction placed on the other in this paragraph of the article. The phrases, "or as the two parties may otherwise agree" and "except as the two parties may otherwise agree" permit each party to agree to remove the restrictions placed on the other. Acceptance of this reservation by both countries requires that each shall agree, in the instrument of ratification, to "otherwise agree", or waive the restrictions of paragraph 2, article XII.

Mr. CHURCH. Does the reservation void or negate all provisions of article XII?

Mr. LONG. No. It does not. The other provisions of article XII would remain in force. These include the requirement for a feasibility study by the United States and Panama concerning the possible construction of a sea level canal in Panama, the provisions of paragraph 3 which give the United States the right to add a third lane of locks to the existing canal, and the provisions of

paragraphs 3 and 4 with respect to the additional lands and the use of nuclear excavation techniques. All these would remain in force should the United States either add the third lane of locks or construct a sea level canal in Panama.

Mr. CHURCH. I thank the Senator very much.

I think this exchange does, in fact, clarify the purpose of the reservation and makes it possible for the leadership to support the reservation offered by the Senator from Louisiana.

I thank him for his answers to the questions.

Mr. LONG. I thank the manager of the bill. We thought about this and discussed it, and I believe that with this amendment some of us can vote for the treaty who otherwise would find extreme difficulty in doing so.

Mr. CHURCH. I thank the Senator from Alaska for his courtesy.

Mr. GRAVEL. Mr. President, I think yielding for that kind of purpose is like handing somebody a switch to whip you with. I say that in good humor to my colleague.

Let me first address a statement to the leadership. I know the leadership plans to support the Long amendment, but I nurture the vain hope of being able to persuade my good friend from Louisiana that this is not a good idea. I know he has an open mind, and I am going to try my darndest right now. I hope similarly the leadership would keep an open mind. I think, with some of the information I will bring out, I may be able to make a case that could be persuasive.

First off, not as an admonition to the leadership but just as a statement, we find ourselves in some difficulties today on this issue for the very simple reason of accepting things we do not truly think out.

I would say that if the Long proposition is accepted, people will stand on this floor and gnash their teeth over that unfortunate decision, for the very simple reason that when you strip away from the issue of the Panama Canal the matters of sovereignty and justice to the Panamanian People, then—in the light of cold economic analysis—the most important item in these deliberations is to determine what will be in the enlightened economic self-interest of the United States.

I feel responsible for this section of the treaty. I went to the negotiators, to the President, and to the Secretary of State to press for language to cover this situation. If we put that language aside, there may come a day when our relationship with Panama may not be as strong as it is today. And I would say that if that day comes, certainly these debates will have contributed to it. If at that time you start from square one, that is, sort of a no-holds-barred situation, that is not in the best economic interest of the United States. I do not think it is in the best economic interest of Panama either, but it may not be viewed that way at that point in time.

Let us now look at what I think is the central point of my colleague from Louisiana, namely that we can look for a better deal elsewhere—may we have order, Mr. President?

The PRESIDING OFFICER. (Mr. Matsunaga). The Senate will be in order. Members will cease their conversation.

Mr. GRAVEL. I thank the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. GRAVEL. Because I know my colleague from Louisiana is experienced in business practices. It just strikes a chord of reasonableness that if you are going to bry to negotiate something with Charlie over there, and he appears to have a bit of a monopoly, then your best tactic is to bring in Peter and John as possible participants in the deal so that you can play one off against the other and get the best deal. That is standard practice in any kind of dealing, any kind of human dealing, economic or noneconomic.

But I think in this particular case we have gone beyond that. That would have been the situation maybe in 1903. That might have been the situation before the facts available to us today occurred. It certainly would have been the situation prior to 1964.

But since 1964, when we launched upon a course of study to find out what to do with respect to a sea-level canal, and came to a conclusion in 1970, we have had facts before us, and those facts are known to the world—they are known to the Panamanians as well as to ourselves.

In fact, the United States of America spent $22 million studying where to put the Panama Canal, a sea-level canal, if one is to be build. So I think you cannot come in here now and say that we are going to make off as if that study never existed, and we are going to take some study that was off the back of somebody's envelope and say "maybe it could go in Costa Rica, maybe it could go here, so let us bring those into the picture." If those were real possibilities, I think my colleague from Louisaina would have a point. But I think they are not real possibilities, and I think anybody who has made any effort to ascertain the specific facts involved will be aware of this.

So I want to send over to my colleague from Louisiana a copy of the map of the proposed sea-level canal routes through Central America. Unfortunately, I do not have it in a large map. I have it in these samll maps which each Member of the Senate may have if he likes.

I would offer one also to my colleague from Alabama so that he might follow these deliberations; one copy to my colleague from Michigan; one to the Senator from Maryland, if he might want to follow; and also to the Senator from Georgia, who might want to follow these deliberations.

The key matter here now is what did the study look for and what did the study find.

American taxpayers paid $22 million for this study—and I might add $14 million of that was spend on evaluating nuclear construction, whether or not we could use nuclear devices to construct a sea level canal. If you look at the map I have handed out to you you will see there were 30 sites that were studied all the way from Mexico into Colombia, touching Nicaragua, Costa Rica, Panama, and Colombia.

Of the 30 sites, 22 were essentially dismissed after preliminary investigation as being fairly our of the question, quite out of the question.

So the study, as is normal, narrowed down to eight possible sites. If you will follow with me on the map I will discuss those eight sites. The first site considered as a viable site of the eight was

Route No. 5 in Nicaragua. It goes through Nicaragua and parts of Costa Rica.

Certainly Costa Rica—and I will just make political editorial comments on the side—is a fine representative government, excellent economy, good, solid-type people to have commercial dealings with.

I think if you look at Nicaragua—I will not editorialize too much—but I think the papers have been replete with considerable difficulties that they have internally. So since political stability is figured as such an item of issue with respect to Panama, which has a reputation for being a stable government since its founding, I can only surmise as to what the reactions of the Senate would be were we talking about a similar long-term commercial arrangement with Nicaragua.

The second one is site No. 8, and that also goes through Nicaragua and Costa Rica.

Then you have site No. 10 which goes through Panama, site No. 14 which goes through Panama; site No. 15 which goes through Panama; site No. 17 which goes througth Panama; site No. 23 which goes through Panama and Colombia; and site No. 25 which goes through Colombia.

Let us just cursorily look at each one of the sites and see why they were discarded, because it is really upon this that the case has to rest on whether there is a reasonable alternative to want to bring somebody else into the dealing process.

With respect to No. 5 through Nicaragua and Costa Rica, that was a lock canal, and that would cost some $6 billion. Now, a lock canal is no different from what you have right now. So obviously the only reason this was studied, and it was so stated in the report, was so you could have a comparison, so you could have something to bounce your costs off of alternatively. It is a lock canal. You would not build that because you have one.

No. 8, in Nicaragua and Costa Rica, is a very long canal, as you can see, and the cost of that was $11 billion. In point of fact, that is just the cost of the canal. The support facilities would be in addition and, of course, you also have the difficulty of having no deep draught harbor in the area, which means the boats would not have a good approach. If you have been down to Panama, you know that what you do is aggregate the boats at either end of the canal, get ready, and then go through.

So having a deep harbor is pretty vital, very vital. But the cost here is just the cost of the canal and that is $11 billion. If you got in to try to build the port facilities where you would need to sort of warehouse the vessels until they could go through, then it gets to be out of reason.

The next, No 10, is in Panama. That is the site that was selected by the commission, and that is going to cost $2.88 billion.

Now, mind you compared to No. 8, which would cost $11 billion as opposed to not quite $3 billion, that is a substantial difference.

Now we go to No. 14. That is all in Panama. This is, in the commission's opinion, the second best site. The cost is $3 billion, which is slightly more than the one that was chosen, which would cost $2.88 billion. Its greatest difficulty is that you might have to close down the canal operations in order to build it; so if it took 5

years—the study talked in terms of 15 years, but I think that is unrealistic; we built the Alaska pipeline in 3 years, and I think they could do similarly with this kind of activity—or even if you got it down to 3 years, it would be very costly to world maritime activity to close it down. It would be very costly, for example, to the State of Louisiana, because the port of New Orleans is a very important port.

So, when you have added the cost of closing the canal, you can see why this was designated second choice instead of first choice.

Then we go to route No. 15, and that is a lock canal, which essentially is no different from the present canal.

I would like at this point to give my colleagues copies of the chart which I have been following; it has just been xeroxed, and we are having the charts passed out so that my colleagues can follow me on it.

Route No. 15, a lock canal, again was studied for comparative purposes. Obviously we have a lock canal, so nothing would be gained there, as this lock canal could not handle vessels larger than 150,000 deadweight tons. So there is no point in pursuing that, and of course the commission did not.

No. 17, in Panama, is unfeasible unless they go to nuclear excavation, at a cost of $3 billion. Seemingly this is out in the hinterlands, and would have no port facilities to bring it about.

Route No. 23, between Panama and Colombia, again is pretty much in the hinterlands; there are no construction support facilities. The cost would be $5.39 billion, and it would require excessive excavation.

Then Route 25, entirely in Colombia, is prohibitively expensive and would require nuclear excavation.

Let me say that with respect to Colombia, I met in Bogota with the chief engineer who represented Colombia on the study commission. We had breakfast together. We had sent him copies of our work, and he was very candid in telling me that there was just no way than any realistic person would make a decision to build a canal in his country. I did not solicit that, it was gratuitous. Here was the head guy for the Colombian interests, who readily admitted it would be preposterous.

So, that is not a group of people that you would want to bring into a deal. That goes back to the essence of the argument of our colleague from Louisiana: "Let us leave our options open to deal with someone else." The Colombians would laugh at us if we said to them, "Let's start dealing."

I also know the Costa Ricans find it most humorous. Maybe with Nicaragua you could make some kind of arrangement, but that would leave only the possibility of No. 8, and No. 8 would require the permission of Costa Rica.

So we cannot bring anybody else into the negotiation process but the Panamanians. Maybe we can close our eyes to the facts, but this is all from the study the American taxpayers spent $22 million for. We can say that we will close our eyes to the facts, and maybe someone will pop up from out of the woodwork with a feasible sea-level canal, but that would be like closing your eyes to the fact that day is day and night is night, hot is hot and cold is cold. You

cannot close your eyes to those facts. These are also facts, and I would hope that my colleagues would be cognizant of that.

So, as to making a deal with someone else to play one off against another, there is nobody to play off. Reasonable people agree that the only place you can build a canal is in Panama.

Senators may say, "Well, the Panamanians may not be aware of that." All they have to do is hire a consultant to advise them as to what the economics are, and they would be saying, as I am standing here right now saying, that the United States of America has no reasonable alternative.

Let us look at what the fastest deal would be. Here I have to go back to the statement made by the Senator from Alabama that we presently have a monopoly right to build a sea-level canal in Panama today, under the 1903 treaty. Mr. President, that right does not exist. If anyone thinks that the situation in the world today would permit us to move construction equipment into Panama without their permission and start digging, affecting their environment, he would have to really see a psychiatrist. We do not have a monopolistic right; there is just no way you can exercise that kind of a situation today.

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. GRAVEL. I am happy to yield to the Senator from Washington.

Mr. MAGNUSON. You skipped No. 9 in all your discussions.

The PRESIDING OFFICER. Will the Senator from Washington please use his microphone?

Mr. GRAVEL. The Senator asked me what the situation was with No. 9 as an alternative.

Mr. MAGNUSON. Right.

Mr. GRAVEL. No. 9 was not one of the eight selected. They started out studying 30 routes, and narrowed it down to eight that they thought were the most viable, and then analyzed the eight in greater depth. No. 9 they did not feel met the criteria that were set for the eight, and you can obviously see why. It is straight across Panama. It is a little bit out in the open country, with no support facilities, and I do not have a topographical map, but I would have to rely on the judgment made by the engineers that did not consider it in a class with the eight most feasible.

Mr. MAGNUSON. The reason I asked was that at one time there was a general discussion about a sea-level canal, which would be north of the present canal, about the same distance from the canal as No. 9. This area was considered an advantageous site because it was sparsely settled, would not pose great environmental problems, and it would be at sea level. Maybe it is not exactly that location——

Mr. GRAVEL. I think my collegue is referring to No. 10, because No. 10 is 10 miles due west of the present canal.

Mr. MAGNUSON. I have my directions confused. It is hard to realize that the canal goes from west to east.

Mr. GRAVEL. The Panama Canal actually goes from north to south.

Mr. MAGNUSON. Part of it goes from north to south. But it is this way, toward us from——

Mr. GRAVEL. That is right. This is closer to the United States, by going west.

Mr. MAGNUSON. And that is why the Senator did not discuss No. 9?

Mr. GRAVEL. Yes, No. 9 was left out by the commission.

For the information of my colleagues, I flew over with a helicopter at about 150 feet the entire route No. 10. It would not really impinge upon existing development. It is open terrain; that is, cleared farmland, and certainly the farms that would be taken for the construction could be swapped for other fertile ground, for the people in question.

The point I was coming to was the assumption that under the present treaty that we have a monopolistic right. In today's climate there is no way that Panama or, for that matter, any other nation which had given up such a right, would permit a foreign country to come in unilaterally and start digging a trench without their permission. So the fact of the situation is today that the 1903 right we think we have can only be exercised as the product of the good will of the Government of Panama and the people of Panama. That is the realistic situation today.

So we come to the next part. If we do not want to accept what is being proposed here by the Commission's conclusions as to what our alternatives are from a construction point of view, then what are the other elements of an economic deal?

Those elements are sheer purely economic. That is, what would be the tolls?

If we still hold to the theory that the object of the exercise is to build the canal so that the tolls and the cost of transportation will be cheaper, then obviously the first thing we have to do is to build the cheapest canal because that will give the cheapest tolls. If No. 5 was built in Nicaragua and Cost Rica, that is twice the cost of route 10. So the tolls would obviously be twice as much. If the other canal was built through Nicaragua and Costa Rica, that is $11 billion. That is almost four times. So what we are talking about is going to the Panamanians and saying, "Look, we may have some disagreements, but why not you build the canal and we will pay you twice as much as you thought possible?" The parameters of discussions are what the other costs would be. Those are the parameters.

If one wants to open this up to more dealing, I suggest that it is not thoroughly thought out.

I would suggest that the best course of action is where we are today. That is recognition by the United States that Panama is the only legitimate location to have a sea-level canal and for us to forswear any intention that we would be the owners and builders.

The Panamanian people are going to own the sea-level canal, just as they will own anything of importance in their country. They have not gone through 70 years of semicolonialism to turn around and cut a new deal where we would be in charge. Of course not. That is preposterous. It is no more acceptable to the Suez or any other place where a country owns the geography in question. They are going to use that geography to their best economic self-interest. That is normal and to be expected.

So the premise that we begin with when we talk of a sea-level canal is that it has to be premised on the simple fact that it will be the Panamanians who will own it, and it will be the Panamanians who will build it. Now comes the crucial thing, that they cannot do anything without money. That is where we come into the picture, I say to my good friend from Louisiana. That is where we come into the picture because it is an important picture, an important picture to New Orleans, the State of Texas, the gulf coast area, to the east coast of the United States.

I can show this to Members with one very good map. Members can see this map now in my hand. When we see the location of Panama, the gulf coast, and the east coast, we can see how close all this is. We see Alaska, a little bit of a treasure chest for the United States. We see the west coast where we have timber that has to be moved to the east coast, and coal which has to be moved; we have the largest coal deposits in the State of Alaska known today.

How will that arrive in the East? Will it reach the East by crossing the continent? I can show figures where that is not economically feasible.

Obviously, what we do is breach the continent. That is what we are talking about. How do we breach the continent? We breach the continent at the smallest point. The smallest point suggested by this $22 million American taxpayer expenditure was route 10.

So we say to the Panamanians, "We do not have a deal for a sea-level canal or anything without it being used." Who uses the canal most today? We do, by one-third. Japan is second.

I am talking about the large world maritime powers, not the west coast powers of South America. It is more vital to them, but I am talking more in a global sense.

They cannot finance it with Ecuador. They cannot finance it with Costa Rica. They have to finance it with the United States, Japan, the OECD countries. That is how to finance that kind of a project.

It is very simple. The deal we are talking about is not a deal about whether we will construct it here or there, or whether we will own it or they will own it. The deal my good friend is talking about is the financing part of the whole arrangement. That is the deal that comes into the question.

We say with our economic ability, "OK, we will finance the canal. Then what will it cost us to go through the canal if we put up our money to finance it?"

That is where we begin to negotiate. That is where negotiations become serious, Japan could finance this. The Arab world could finance this. Germany could finance it. That is about it. Russia cannot finance it. Anyone who suggests they can is really not aware of their economic situation.

Those are the countries that can finance it. In point of fact, if we were intransigent, the Panamanians could go to the Japanese, to the Germans, or they could go to the Arabs. But those negotiations would be fruitless for the very simple reason that whoever is going to finance wants to get their money paid back. They will ask, "Who will use it?" The United States is one-third the user. Obviously, if we boycotted them—and we could, as all we would have to do is to

pay the cost for breaching the continent further north in the United States and boycott the Isthmus.

If somebody invested $10 billion to build the canal and the United States with malice aforethought was going to thwart that, all they have to say is, "We will not use it. We will pass a law here and subsidize our maritime interests to go somewhere else, or subsidize the railroads to carry it across." That is what we do right now. We subsidize the railroads at the expense of the port of New Orleans, of New York, and a few other ports on the east coast of the United States. That is our present national policy.

So the discussions, the negotiations, center on the financing.

Here is a very simple situation. The blue line on this map represents oil coming out of Alaska today, 1,400,000 barrels per day. Essentially, it goes to the west coast. If we do not develop the pipeline system from Long Beach to Midland, Tex., so the oil can go to the middle of the United States, the best project now to get the oil to market soonest, the alternative is to go to the present Panama Canal.

That is with the existing oil. We cannot even say grace over that on the west coast.

The red line on the map represents potential discoveries in 2 to 5 years, based on figures by USGS. It was their average or a little more conservative than average in their projections. I have it marked out here as 2 million barrels per day.

These black lines are existing imports, to scale, in the United States right now. That red one is after 2 to 5 years of discovery. We project that will push out imported oil. This white one is after 5 to 10 years of exploration. So, hopefully, in a decade, we would have in our inventory the potential coming out of Alaska of around 5.5 million barrels a day. If we cannot even say grace over 1.4 million barrels right now, we are not very provident in thinking out the future if we do not do something in that regard.

Arthur D. Little has done a study that compares the various alternatives for shipping the oil. If I could just point to the various alternatives, they are the trans-mountain reversal, which my colleague from Washington State was successful in thwarting the proposal of the company in question. I am very sympathetic to his position, because if I lived in the Puget Sound area and enjoyed the beauty of that, I would be very concerned about the possibility of supertankers coming into the Puget Sound area.

The other alternative is this Northern Tier pipeline, which would take it into the refineries in that part of the country. The problem with that is that the refineries can be very easily satiated with around 500,000 barrels a day. You could actually satisfy their needs with swaps through Maine, without even building one piece of pipe, but we have not gotten to the sensible policy of swapping oil as it used to be done in industry. The governments constructs impediments to that.

Another proposal is the Long Beach to Midland, Tex. route.

The other one is very significant and just got into the news. There was a wire service article on the Guatamalan pipeline as if it were something new. Somebody called me in Alaska and said, "Boy, have you heard about this?" I not only had heard about it,

but I have been writing on it for 9 months. But it shows how thinking gets out of proportion sometimes.

Guatemala was important to analyze because D. K. Ludwig had suggested in 1969, when the discovery at Prudhoe Bay as made, that we ought to move oil in pipelines across Panama. This was never given serious consideration.

So when Arthur D. Little made an analysis, they came up with these figures. The Little study showed the throughput volume, the capital investments required and the cost of oil landed in either Houston, which would be the equivalent of New Orleans, where the superports will be, or Chicago.

It showed that the trans-Guatemalan line, under these projections, was $2.16. That is pipelines, now. That is very critical to perceive at this point, that this chart is pipelines, except for the last two alternatives.

The transmountain reversal was $2.30 into Chicago; Northern Tier $2.78 into Chicago. The Sohio phase I was $2.06—there are two phases, because there are two pipes involved. The first phase would handle 500,000 barrels a day, the second phase would handle another 500,000. That first phase would handle the projected surplus on the west coast very well, but not the projected volume from expansion of the Alaskan pipeline.

Sohio filed a tariff in Alaska for this route which the study projected to cost $2.06. The actual filing in Alaska was over $3. So this study is very conservative.

Then going around the Cape is $3.14.

We asked Arthur D. Little if they would take the matrix of this computer run and add to that what it would cost for a supertanker—that would be a 250,000 dead weight tonner—to go from Valdez to Houston or to the east coast of the United States and compare that cost. They gave us back some figures. Then I superimposed upon that a toll.

The toll on a barrel of oil right now is 27 cents. We superimposed a toll cost of around 44 cents, so we almost doubled the toll. This is what results came back form Arthur D. Little's computer run. The first line on this chart is the pipeline system. That is the cheapest pipeline, Sohio, which takes the least amount of construction. That is $2.06 a barrel delivered to Houston. The Northern Tier, which would be the most expensive of pipelines, had a $2.78-a-barrel cost from Valdez. With a supertanker, almost double the toll, for 265,000 deadweight tons, it was $1.75. For the 150,000 deadweight tons, it was $2.18. Quite a sizable savings. We are talking about almost 50 cents—that would be the average per barrel, quite a considerable sum of money when we discuss how we are going to get oil more cheaply to the marketplace.

When you consider that $1.75, measure that against what is actually happening today with oil going through the canal at, let us say, $3. We are talking about over $1 we could save on a barrel of oil today.

The fact that that cost is being eaten by the State of Alaska today and the oil companies in question may not be very important, but let me submit that when we operate inefficiently anywhere in our society, whether it is private, public, what have you, we all pay in one degree or another. That is money that is wasted

on inefficient transportation systems. That is money that cannot be used to find more oil or gas.

I submit that what would happen, using these very conservative projections, just on oil alone, is that we could probably pay for a new sea level canal.

Let me show one chart to demonstrate that we do not even need the new oil. When the study was done the Commission made some projections as to how you would pay off the sea level canal that they projected in 1970 would cost $2.8 billion. For this chart, I would truly love to have the attention of my good colleague from Louisiana because I think it is important for him to appreciate the facts of how we could pay for a new canal.

They made projections of a high, medium and low revenue picture. I took the average, the medium revenue picture. We took projections for this period of time; that is, until 1980, this decade that we are in. Their projections show that with this line, you are able to amortize, with 60-year bonds at an interest rate of 6 percent, the cost of a sea level canal had it come into being instantly in 1970.

This line is the actual revenue picture of what the tolls have been in this part of the decade of the seventies. I think anybody can see that if the sea level canal had been brought into being instantly in 1970, we would have been able to pay for it very handsomely with what has gone through the canal. These great Alaskan oil finds which I used, which really set me on the trail of investigation, were not even in this picture. So you see from their own projections, it came out quite well, Of course, in there, you had the effect of toll increases. But you see that, even with the situation today, operating almost in a nonprofit situation you could have paid for the sea level canal.

Let me now jump to one point that is important to my colleague from Louisiana, and this is the reason that I hope he will join with me in recognizing that we should leave well enough alone in the treaty. My colleague comes from a maritime State, much more of a maritime State than the distinguished former chairman of the Committee on Commerce, who has been looked at as Mr. Maritime in this body. Senator Long comes from the State of Louisiana. I believe the Port of New Orleans is probably the second most important port in the United States; certainly in the top five in the world, probably fourth place in the world. I believe Amsterdam would be No. 1. It is one in the Netherlands; I think it is Amsterdam. So, as a person with an economic interest in the maritime area and a constituency that has something vital at stake, I think the following will be very enlightening to him.

First let me show two charts here which sort of lead into where we are today.

When the Commission made its projections, it determined potential transits. This red line shows the average potential transits that it foresaw.

This blue line is the transits that actually took place. Other than the recession, it is quite obvious from a forecasting point of view, the projections were quite different from what actually occurred.

That is the first inkling that something unusual is happening in these projections.

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The second is when we look at the tonnage that went through the canal. This red line represents their forecast of tonnage.

Now, this is a long-term forecast. When we look at the tonnage that actually went through, this blue line, we see it is quite on target.

So, we could say to the Commission that they are pretty far off on their transits, but right on target with respect to the tonnage.

What does that mean? Very simply, that the size of the vessels going through the Panama Canal was changing under their very eyes and it changed in this very short decade—less than a decade—7 years. It was changing right then and there.

So we look further and then we see the dynamics of what was going on in the world maritime fleet. Let's look first at bulk carriers. That is the second largest item in world maritime trade, and up until 1961 we see, literally, nothing was happening. Then, all of a sudden, in 1961, it took off like a skyrocket, to the point that now 19.6 percent of all the bulk carriers—that is in numbers—are over 60,000 deadweight tons.

That is the barrier of the present canal. Around 65,000 deadweight tons and we cannot go through the canal.

This must be translated into tonnage, which is the significant element in world commerce, not the number of ships. We could have a number of rowboats. There is no difference. It is the tonnage that counts, and we see our bulk tonnage today.

In 1975 43.8 percent of the bulk carriers, in tonnage, could not go through the Panama Canal.

So we could state very simply, that is an obsolescence factor. So the present obsolescence of the Panama Canal with respect to bulk carriers is 43 percent.

Then look at what happened with the largest item in world maritime trade, which is tankers. And I might say, the largest item going through the Panama Canal is oil. Look what happened and just see the chart and the way it goes.

Back in 1955 and 1956, 2.4 percent of the new tankers being built were 70,000 deadweight tons. By this period here, 1971–75, 66.7 percent were over 70,000 deadweight tons.

Mr. MAGNUSON. Which cannot go through the canal?

Mr. GRAVEL. That is right. At all. Could not go through the canal if we wanted to carry it.

Mr. MAGNUSON. No.

Mr. GRAVEL. But then we see what happened here on this chart. We see the line a different way. It shows that 76.5 percent of the world tonnage of tankers cannot go through the Panama Canal.

Now, we take those two figures and add to those two figures the balance of cargo in world trade, tonnage, and we see the tonnage available in world trade. We see 57.8 percent of all the vessels over 60,000 deadweight tons cannot go through the canal. So we arrive at our obolescence figure in 1978, of obsolescence for the Panama Canal. We have to admit the present canal is 57 percent, almost 58 percent, obsolete. That is where we are today.

So if we take——

Mr. MAGNUSON. Does the Senator from Alaska think there is going to be any change in that, that in 1978—what did the Senator say, 57 percent?

Mr. GRAVEL. Yes.

Mr. MAGNUSON. Whatever it is, 57 percent.

Mr. GRAVEL. Yes.

Mr. MAGNUSON. Does the Senator not think that by the year 2000, if we want to go that far, that the canal is not going to be very functional at all?

Mr. GRAVEL. I want to disclaim any charge that the Senator and I conspired in this because he is just hitting me with the question straight out and I want to offer my next chart.

Mr. MAGNUSON. All right. I did not know that.

Mr. GRAVEL. I want the record to show the Senator did not know this next chart was coming up.

And that, very simply, is this, if we just reversed those figures—if I could really get the attention of my colleague from Louisiana on this one point, then I will not impose on him for his vital attention, but if I can just show him this, and my colleague from South Carolina, also—in 1966, 89.59 percent of the world tonnage was capable of using the Panama Canal. In 1977, that figure is 42.2 percent.

Now, that is a pretty rapid decline, as we see.

I did not want to be that severe. That is a 12-year period. In the next 20 years, we do not know what will happen, but let us be conservative and say only one-third of what happened in the last 12 will happen in the next 20. Only one-third of that performance. We see that by the year 2000 only 7.64 percent of the world maritime fleet will be able to use the Panama Canal.

This is disastrous for the port of New Orleans, or any port on the gulf or east coast of the United States. It is disastrous for the Western Hemisphere.

This will be compounded by the fact that the Suez Canal is going to be able to handle supertankers in 1981. They will be able to handle tankers of 250,000 deadweight tons.

So the barrier that every day is getting bigger for Louisiana, the silting-in—I know my colleague can understand this, this is one of the biggest problems in Louisiana, the silting-in, in New Orleans. It silts in. Well, it is not only the delta that is silting in, it is the present Panama Canal that is silting in, because every day that goes forward, this chart keeps going and it is like the port silting-in. We can use it less and less every year, with the fleet we have in the world.

Now, stop and think, if we can build a new sea-level canal and get with the program in a hurry, to catch up to what I think has been the only provident action in the United States today from an important maritime point of view, and that is the decision in the State of Louisiana to build a super oil port.

I want to compliment my colleague. I met with the poeple who are involved with that in the State of Lousiana, and they told me how it came about.

Senator Russell Long, the senior Senator from Louisiana, called his port people to Washington, sat them down in his office and said, "Hey, I thing this is an idea you people want to get out and do something about."

They are now out doing something about it and will start construction in the next few months.

There will be only two superports in the United States. I am proud to say I beat him by a few days; that other superport is in Valdez, Alaska. The other is going to be off Louisiana.

They will be the only two ports that will be able to handle an oil cargo efficiently, and in the best interests of the consumers of the United States. One came about through his leadership, and one came about, I am proud to say, through my leadership, with his good support.

The question is, how do we get the oil from Alaska to use that port you are building? I know that you are not building it for Arab oil. It is for us. There is only one way to do that, and that is by breaching this isthmus.

We can talk of negotiating with Peter, Paul, and John. There is only one group we are going to negotiate with, and that is the Panamanians.

I started out with this report and my efforts to get this language in the treaty on the premise that if we treat the Panamanians right, they are going to treat us right. If we are going to put a dollar on the table and make a dollar, they are going to be as smart as we are to make that dollar. The only deal is going to be a good commercial deal—good for both parties. If it is good for only one party, it is not a good deal.

So, requisite to bringing about the breach of that isthmus is the good will and friendship of the Panamanian people and the leadership of Panama, whoever it is.

The language I press for, which I want to get in this treaty, states a very simple thing. The only figures available are what I have just presented. Obviously I am proud of my work, but I do not think it is definitive. It needs a great deal more study, a great deal more negotiation.

Obviously, what we should do is study the situation. We will put up the money, and we will have a proposal before the Senate. I compliment the Senator from Washington in joining me and in offering his leadership to bring this about. I hope it will come about, regardless of what happens with the treaties. I hope it will come about in the near future; because with what is going on, we can make a decision here. What makes man different from animals is that we can anticipate that we are going to have a problem, and we do something about it before it is upon us.

So, shame on us if we have to wait until the year 2000 and say that 90 percent of the world maritime fleet cannot use the canal; therefore, let us study it. This treaty says that the United States and Panama will study it. It has to be with Panama. We are going to be studying something across their land, and it would be the height of arrogance to talk about the impact on their environment without involving them in the study. So we do it together. We are a wealthy country and they are a poor country.

What happens when you want to make a deal with somebody? The Senator knows that if he has an oil lease and does not have the money to exploit it, he finds a guy with a few bucks who can finance the exploration of his oil lease; and if they find some oil, he is going to make a lot of money. It they do not find oil, he is not out of any money. But he is taking advantage of the geography he has to lease.

My colleague knows that kind of arrangement, and that is all I am suggesting under the study. They have the land; they have the potential canal site; we have the money. Let us study it with them and do it together. If something comes from it and if somebody hits an oil strike on his leased land, he shares in the benefits of it, and so does the guy who drills the oil and sells it. Everybody makes a buck. With the Panamanians, we have the language in here, and we are going to study it, and then we are going to negotiate on what the deal is going to be. That is all the language amounts to.

It is punitive to say, "You can't do this and you can't do that," The "can'ts" are not important in this case because the "can'ts" in this treaty, on its language, are not the language itself. They are the realities of what exist in our society today. They have the best site; that is their "can." We have the money, and that is our "can." That is what our disciplines are.

So, to take the language out does not mean a hill of beans. What does count is that we stand up toe to toe with the Panamanians, as equal, and say, "My good friends, you have a piece of land that we think is important to the world maritime interests, ourselves included. Since we use the isthmus, since we are the biggest in the Western Hemisphere, we are interested in seeing that something comes about. Let's study it, and after we study it, let's negotiate." That is all there is to this language.

I know my colleague's interests. I know his interests are sincere ans well-meaning, because there is much at stake for the gulf coast and the State of Louisiana. I know that motivates him in this regard. He wants to get the best deal for his people. The best deal for his people in this regard is for his people to have good relationships with the people of Panama. And they do. Louisianans have a great relationship with the people of Panama; and the people of Panama know that if there is a State in the United States to which they are economically bound, it is the State of Louisiana.

So it is upon that crucible of friendship that you want to build. You do not want to push it aside and say, "Let's deal potentially with somebody else." There is nobody else with whom to deal.

I hope that my colleague, upon reflection upon the facts I have brought forth, will see the wisdom of our not going backward. Let us not eradicate this language from the treaty, so that if the treaties are approved—and I pray they are—we wake up tomorrow and recognize that our economic interest is that we have to have a sea-level canal and have to start from scratch in talking about it, as though we have never had a conversation with them.

This conversation did not start with us and the Panamanians. It started with Charles V of Spain, in 1505. That is when the conversation started on breaching the Isthmus of Panama. He saw it then. That is how they could get the gold from the Spanish Main across to Europe. Then, when we had the gold rush of 1849, the Americans built a railroad so they could get the miners across the Isthmus and to California.

Obviously, it is in our economic interest to have it in this location. I think that to pull out this language is to negate the $22 million. It is to tell the Panamanians, "We don't think you're very important." Unless we recognize that they are the ones to negotiate with—and from their point of view, we are really the only ones

to negotiate with—we negate all the good will that is embodied in this section.

I know why the Panamanians were not enthusiastic about this section. At the time it was proposed, they did not understand it. I did not get a chance to brief the chief of state of Panama until the day he signed the treaty in Washington. I did not get a chance to go to Panama to make this presentation to the intellectual leadership of the University of Panama until December of this year.

So there is no constituency that is knowledgeable and enlightened about this in Panama.

Nobody has thought out with great detail that they cannot build the sea-level canal without us because it takes us to finance it an it must be used to make it worthwhile. All those things have not been thought out to develop a constituency—just as it has not been thought out and a constituency has not been developed in the United States.

I have made several presentations, but there has been no effort, other than on the Senate floor, to make the Nation privy to these facts. Yet, these facts have not been refuted by competent authority—whether it be a Panama Canal economist or a consulting firm that works for the Panama Canal or a consulting firm that works for world maritime interests I have briefed in Japan, Venezuela, Britain, and Norway. There has been no refutation of what I have put forward, and I think there has been universal acceptance that this is pretty interesting, pretty valid, and we should move forward with the study.

The yeas and nays have not been ordered. I hope my colleague will withdraw his amendment. If he does so, I think time will show that he acted in the best interests of the people of Louisiana, which is what is motivating him to do what he is doing.

He has been probably the most able person in their history to cut deals for his people. I know him. I have seen him do it, and I admire him for doing it. On this one, I can only say to my colleague that I have spent hundreds of hours on the subject; and I can tell him that what is in the interest of the people of New Orleans is in the interest of the people of Alaska and in the interest of the people of Panama, and that is for all of us to love each other, so we can sit down and cut a good commercial deal.

[Mr. Nunn assumed the Chair.]

Mr. MAGNUSON. Mr. President, will the Senator yield?

Mr. GRAVEL. I am happy to yield.

Mr. MAGNUSON. I was somewhat inclined to vote and maybe even cosponsor the amendment of the Senator from Louisiana for the simple reason that I thought if a person knows, as the Senator points out, in any business dealings that he is the only person you can bargain with, you are not as apt to get as good a deal as if there is some option.

I understand that the Panamanians do not particularly like to be tied up this way. I do not know. The Senator has had more experience with them than I have had.

But suppose that a consortium of maritime nations in the world decided that they needed the second canal. The Senator and I agree the quicker we get going on it, no matter what we do here, the better. I have talked about the need for a second canal since 1938,

as I mentioned before, when Lyndon Johnson and I went down to make the first study for the Navy. But supposing the United States said to a group of maritime nations, Japan, England, Norway, Sweden, and some of the South American nations, "Well, we don't want this under the control of just one nation any more. It is an international canal, and if we need it, we are all going to put our share in." The United States would have to furnish most of the money because, as the Senator pointed out so well, we are going to be using the canal more than any other nation. Between the United States and Japan, I guess, they might account for almost half of the use of the canal.

Assume they all wanted to get together and each put in a share in some sort of an international loan deal. I do not want to mention the United Nations in this, but it could be similar to that. How would that happen if the amendment of the Senator from Louisiana were not adopted? Could the United States act for them?

Mr. GRAVEL. We would all lose our present posture. My colleague is entirely correct. I say to Senator Magnuson from the State of Washington that he is right on target. This should be financed really on a multinational basis. Each country, by and large, that uses it should buy some of the bonds for their use.

Mr. MAGNUSON. Yes.

Mr. GRAVEL. In that way, you have an international financing mechanism that would come into being. The Panamanians would own it. The tolls would be tied to the financing in question, and you would have yourself a very serious commercial venture. In my mind, that is how it should be done.

Mr. MAGNUSON. I shall ask two questions. First, can that be done the way the treaty stands now?

Mr. GRAVEL. Yes. In fact, the way the treaty stands now we are in that posture. In other words, first, we recognize that we are going to do the study with the Panamanians.

Mr. MAGNUSON. Yes. The Senator and I want to begin that study immediately.

Mr. GRAVEL. Immediately. It should have begun yesterday.

Mr. MAGNUSON. Yes.

Mr. GRAVEL. Second, after the study is in, that is when you make your decision of go-no go. You know what your costs are, you know what the economics are going to be, and you know who will be the beneficiaries. And then you just go structure the debt that will be involved. We, with the Panamanians, could take the initiative to say, OK, the study shows that Japan uses this canal for about 8 percent and so the Japanese ought to finance this share. We would negotiate with the Panamanians to set up a body to do this, or their own ownership body could do it. They could set up a Panamanian corporation. We would have a seat on the board of directors. Japan could have a seat on the board of directors. You could do all of this and yet the ownership would still be in the hands of Panama. The profits would still go to the people of Panama. But the rest of the world would be assured of a viable commercial undertaking.

We lose sight of the fact that when deLesseps built the Suez Canal, that was the hottest piece of commercial property in the world at that point in time, and that is the reason he was able to

sell stock to go try and build the Panama Canal. I think it was several thousand percent that the stock appreciated in Suez. Once you make the breach, it is a very good venture, once you build a sea-level canal.

Mr. MAGNUSON. Everyone went broke, did they not?

Mr. GRAVEL. Oh, not in Suez, no. They went broke on this one because unfortunately Mr. deLesseps—and I might say it is almost 100 years back—made the calculated mistake of going for a sea-level canal rather than a lock canal.

Engineers who thought of it recommended a lock canal, but he made a political decision on somewhat of an ego trip to build a sea-level canal, and the technology was not there to do it at that point in time.

Mr. MAGNUSON. But under the present wording of the treaty, as it stands now, could that sort of consortium be arranged in the world?

Mr. GRAVEL. Yes. In fact, we have already——

Mr. MAGNUSON. But who would be the banker?

Mr. GRAVEL. That is not determined at this point, because under the treaty language what you have is that the United States and Panama must negotiate. If you take that language out there is no "must negotiate." I mean, we can sort of go our separate ways. They really cannot do anything. We cannot do anything. We cannot exercise that right of monopoly that my colleague inferred.

Mr. MAGNUSON. It does not bar anyone from negotiating right now, does it?

Mr. GRAVEL. Actually, it sort of forces them to negotiate. That is the beauty of this thing. It is that the two major elements in the world that have to come together with mutual agreement on what is to be done are Panama and the United States. That is in this treaty. That was the language I was able to secure in here.

Mr. MAGNUSON. And we go out and float a loan.

Mr. GRAVEL. Exactly, or Panama would float the loan and we would undersign it.

Mr. Matsunaga addressed the Chair.

Mr. MAGNUSON. May I ask the second question? And then I will yield to the Senator from Hawaii.

Mr. MATSUNAGA. On this point, I might point out, if the Senator from Alaska will yield, that the language of the treaty itself is very clear, and we are now talking about article XII, paragraph 2, which reads:

The United States of America and the Republic of Panama agree on the following.

And this is where the Senator's question comes in and where the answer is implied, if not directly responded to:

(a) No new oceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this treaty except in accordance with the provisions of this treaty or as the two parties may otherwise agree,

which means that the United States and Panama may agree to a consortium going into Panama to construct the sea-level canal. That is what the present provisions of the treaty provide.

Mr. MAGNUSON. There is no bar. Say that we went down to Panama and said, "We have a group of nations that are interested,

and we would like to negotiate on behalf of those nations with you." If they agreed, there is no bar to that.

Mr. GRAVEL. Not at all.

Mr. MATSUNAGA. That is correct. So long as Panama will agree and the United States will agree to it there is no bar to the proposal put by the Senator.

Mr. MAGNUSON. I suppose we will take the initiative. We agree that something ought to be done.

Mr. MATSUNAGA. Then we need only the agreement.

Mr. MAGNUSON. And we would be able to go down and present this to Panama.

Under the Long amendment, there is no question that could be done also, is that not correct?

Mr. MATSUNAGA. That is correct.

Mr. GRAVEL. Except that under the Long proposal, you would no longer have the caveat in place that it is the United States and Panama. It could be Panama and anybody else.

Mr. MAGNUSON. I know that.

Mr. GRAVEL. So really we are going backwards if we take it out. Does the Senator see what the present part of the treaty is? It is a frame. You can take the frame out and you have the whole wide world to do whatever you want. This narrows the funnel down to a study done with us and Panama, and then after the study a decision that involves us and Panama, not Panama and Japan, or Panama and someone else.

Mr. MAGNUSON. I, at first, was very dubious about this provision in the treaty. I discussed with the Senator from South Carolina my concern that we would be tied down to Panama and they would be tied down to us. Naturally they do not mind because we are the only ones who could finance something or put together a consortium if it is necessary.

[Mr. Anderson assumed the chair.]

Mr. GRAVEL. Very much so.

Mr. MAGNUSON. I inquired of Mr. Bunker and others who negotiated this, "Why did you put this provision in the treaty at all? Why not just leave it open, say nothing, and you would not need the Long amendment."

Well, he said, "We were advised"—which the Senator from Alaska pointed out so well today—"that this was the only place you could construct a second sea-level canal and that, therefore, we must say something about it in the treaty."

I understand that the Panamanians are concerned about that provision because they did not want to be tied down.

I got to thinking about it, and I thought, well, this is not bad. I thought, well, if the Panamanians are not tied to us and we are not tied to them, anybody could come along and they could deal with any country, including Russia.

So then I got to thinking maybe this is a good provision. The best engineering, I guess, came out of that commission. That was headed by Robert Anderson of Texas.

Mr. GRAVEL. Right.

Mr. MAGNUSON. Lyndon Johnson——

Mr. GRAVEL. Milton Eisenhower.

Mr. MAGNUSON [continuing]. Created the commission because we had that experience, the two of us, in 1938, and he was very interested in this matter. As a matter of fact, we came back, not being engineers, either one of us, and recommended Nicaragua. We thought that was the best place. We had our eye on the Gulf of Tehuantepec, which was a safer place to build it than all the others. That would have been a shortcut to New Orleans. But that has become too costly, I understand, is that correct?

Mr. GRAVEL. Yes. That would cost about $6 billion to $11 billion.

Mr. MAGNUSON. I am driven by my deep desire after many, many years of talking about this and being a part of it to see that we get going on a second canal.

As a matter of fact, one of the reasons, I will confess, I am voting for this treaty is that I do not think we are giving them very much by the year 2000 anyway. I do not think this present canal is going to amount to much in the year 2000.

I am a little bit torn as to whether the best way to proceed is through the Long amendment or to follow the suggestions of my friend from Alaska. But either way I do not want to shut out a consortium because I think that may be necessary, a consortium where we pay our share.

So I want to thank the Senator from Alaska and the Senator from Louisiana, too, for bringing this up. I think it will clear the air.

I have introduced a resolution to begin negotiations immediately for the construction of a second canal. I was going to make it a reservation, but they advised me I should make it a resolution. The resolution was sent to the Committee on Foreign Relations, and there it is. When we complete action on the treaty, I hope the committee will consider this resolution. I think it is so important because time is running out, time is running out for the whole free world on this canal business.

I thank the Senator from Alaska and the Senator from Louisiana for bringing this important matter up.

I find a great number of people who are very dubious about the canal treaty. If you explain to them that the canal is going to be probably almost nonfunctional by the year 2000, and if we need a second canal, we are going to build a second sea-level canal, then they are quite a bit more relieved about voting for this treaty than they were before.

I thank the Senator for yielding.

Mr. GRAVEL. I really want to thank my colleague from Washington, who has provided leadership, and certainly given us historical perspective. His participation which goes back to 1938 with Lyndon Johnson on this whole canal issue.

Again I want to state that my good friend from Louisiana is right on target in recognizing that the canal has great import to his State and in fighting to the best of his ability for the interest of the people of his State. I think in a normal situation the best way to negotiate is with as many options as possible.

I think in this situation we have already eliminated many options over time, and that the option that is left to us is to locate a new canal in Panama. With the political realities that exist in the world today that can only take place with the good will and friend-

ship and leadership of the Panamanian people and their government.

So it is important to us to get a treaty that will gain us that friendship, and then to step forward with them, make this study and, as this language says in the treaty, after we have made the study, to negotiate. We have to understand, regardless of what is done, it is going to take two to effect the canal under the realities of the situation, and it will take two to effect the canal under the language of this treaty, that is, it will take Panama and the United States.

To take that language out still leaves the reality of the situation. But when you do that, when you consciously take the language out, still leaving the realities, you leave great confusion because insult can be taken as a result of that.

So it is most unfortunate if we do take this out. I think some people who will not understand the exigencies of what the situation is in the world today will——

Mr. MAGNUSON. Mr. President, I wonder if the Senator will yield for one more thing?

Mr. GRAVEL. I would be happy to yield.

Mr. MAGNUSON. Can I have the attention of the Senator from Idaho? As long as he is on the floor and other distinguished members of the Committee on Foreign Relations are here, no matter what happens to this amendment, I hope I can get some kind of recognition from you people concerning the resolution that I have introduced to proceed immediately or as soon as possible toward negotiations on a second canal. I hope I can get some assurance that the Committee on Foreign Relations will take this matter up.

Mr. CHURCH. If I understand the distinguished Senator correctly, he intends to introduce and press for early consideration of a resolution——

Mr. MAGNUSON. Yes.

Mr. CHURCH [continuing]. That would urge the United States and Panama to commence negotiations——

Mr. MAGNUSON. Yes.

Mr. CHURCH [continuing]. Looking toward the possibility of building a sea level canal; is that correct?

Mr. MAGNUSON. Yes, that is correct.

Mr. CHURCH. I can give the Senator every assurance that such a negotiation would attract the interest of the Committee on Foreign Relations. I see no reason whatever why the committee could not proceed to take up such a resolution and hold hearings on it in the near future.

Mr. MAGNUSON. I thank the Senator.

Mr. GRAVEL. I can only add that it would strike me as not very logical to at one moment have the Senate turn down a caveat in treaty language that requires us to negotiate with Panama, and then at the same time come in with a resolution saying "negotiate with Panama." I mean, you want to guarantee if that resolution is going to have any weight at all, you want to have this language in the treaty so that there will be only two parties to the negotiations to get them going, and that will be ourselves and Panama.

So I would hope the leadership would rethink its position on the efficacy of taking this language out. I think it would not be in the

best interests of the United States or of the people of Panama and could really lead to some unfortunate misunderstandings down the road, because somebody will think that there are alternatives that are not there, and we will spend 3, 4, or 5 years hassling people with unrealistic proposals that had been set aside with the $22 million we have already spent.

Mr. CHURCH. The Senator always states a good case. But I see nothing inconsistent with the committee's consideration of the resolution proposed by the Senator from Washington and the adoption by the Senate of the reservation offered by the able Senator from Louisiana.

Even with the adoption of the reservation, the following words would remain in the treaty. I quote from section 1 of article XII:

> Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeble to both Parties, for its construction.

That is what is contemplated by the resolution of the Senator from Washington, so I see no inconsistency in the two actions.

Mr. MAGNUSON. No, that is correct.

Mr. GRAVEL. The only inconsistency I see, and I call it most respectfully to my colleagues' attention, is that when you move to section 2 of article XII you do not have the simple words of good will, you have the definitive words that they are bound together.

We so often stand here on the floor of the Senate and make great statements, but it is just a statement thrown out there.

Section 1 of article XII is a statement thrown out there for good will. If we do not have that good will, we need something more than that; so we have section 2, which says that the Republic of Panama, during the duration of the treaty, cannot do anything without our agreement, and then, on the other side, in (b) it states that during the duration of the treaty the United States cannot do anything without Panama.

That is the beginning of the marriage. If we are going to have a marriage between the Panamanian people and the people of the United States, then we have entered into—we sort of have a betrothal here, and now we are looking forward to the marriage if we pass the blood test, so to speak.

What my colleague wants to do is become "unengaged," break the vows of the betrothal, and then say, "Let's get married."

Mr President, I only know how to get married one way, and that is first to get betrothed, to think about it, and then to set it in motion. My friend wants to break the engagement. That, to my mind, would be very tragic. You not continue with a happy love affair by breaking off the engagement.

Mr. CHURCH. I agree with the Senator. He is infatuated with the language of love. I have already told the able Senator from Alaska that he always makes a very persuasive case, though not always as ardently as he has today, but, nevertheless, effectively.

Senators know that it was a great Frenchman, Ferdinand de Lesseps, who first envisioned, then promoted, and finally managed the digging of the Suez Canal. It is quite possible that the distinguished Senator from Alaska is going to become the Ferdinand de

Lesseps of the 20th century in his advocacy of a new sea-level canal.

Mr. GRAVEL. I might say at least the nationality is correct.

Mr. CHURCH. Yes, there is a French connection. [Laughter.]

But I would say to the Senator that if we adopt this reservation, it does not in anyway inhibit the United States and Panama from jointly building a new sea-level canal across the isthmus, if that seems feasible. There is nothing in Senator Long's reservation that would discourage or deter negotiations between the two countries. Indeed, if the arguments of the Senator from Alaska are valid, and I think they are, the Panamanian Isthmus will prove to be the only practical place for such a canal to be built.

So, whether or not these provisions remain in the treaty, as a practical matter the United States and Panama will be the two countries involved in constructing any sea-level canal that connects the Atlantic and Pacific Oceans.

I hope the Senator from Alaska does prove to be the Ferdinand de Lesseps of that great venture. His name will be emblazoned in glory and the people of Alaska, along with the people of the rest of the United States, will hold his memory dear, But——

Mr. GRAVEL. If my colleague will permit me to make a comment, it is getting pretty deep in here right now.

Mr. CHURCH. But the fact is that there are some Senators who do not think that the United States or Panama should covenent in this treaty not to negotiate with any other party in connection with building a sea-level canal in the future. And since they attach great importance to this reservation, I think the better part of wisdom is to accept it and elicit their support when the final vote comes on the treaties, with such a reservation included, particularly inasmuch as the Panamanian Government does not object to the reservation. Thus by accepting this reservation I can not see how the cause could possibly be hindered, but I can plainly see how it could be enhanced. And I daresay, this observation is equally apparent to the able Senator from Alaska.

I am delighted with the Senator's charts. I have seen them twice now. I am thoroughly convinced by the Senator's arguments that the present canal is rapidly becoming obsolete. I am aware that only 12 years ago, something over three-quarters of the world's maritime tonnage could pass through the canal, and that today, a short time later, something less than half of the world's maritime tonnage can pass through the canal. And I am aware of the Senator's projection which shows that, by the time we actually transfer ownership and operation of this canal over to Panama, less than 10 percent of the world's maritime tonnage will be able to pass through the canal.

Obviously, the Panama Canal is an old lady. Go down and look at her; she is 64 years old aleady, and she will be 86 years old when we turn her over to the Panamanians. Between now and then, it is obvious from any reading of the Senator's charts, that the needs of the United States and, indeed, the needs of international commerce will probably call for a sea-level canal to replace the present lock canal. It is evident that the United States and Panama will have to get together.

One of the compelling reasons to adopt this treaty is that it will tend to preserve that close cooperation and friendship which will enable us to get together to build the kind of canal with which we can meet the needs of the 21st century.

Those of us who support this treaty look forward. Those who oppose the treaty look backward. That is the difference. I hope that tomorrow two-thirds of the Senators in the Senate of the United States will look forward to the needs of the future, and thus vote in favor of ratifying this treaty.

As manager of the treaty, I am prepared to support the reservation offered by the distinguished Senator from Louisiana. That reservation does not impede any eventual agreement to construct a sea-level canal joining the two great oceans at the Isthmus of Panama.

Mr. President, I would like to pose a unanimous-consent agreement.

Mr. HOLLINGS. Will the Senator withhold that for a moment? We are checking for Senator Bellmon.

Mr. CHURCH. May I just explain what the proposal might be?

The PRESIDING OFFICER. The Senator from Alaska has the floor.

Mr. GRAVEL. I will release the floor in just a moment. I just wanted to state that I think I made a fine presentation. But I failed to take account of the eloquence of my dear friend from Idaho. He agrees with what I have to say and then gives me a lecture in arithmetic, that 67 is more than 66. I will reserve any further comments I have because I am waiting very interestedly to hear the distinguished Senator from South Carolina, who I know will shed some real light on this subject. I do want to hear him. I had a preview of this at the table, and I believe he joins me in furthering this approach. I would like to yield the floor and say that I will not carry my appeal any further to the leadership. I think they carry the burden of that leadership very well. I wish them well in the next 24 hours. I will make one final plea and appeal to my good friend from Louisiana, who I think, if he were to release his amendment, would absolve us of any difficulties. I do yield the floor and thank my good friend for his courtesies.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. CHURCH. Will the Senator yield?

Mr. HOLLINGS. I will be glad to yield to the Senator from Idaho.

Mr. CHURCH. First, I will ask the Senator from South Carolina if he wishes a rollcall vote on the reservaton he will offer.

Mr. HOLLINGS. I am sure the Senator from Oklahoma and the Senator from Pennsylvania do wish a rollcall vote.

Mr. GRAVEL. And I will join in asking for a rollcall vote.

Mr. HOLLINGS. I am only checking to find out what time would be convenient. I think 5 o'clock would be convenient. Or we can speed it up.

I think 5 o'clock would be convenient.

Mr. CHURCH. I am waiting to hear from the Republican side.

Mr. President, I understand that it is acceptable with the Republican side of the aisle for a back-to-work vote to be arranged. The first vote will be on the Long reservation and the second vote on the Hollings reservation. Both votes will commence at 5 p.m. today,

providing we can now proceed to a debate on the Hollings reservation.

Mr. HOLLINGS. Certainly no later than 5.

Mr. CHURCH. I think we are ready now to proceed with that debate. The prerequisites appear to be in order to make a unanimous-consent request feasible.

UNANIMOUS-CONSENT AGREEMENT

I ask unanimous consent, Mr. President, that at the hour of 5 p.m. today the Senate proceed to a rollcall vote on the Long reservation, after which it immediately will proceed to a rollcall on the Hollings reservation.

Mr. GRIFFIN. Reserving the right to object, Mr. President——

Mr. CHURCH. And that the time between now and 5 p.m. today be equally divided between the proponents of the Hollings reservation and the opponents.

The PRESIDING OFFICER. Does the Senator understand time has been set aside for Senator Morgan?

Mr. CHURCH. Yes.

A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. CHURCH. Does the special order for Senator Morgan read that he may claim his 30 minutes at any time after 3:30 this afternoon?

The PRESIDING OFFICER. That is correct.

Mr. CHURCH. Then the unanimous-consent request I have propounded is not inconsistent with the unanimous-consent agreement already entered into.

The PRESIDING OFFICER. The Senator is correct.

Mr. CHURCH. Mr. President, I ask unanimous consent that at the hour of 5 p.m. today the Senate proceed to a vote on the reservation offered by the distinguished Senator from Louisiana (Mr. Long), following which the Senate then vote on the reservation offered by Senator Heinz, Senator Hollings, and Senator Bellmon, the time for debate on the latter reservation being equally divided between the proponents of the reservation and the manager of the treaty, and that the time begin running now.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

RESERVATION NO. 14

Mr. HOLLINGS. Mr. President, my colleagues, Senator Bellmon and Senator Heinz, are momentarily not on the floor. I only have a brief statement to make with respect to the reservation. I thought we ought to clear the air.

The PRESIDING OFFICER. Would the Senator like his reservation to be stated?

Mr. HOLLINGS. Let us call the reservation, but I will also have a word to say about the Long reservation.

Mr. President, I call up my reservation No. 14 and ask that it be stated.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. Hollings), for himself, Mr. Heinz, and Mr. Bellmon, proposes reservation No. 14.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which is to be made a part of the instrument of ratification, that any accumulated unpaid balance under paragraph 4(c) of Article XII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date".

Mr. HOLLINGS. Mr. President, this is a reservation which is very similar to the measure by the Senator from Oklahoma (Mr. Barlett) which we debated some 10 days ago. At that time it was in the form of an amendment. We agreed with the misgivings of the Senator from Oklahoma (Mr. Bartlett) but said it could be better handled by way of a reservation. There are no new records or arguments to be made, but I will make a more coherent record with respect to our proposal after I comment first on the proposal by the Senator from Louisiana.

It is not my intent in doing so to add to the burdens of the Senator from Idaho and the Senator from Maryland, the managers of these particular treaties. I think Senator Church and Senator Sarbanes have done a magnificient job throughout in handling all the difficulties, on and off the floor. It has been a thankless task in some measure. A lot of the good argument has gone on off the floor.

I find perhaps some of the misunderstanding to be that many people do not become more learned in the sense of the exact provisions of these treaties and how they work in the best interests of the United States. Instead they only take up the treaties in segmented fashion by way of amendment. Just a moment ago we heard the treaty called an old lady, and we had our good friend from Alaska (Mr. Gravel) talking about further negotiations and studies.

Let me bring into focus, if I can, the real study at hand that prompted President Carter to include article XII, section 2, that is to be stricken by the reservation of the Senator from Louisiana. I oppose the striking of that reservation. I oppose it for the very reason that President Carter included it in these treaties.

We go back to 1965 and, at that particular time, an interoceanic canal commission was formulated by Congress for which we appropriated over the ensuing 5 years, some $22 million. The exact name was the Atlantic-Pacific Interoceanic Canal Study Commission. Amongst its various duties was trying to study other canal routes than the present lock system down at the isthmus—through countries like Colombia, Nicaragua, Costa Rica, wherever—and the alternatives of the regular excavation versus the nuclear excavation. This intent was foremost in the Canal Commission's mind throughout that 5-year study.

I quote from the record made before the Committee on Foreign Relations, part 4, on page 521, the testimony of John P. Sheffey. Colonel Sheffey, Mr. President, was the Executive Director of the Interoceanic Canal Commission. He presently serves as the executive vice president of the National Association for Uniformed Services, which group, as best I can tell, are not enthusiasts for the

treaty. Certainly, Colonel Sheffey, individually, is very enthusiastic about the provisions included in article XII, section 2. He says, on page 521:

When we entered this study in 1965, one of our purposes was to prove that we could build a canal, a technically satisfactory canal, outside Panama because it would give us far better negotiating leverage to renegotiate our relationship with Panama.

So, at the very beginning the Interoceanic Canal Commission study, amongst other ideas and intents and purposes, said, "Look, if we can really find another route, we ought to look with somewhat of a prejudice or favor for a canal somewhere outside Panama, if at all possible, so we can better our leverage in negotiating with the Panamanians." It certainly was not a pro-Panama group, in other words.

Having studied it for some 5 years, I then go back to the original part of his testimony, and I read from page 511:

First, as the former executive director of the $22 million Sea-Level Canal Study of 1965-70, I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new isthmian canal outside Panama. The only feasible routes are in Panama. The economic, technical, and political objections to the far longer routes in Colombia and Nicaragua eliminate them from practical consideration. Limiting the choice to Panama costs the United States nothing, and in return we get the commitment that other powers cannot meddle in this matter.

I quote again from page 521, when Senator Sarbanes is questioning. The distinguished Senator from Maryland is asking then Colonel Sheffey:

So what we give up—

This is the initial article XII, section 2—

is that right to build a sea-level canal outside Panama, and we are really not giving up anything.

Colonel SHEFFEY. It is giving up nothing whatever, Mr. Chairman.

Senator SARBANES. The Panamanians, as I understand it, give up at least the right to allow some other power to come into Panama to build a canal.

Colonel SHEFFEY. It is an extremely valuable quid pro quo. We are getting something for nothing.

That, Mr. President, is a record that should be made and it should be finalized.

I might add, if someone really wishes to debate it, that Saudi Arabia with anybody else would be a consortium. When you have billions running around and you want to invest, you can pick up Ghana, Tanzania, Argentina, or anybody else and call that a consortium, inasmuch as they have some purpose or reason. There is plenty of money available for oil passage, for oil transport, over a sea-level canal.

I may also add, along this line, that Colonel Sheffey pointed out, rather than being an old lady as the treaty was called earlier, on page 511, he said:

Certainly, the foreseeable traffic cannot support two isthmian canals, and 95 percent of the world shipping forecast for the year 2000 will still be of sizes that can pass through the present canal. The 5 percent of superships that need a larger canal cannot possibly support its costs, even in Panama.

So, to many, it was not an old lady, nor was it to this Senator. But let us look at page 63, finally, of this large, voluminous report that you cannot see, of course, in the Congressional Record, but which measures 3 inches thick.

The choice of a feasible sea-level canal excavated by conventional means is limited to Routes 10 and 14.

That is quoting directly from page 63 of the study. In other words, Panama is the only feasible location.

I think that record ought to be made, because many people, in the very origins of this debate last August and September, were running around pellmell, saying let us do something with Nicaragua. The very same Senators that were saying that had forgotten that, as a result of this particular finding—that is, of the Interoceanic Canal Commission—the United States gave up its rights to build a sea-level canal in Nicaragua. Nicaragua had been pressing for some time, like the Panamanians, to rid itself of the last vestiges of colonialism. Certainly, written-in perpetuity was given under the Bryan-Chamorro Treaty in 1914, when then Secretary of State William Jennings Bryan under President Woodrow Wilson, got, in perpetuity, the exclusive right for the United States to build a sea-level canal in Nicaragua. The Canal Commission said, as I read on page 63, that a canal there is not feasible. It would be some 140 miles in length through Nicaragua, versus less than 40 miles in Panama. It would cost $11 billion—that is the 1975 findings—in Nicaragua, versus some $2.7 billion in Panama in 1970 dollars. It would displace some 370,000 inhabitants in Nicaragua; relatively little displacement in Panama. And, of course, Nicaragua is subject to earthquakes and Panama is not.

Having made that finding, it then summoned up by convention the Bryan-Chamorro Treaty and rescinded that right by a vote of 66 to 5 on February 21, 1971. I would like to see a little bit better institutional memory around this body so that when we do make the studies, we take advantage of them and we do remember the history made and we are not running pellmell down the road, as the opposition would picture it, just to please the Panamanians and the State Department.

So much for the Long reservation. I understand the leadership has worked its will. I would follow it. I would not have any misgivings about the judgment of the Senator from Idaho, but I think President Carter acted wisely when he had our negotiating team include article XII, section 2 (a) and (b) with a signoff by both parties for an exclusive right within the Republic of Panama for the sea-level canal.

Now, Mr. President, we have called up the reservation with respect to the contingent cost debate.

The treaty as written provides that the Panama Canal Commission shall pay a sum of $10 million annually to the Government of Panama from any surplus revenues that are collected. Not only should we pay annually $10 million but, insofar as revenues permit, an additional $10 million each year, to be carried over each year and be taken from the cumulative revenues during the remaining period between the date of ratification and the date of the treaty's expiration on December 31, 1999. The question is, should there be a residual liability to be paid by the United States from that amount, if any, that is carried over and that would apparently be due and owing in that we have not been able to satisfy them from a previous year's collection of some $10 million.

The treaty itself says, "As to be agreed."

We never have been able to see the agreement. I want to agree with Senator Bartlett that I do not think that a statement by the distinguised Economic Minister, Nicholas Barletta, out in San Francisco, to the Commonwealth Club constitutes an agreement. I am glad San Francisco and the Commonwealth Club invited him and I am glad he made the statement. But we get letters from Secretaries of State and Defense, and everything else, saying, "No, it ain't so."

We have answers in an indirect manner through the Ambassador of Panama, Gabriel Lewis. "I am not going to answer your letter," says Omar Torrijos to Senator Bartlett.

I want to look and see what Nicky Bartletta said out at the Commonwealth Club in San Francisco. But, I rather agree with Senator Bartlett, I am sure Senator Bellmon agrees with him, that that does not suffice. We believe, however, a reservation does suffice.

Now, here is what we are trying to make certain of. I will read from the particular section of article XIII, 4(c):

(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Now, when they agree and accept our ratification with this resolution of ratification, then they have agreed. We do not have to run around like a dog chasing its tail to find where in the dickens has the agreement gone. Because our reservation says it simply, and I refer now to the reservation by the distinguished Senator from Pennsylvania (Mr. Heinz) and the distinguished Senator from Oklahoma (Mr. Bellmon), and myself. And I quote:

Before the period at the end of the resolution of ratification, insert a comma and the following: "Subject to the reservation, which is to be made a part of the instrument of ratification, that any accumulated unpaid balance under paragraph 4(c) of Article XIII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date".

We can see then what we are trying to do is make for the agreement as provided for in the body of the treaty in that expression, "in a manner to be mutually agreed."

We hear rumors. We hear whispers. We hear hints.

Go look at the Commonwealth statement. Look at the letter of the Secretary of State or the Secretary of Defense.

We hear, "Look at the Comptroller General who said he had misgivings and now does not have misgivings." We say, "Look at all these things."

None of those, of course, constitutes an agreement. Any lawyer would advise us of that. It takes two parties to agree. With the resolution of ratification, with our reservation, if the Panamanians accept that particular ratification, then the two have agreed.

Mr. President, during the past few days, the distinguished Senator from Oklahoma (Mr. Bellmon) and I have looked anew at the understanding we have proposed to the Panama Canal Treaty con-

cerning the contingent payments provisions under paragraph 4(c) of article XIII. With an eye to expediting the debate and offering the best possible approach, we have worked along with the distinguished Senator from Pennsylvania (Mr. Heinz), who has a reservation dealing with the same section of the treaty. What we have done now is to combine the best features of Mr. Heinz' reservation and the measure proposed by Mr. Bellmon and me.

Article XIII, paragraph 4(c) provides that the Panama Canal Commission shall pay a sum of $10 million annually to the Government of Panama from surplus revenues.

This contingency payment—contingent upon adequate surplus revenues—is in addition to other payments provided Panama under the terms of the treaty.

The paragraph goes on to say that in the event that there is insufficient revenue to make this $10 million payment, the obligation will carry over into subsequent years.

The issue is whether, in the absence of sufficient revenues to make some or all of these contingency payments, the United States would have an obligation to pay the accumulated deficiency upon the termination of the Panama Canal Treaty on December 31, 1999.

The Department of State argues that the United States would have no such obligation under the treaty.

However, the history of the matter discloses considerable uncertainty in other quarters, and this uncertainty is the origin of the reservation that Mr. Bellmon, Mr. Heinz, and I are calling up.

The reservation is simple and to the point and reads as follows:

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation, which is to be made a part of the instrument of ratification, that any accumulated unpaid balance under Paragraph 4(c) of Article XIII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date.

Mr. President, we have learned during our long deliberations on the Panama Canal treaties the virtues of clarity.

We have seen that differences of interpretation can cause serious disagreement.

When there is a difference of interpretation—or even the possibility of a future difference—the best recourse by far is to be specific now and settle the matter now, during the treaty ratification process.

And it is clear beyond doubt that unless this particular matter is clarified now, there could be a substantial difference of interpretation later on.

Oh, I know that there are all kinds of State Department assurances and White House assurances circulating through this Chamber to the effect that there is no such obligation.

And I have seen the letter from Comptroller General Staats saying that no understanding is necessary.

Yet last November 30, when he appeared before the Subcommittee on the Panama Canal of the House Marine and Fisheries Committee, the Comptroller General was not so certain about what

our obligations were in this regard and he indicated that he had not yet formed an opinion on the matter.

Now he has—but that is not to say that everyone down in Panama agrees with him. And Governor Parfitt, Governor of the Canal Zone and President of the Panama Canal Company, in his February 1, 1978, testimony before the Senate Armed Services Committee, alluded to the possibility of differing interpretations on the contingency payment.

In other words, there is sufficient debate about what the treaty really means; that we have been sent running off to months-old testimony, scurrying to the files for copies of letters from various officials and departments, looking at old press clippings, and all the rest.

Imagine nearly a quarter of a century down the line, when those in charge of policy get our their copies of the treaty and start the debate all over again. Imagine the confusion, the disagreement, and the possibility for ill-will. Arguments like that at the time of the turnover could cancel out many of the other advantages accorded us by these treaties.

How much simpler then—and wiser, too—to deal forthrightly with the situation, now. We can do so easily and effectively in the Resolution of Ratification. Then, there can be no doubts at century's end. The Panamanians will know—we will know—what the terms of the treaty provide and what they do not provide.

There will be no possibility of false expectations in Panama or anywhere else. Instead of debate and discord in the year 2000, the transition can be consummated in an aura of friendship and cooperation that is the whole purpose of these treaties.

Mr. President, I do not believe the Senate needs or wishes to consume any considerable period of time discussing this matter. We had a rather full debate on the general issue week before last when Senator Bartlett offered an amendment similar to our reservation.

The majority correctly decided that the matter could be effectively resolved by means other than an amendment. The reservation we propose today will solve the problem and clear the air. I ask the Senate's speedy approval of our reservation.

Mr. President, I am glad to yield to the distinguished Senator from Oklahoma. As he makes his way to his seat—we cannot have this on film, but those listening on radio should know—I wish to state my feeling. I have worked on this canal problem for more than 10 years. I have listened and I have learned and I have visited, and I continued to listen and try to learn even more. I believe that the most meaningful statement made about the Panama Canal treaties was a very sober, cogent, and unemotional but very inspiring statement made by the Senator from Oklahoma (Mr. Bellmon). He studied every angle. It is not an easy question. It is complex. There is no clear-cut answer. These treaties are not going to settle every problem we have in Latin America or even with Panama.

Senator Bellmon, on the day of the ratification of the neutrality treaty, stood tall and strong in the U.S. Senate Chamber. He said, "I believe that the people of Panama would like to be treated the way we would like to be treated by them." As a result, he voted in

favor of the treaty, and I thought it was downright eloquent. I admire him for it, and I am glad to be associated with him on this reservation.

Mr. BELLMON. Mr. President, I thank the Senator from South Carolina for his very kind and complimentary remarks. I am pleased to join Senator Hollings and Senator Heinz in sponsoring this reservation. I will be very brief. Senator Hollings has made the case extremely well, and I have very little to add to what has been said.

Article XIII section 4, paragraph C states:

> An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Many of my constituents in Oklahoma who contacted our office to express opposition to the canal treaties had based their opposition on their fear that we are not only giving the Panamanians the canal but also are going to pay them a sizable sum of money to take it off our hands. They base this fear on what I consider to be misinformation that has been circulated, that this language from article XIII section 4, means we are going to pay the Panamanians a lump sum after the year 2000.

The last sentence I read from paragraph C has given rise to different and potentially expensive interpretations. The Panamanian negotiators have claimed that a "rollover" effect is possible. A "rollover" effect is, quite simply, that if Canal toll revenues are not sufficient to pay Panama the $10 million stipulated under article XIII, section 4, paragraph C then the debt will roll over to the following year. Under this interpretation it is conceivable that by the year 2000 the United States would have to pay Panama a lump sum of $220 million in order to turn the canal over to Panama in a state which is free of liens and debts as is called for in Article XIII, Section 1.

Our negotiators have stated unequivocally that, at the expiration of the Treaty, the U.S. will be under no obligation to pay any unpaid balance from previous years because of such a rollover. The $10 million payment is a contingent obligation based only on available toll revenue surplus. The reservation will lay to rest any varying interpretations of the article which might arise in future years.

My support of this reservation is intended to protect the American taxpayer from a future $220 million surprise should these treaties be ratified and should the revenues from tolls be inadequate to pay the extra $10 million a year.

Mr. President, I believe that the reservation which Senator Hollings, Senator Heinz, and I have offered to the Senate is a way of clearing up this possible misunderstanding, that it should help to remove some of the opposition that many people feel toward the treaties, and that this is in keeping with the intention of our negotiators at the time the negotiations were completed.

I urge that this reservation be adopted, so that this uncertainty can be cleared up and so that the fears and doubts which many Americans have can be removed.

Mr. HEINZ. Mr. President, I compliment the Senator from Oklahoma (Mr. Bellmon) on his very fine statement, and I commend the Senator from South Carolina (Mr. Hollings), as well, for his remarks regarding the reservation that is now before the Senate.

The reservation is a joint effort of Senator Hollings, Senator Bellmon, and me, in order to lay to rest the issue that my colleagues have addressed at considerable length. In their statements they have pointed out the problems involved in this matter.

There has been a great deal of interest in this reservation, and several other Senators have expressed a desire to join us in sponsoring it. For that reason, I ask unanimous consent that the names of Senator Cannon, Senator Brooke, Senator DeConcini, Senator Paul Hatfield, and Senator Nunn be added as cosponsors of the reservation.

Mr. HOLLINGS. Has the Senator included the names of the Senator from Nevada (Mr. Cannon) and the Senator from Massachusetts (Mr. Brooke)?

Mr. HEINZ. I have included both in my request.

The PRESIDING OFFICER (Mr. Glenn). Without objection it is so ordered.

Mr. HEINZ. Mr. President, I offer this reservation, together with Senator Hollings and Senator Bellmon, who have had similar concerns about this treaty. The content of the reservation is similar to the amendment offered by Senator Bartlett some 10 days ago, on April 7.

Since this issue was thoroughly debated at that time, and since Senator Hollings and Senator Bellmon have gone into considerable detail, I am not going to make an extensive statement at this time. Suffice it to say that I supported the Bartlett amendment because I believe it is vital that the Panama Canal Treaty be clarified with respect to the status of the $10 million per year contingency payment.

The Bartlett amendment was tabled, but the issue is still with us. However, since it is essentially one of interpreting the existing treaty language, I believe it can be as effectively handled by a reservation or an understanding as by an amendment, so long as such a reservation, as is the case with this one, is incorporated into the text of the Resolution of Ratification.

The objective of this reservation is to make clear that the $10 million contingency payment, which is to be paid only from surplus revenues, the so-called contingency payment specified in article XIII, paragraph 4(c), does not constitute—and I emphasize "not constitute"—a debt which in any way extends beyond December 31, 1999, and the expiration of this treaty, and therefore will not become an obligation to the American taxpayer.

Some doubt arose about this point because of ambiguities in the Treaty language and alleged statements by Panamanian officials indicating contrary expectations. Some of that confusion has since been cleared up. First, our Government has made clear its policy will continue to be to set tolls at break-even levels so as not to guarantee an annual surplus which would then be paid to Panama.

Second, the Panamanian Government has made clear that its interpretation of the treaty parallels our own with respect to the status of these payments. The statement of the Panamanian minister of planning and economic development, Nicholas Barletta, in his February 28 speech in San Francisco has already been printed in the Record and those remarks have been cited in debate on several occasions, so I will not take the time to quote it now.

That statement, however, is helpful in that it clears up some concern about the current Panamanian view on this question. Of course, Dr. Barletta's comment remains only a statement of opinion. It is reassuring, it is welcome, but it is nontheless, not binding.

Similarly, the April 4 letter from the Comptroller General to Senator Stone, to which Senator Hollings referred and which was also put into the Record on April 7, provides reassurance. Again, it is welcome reassurance, but it does not necessarily bind the Panamanians.

I believe it is important to lay this matter to rest once and for all, and to do that we need language which will have to be formally accepted by both the United States and Panama when the instruments of ratification are exchanged.

The reservation which we offer achieves that objective. The reservation defines and limits our obligation with respect to the payment described in article XIII, paragraph 4(c), and it limits our obligation in terms of both amount of money and duration. The reservation leaves no question that although unpaid balances may "roll over" or accumulate from year to year, at the time the treaty is terminated, that is to say December 31, 1999, any payment due may not exceed the amount of any surplus in the final year of canal operation under this treaty. Further, no payment may be made in any event after December 31, 1999.

So what this language does is to clarify and make a part of the resolution document two essential points. First, that the United States owes nothing after the treaty terminates; second, that we cannot be expected or required to pay an excessive amount, conceivably as much as $220 million, in the final days before the treaty terminates.

Mr. President, this reservation clearly limits the financial obligation of the United States and in doing so it limits the financial obligations of the taxpayers of the United States. This is, I believe, the way the negotiators on both sides intended to write the treaty. Unfortunately, in my judgment, that is not the way they did write the treaty. I think that the adoption of this reservation, therefore, is a necessary and responsible addition to the Panama Canal Treaty.

I am hopeful—indeed I am confident—that it will be acceptable to both proponents and opponents of the treaties, and I urge its adoption.

Mr. President, I reserve the remainder of my time.

I yield to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. PERCY. Mr. President, I thank my distinguished colleague.

The Senator from Illinois wishes to make some comments that might run as long as 15 minutes or so. Is that perfectly all right?

Mr. HEINZ. Yes.

Mr. PERCY. Mr. President, when I returned from a visit to the Canal Zone in January——

The PRESIDING OFFICER. If the Senator will suspend, the Senator from Pennsylvania only has 4 minutes remaining.

Mr. PERCY. Mr. President, will the Senator yield?

Mr. HEINZ. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. HEINZ. How is the time divided and among whom? Who controls the remainder of the time?

The PRESIDING OFFICER. The time is divided between the Senator from Pennsylvania and the Senator from South Carolina on one hand and the floor manager of the treaty on the other.

Mr. HEINZ. Mr. President, I am not sure of the position of the floor manager of the treaty. Perhaps he will be willing to yield some time to Senator Percy.

Mr. Matsunaga addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. How much time does the manager have?

The PRESIDING OFFICER. Forty-one minutes.

Mr. MATSUNAGA. I thank the Chair.

Mr. President, the committee is not opposed to this reservation and is willing to accept the reservation, and in the interests of time I am willing to yield back all of our time.

Mr. HOLLINGS. Mr. President, have we had the yeas and nays ordered yet?

The PRESIDING OFFICER. The Senator may yield it to another Senator.

The vote on this does not come until 5 o'clock by previous agreement.

Mr. MATSUNAGA. That is correct. But I was about to ask unanimous consent.

The PRESIDING OFFICER. This comes after another vote that occurs first at 5 o'clock. This comes after that other vote.

Mr. MATSUNAGA. I understand that, Mr. President. But I was about to ask unanimous consent that inasmuch as there were no other Senators who wished to speak on this amendment——

Mr. STONE. Mr. President, I wish to ask unanimous consent if the Senator will yield for that purpose.

Mr. MATSUNAGA. I am happy to yield for a unanimous-consent request.

Mr. STONE. I thank the Senator.

Mr. President, I ask unanimous consent that my name be added as a cosponsor to the Long amendment, which is scheduled for vote this afternoon, and the Heinz amendment which is also scheduled for a vote this afternoon.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATSUNAGA. Mr. President, if there be no other requests and if the cosponsors of the amendment are willing to yield back their time, I ask unanimous consent that the Senator from North Carolina (Mr. Morgan) may proceed under a previous order of the Senate for a period not to exceed an hour but in no case beyond 5 o'clock, when the vote will be taken back to back on the amendments pending.

Mr. HEINZ. Mr. President, as I understant the request of the Senator from Hawaii, we will yield back the remainder of our time on the reservation, that is the Hollings-Heinz-Bellmon amendment, and the Senator from Hawaii will also yield back the remainder of his time.

I know at this point of no request for time to speak further on reservation 14. Does the Senator know of anyone?

Mr. HOLLINGS. No, I do not know of any. I would be prepared to yield back the time.

Mr. HEINZ. I would be more than prepared, with that understanding.

Mr. MATSUNAGA. Then, Mr. President, I make this unanimous-consent request.

The PRESIDING OFFICER. Does the Chair understand the Senator from Illinois was not speaking on 14; is that correct?

Mr. PERCY. The Senator from Illinois would like to speak on an unrelated subject of about 15 minutes' duration before 5 o'clock if it is at all possible, if there is no other pending business.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Hawaii? If not, it is so ordered.

The Senator from North Carolina is recognized.

Mr. MORGAN. Mr. President, we have been on this issue now for approximately 2 months, and I suspect that about every thing has been said on behalf of these treaties that can be said, as well as all that can be said against the treaties, and I doubt that anything I could say this afternoon would change the minds of any of those who are prepared to vote.

But I would like to take a few moments of the Senate's time and state for the Record some of my thoughts about these treaties, some of the things I have studied, and some of my beliefs about them, and why I intend, barring any unforeseen developments between now and tomorrow afternoon at 6 o'clock, to cast my vote in favor of ratification of the treaty before the Senate, as I did for the Treaty of Neutrality which was ratified by the Senate some 2 or 3 weeks ago.

I would say in the beginning, Mr. President, that there are a lot of things in these two treaties with which I disagree, but I doubt that anyone can draft any treaties or that any treaties could be drafted with which I would agree completely and in totality. As a matter of fact, I doubt if treaties could be drafted that would be satisfactory to any Member of the Senate as well as the Government of Panama.

But, taken as a whole, I believe the treaties are in the best interests of the United States, the national security of this country and, therefore, I think they should be ratified.

I want to address my remarks primarily to three topics this afternoon in the debate, if time permits. I want to talk a little about the history, which has led me to the conclusion that the time for a new treaty arrangement with Panama is now. And then I want to address the tough questions which we all have to answer about the second treaty dealing with the Panama Canal. And, finally, I want to speak of my personal convictions about the canal issue and about my hopes for our country.

No issue to my recolleciton has aroused so much debate and controversy, and certainly no issue during my 4-year tenure in the U.S. Senate has generated so much mail from the American people. While at times the communications we have received have been less than pleasant, I am refreshed and I am reassured by the public debate on this issue.

I have just returned from a long weekend of travels back and forth across the State of North Carolina where I have talked to literally hundreds of people, and I am impressed with the knowledge of the people concerning the issues before us, and I am impressed with the willingness of what I believe to be the majority of the people of North Carolina to place their trust and their confidence in the majority of the Members of this Senate.

We have a great country, Mr. President, and I believe that the greatness of this country requires us to make some decisions that a lesser country could not afford to make. It is this time of decision which prompts me to speak about the Panama Canal treaties.

Let me say, Mr. President, that my concern about these treaties did not begin in August of last year when the President of the United States announced that an agreement had been reached between the Governments of Panama and of this country. My concern and my interest began during the first year that I arrived in the Senate.

Like so many of my colleagues and like so many of my constituents in North Carolina when I was first approached about the idea of a new treaty on the Panama Canal which might eventually turn over control of the canal the Panamanian Government, I was repelled by the idea. Like more than a majority of the Members of this Senate, when asked in 1975 to join in a resolution expressing our displeasure and opposition to any kind of a new treaty with Panama, I joined in that resolution.

But like so many of my colleagues and my constituents I joined in sponsoring that resolution without first taking the time to ascertain whereof I was speaking.

Later on, in the latter part of 1976, on behalf of and at the behest of another committee on which I serve, the Select Committee on Intelligence, and at the request of my distinguished chairman, the senior Senator from Hawaii (Mr. Inouye), I undertook a trip, along with my assistant, Mr. Ricks of that committee, to visit the Canal Zone, not for the purpose of talking about the Panama Canal Treaty but looking at the Southern Command of the U.S. military forces, looking at the defense intelligence agencies of that command.

It was while I was there and talking with the people in the defense intelligence agencies of our country, and talking with the American Ambassador, in going through the Canal Zone and meeting with the Citizens Association of the Canal Zone, and with the rank and file of the Panamanians, that I came home in January of 1977 and said to the people of my State that I felt that some adjustments and some rearrangements ought to be made with the people of Panama; that we had come a long way from the days of gunboat diplomacy, a diplomacy that was accepted by most all of the world when we acquired the right to build that canal, and that, if we expected to develop a relationship which would help us devel-

op some kind of solidarity in the Western Hemisphere, we had to do what, in my mind, was right, and to arrive at a new relationship with the people of Panama. At the same time, we had to provide for the national security of this country, and provide that the canal would remain open for shipping not only for the United States but for all of the world.

I expressed my opinion throught the media in North Carolina after that, having no idea that within the period of a few months an agreement would be reached between our two countries.

I can understand the frustrations of the Panamanian people, who, time and time again, since the day that the 1903 treaty was signed, have expressed their indignation and their displeasure at the terms of the 1903 treaty.

We cannot right all the wrongs that have been committed in this country, Mr. President, in years past, because if we did we probably would give this country back to the Indians. But I think that when wrongs have been committed, even though they were right in the eyes of the world at the time that they were committed, and they are still causing dissatisfaction, that we are big enough in this country to take a look at them and reexamine ourselves. We are a great enough and strong enough nation to do what is right, and to look at the facts.

The people on that little isthmus that now constitutes the country of Panama have long been a furiously nationalistic people, almost since the date when the country was discovered by the Spanish explorers in 1501, and since the days when Christopher Columbus visited it in 1502. The history of that isthmus did not begin with the United States. Some of my friends have said to me, "You know, after all, what Panama is, we in the United States made it."

I am not sure that is true. In 1529, over 400 years ago, the Explorer Cortex drafted a plan for canal route. In 1534, again more than 400 years ago, the King of Spain ordered a survey for a ship canal. In 1535 there was a highway built across the Isthmus of Panama, where the Spaniards, having brought their gold up from the west coast of South America, offloaded it at this narrow 50-mile isthmus and carried it across the isthmus on land, and then put it on their ships which carried the gold to Europe. At one time, the three most thriving metropolises in the whole Western World were Panama City, Mexico City, and Lima, Peru.

What I am saying is that Panama has been a center of commerce for the world a long, long time and has been a most independent nation. In 1814, nearly 90 years before we began to get involve in the building of the canal, the Spaniards attempted to construct a canal, but they were interrupted by a revolt. Again in 1821, Panama, apart from the country of New Granada, severed relationships with Spain at the time of the Latin American independence movements. At that point, Panama joined the country of Colombia. From that time until the independence, which we helped bring about by revolution in 1903, time and time again these furiously nationalistic people tried to establish their own province, but time and time again their revolutions were put down.

I point that out to say that the nationalistic tendency in this part of the world is not something of recent origin, but something that

has existed since the very founding of the Nation. It is something that we in this country have to recognize and ought to deal with. We have to deal with it, Mr. President, because I believe that it is in the national interest of this country that we remove some of the sources of irritation to our Latin American neighbors that have prevented us from building the kind of solid support there that we seek from those countries.

As I returned home from Panama in 1976, I stopped by for a day or two in Mexico City. While visiting there, I said to the American Ambassador:

How are our relations with Mexico? Do they trust us? Are they afraid?

He said to me:

Well, Senator, I think relations between Mexico and the United States are pretty good, considering that fact that on the 13th of September of every year the Mexicans have a national celebration in which they stand in Chapultapec Castle and read off the names of the young cadets that we Americans killed in storming that castle in Mexico City in the 1840's.

Three times since the turn of the century we have used military force in the country of Mexico. Thirty-eight times, or maybe 39, since 1891, we have used force in Latin American countries. No later than the last decade, we used military force in moving into the Dominican Republic.

So when we study the record of the United States, I think we can readily see why many of our Latin American friends to the south are somewhat dubious of us, and somewhat afraid to join into meaningful coalitions for the protection of all of the Western Hemisphere.

I was speaking with the Ambassador from Mexico who served here in Washington sometime ago. He is a great friend of the United States, and he said to me, "Senator, did you know that your country had taken half or more than half of our country in the last 100 or so years?"

That astounded me. I knew we had annexed Texas. I did not fully realized we had taken Texas, New Mexico, Arizona, California, and the area covered by Nevada, all in the last 100 or so years.

You know, those of us who live down in the South are not quite over the Civil War yet. We live with our brothers from the North, we speak the same language, and yet I must confess to you that there are animosities in the South today against the people from the North. Can you imagine the kind of fear that must rest in the minds and hearts of these people who live to the south of us, who do not speak our language, and who have seen us time and time again, all in the interest of protection of American property or for the purpose of collecting levies, or for whatever reasons may have existed—can you imagine their fear when, we have used military force against them so often?

Mr. President, as I have examined all of these facts, I have concluded that it is time that we in this country let the world know and let our neighbors and friends in the Western Hemisphere know that we want to work together to build a unified front against the ever-expanding and increasing Communism in this world. Is disturbs me, Mr. President, when I look at a map of the world. If you will, visualize a map of the world and picture in your

mind the countries that are controlled by Communist forces and under the influence of Communist forces. If you look at that map, you will see all across the top of the continent of Europe nothing but red: the Soviet Union, East Germany, Czechoslovakia, Romania, Yugoslavia, and I could go on. Picture in your mind's eye the map of Asia, and look at the great land massess of China, Vietnam, North Korea, and others. You know, there would not be a whole lot of land left where there is freedom, where there is a free and democratic society. Really, when you look at it, the Western Hemisphere is about all that is left, with only one spot of a Communist-dominated country. Mr. President, I believe it is in the interest of this country that we do something about it.

For example, we have 2,200 miles of common border with our neighbor to the South—Mexico, a great neighbor and a great friend. There are 60 million people in Mexico, and the population is expected to double in the next 19 years. They are living in crowded conditions. They are living on about 12 percent of the arable land.

Today, because of the great poverty in that area, we are constantly troubled by illegal aliens who cross the border and come into the United States. We cannot control that because of this 2,200 miles of border:

Thank goodness, I see no tendency despite this poverty of our neighbor to the South—Mexico—turning towards communism. But I will say this to you, Mr. President, that there is very little middle class in Mexico. As I drove through the suburbs of Mexico City I observed poverty, the likes of which I have never seen. There are people there who are just ripe for the picking by some Communist leader who has a knack for inspiring the people. If you were living in abject poverty. Mr. President, and had no hope under the present system, you would be a lot more inclined to follow any leader who might come along.

Yet, Mexico, with all if its poverty and all of its needs for economic assistance, is afraid of our country, with all its wealth. They are afraid of the "imperialistic" United States that has not only taken more than half of its country away from them, but also has since the turn of the century used military force on so many different occasions.

That is why it is important that we not only do something to improve our relations in Latin America, but also to improve our relations with the country of Panama, which I think has great affection for the United States.

Mr. President, I have heard a lot of talk General Torrijos. I would say, in all fairness, that I think General Torrijos is a strong-armed Latin american leader, but I have heard very little said about other leaders of Panama.

On my visit, I sat in the office of the President of Panama for more than a half-day, a man named Lakas, a first generation Panamanian whose mother and father came from Greece, a man who was not a political leader but a contractor, who accepted the challenge of the presidency of that country in order to try to do something to improve the quality of life and the plight of the people there.

President Lakas was educated in America. He spent 7 years at Texas A. & M., and if you closed your eyes, Mr. President, you

could almost hear our late President Lyndon Johnson speaking, or John Connally, or someone else with a typical Texas accent.

I went to the office of the Minister of Economics and Planning a very important office in that country. I found there a man named Mr. Barletta, educated at North Carolina State University where he received a B. A. degree in agricultural economics, where he received a master's degree in agricultural economics, and from where he went on to get his doctorate degree at Chicago; a man who was schooled in the American system of free enterprise; a man who has been recognized by almost all who know him as one of the brilliant minds of all of Latin America.

No one can convince me that Mr. Barletta has any Communist leanings.

I visited with the Minister of Foreign Affairs, a man who was educated at LaSalle University and Stanford University.

These people know what life in America is like, and they are the people who literally run the country on a day-to-day basis. It is not to say that Torrijos is not a strong man. He came from a major's rank in the National Guard, and sometimes that frightens us.

I see a real desire on the part of the people of Panama and the government leaders. They want to be friends with us. They want to improve their plight.

Mr. President, I go back to what I said earlier, these people are furiously nationalistic. It did not begin with the time that we began negotiating the treaties. Some 53 times between 1846 and 1903 the people living in this small province of Panama tried to secede from Colombia, but they were not able to do so. It was only when we promised to protect them in their revolt that they were able to do it. I think there is no question but that we did protect them. Because of that, and because of their desire to be free, they were so very disappointed by the 1903 treaty.

What happened? The French company tried to build the canal from somewhere around 1878 to the time 1885. The company failed because of the loss of about 20,000 lives to malarial fever and yellow fever and had gone bankrupt. They wanted to salvage what they could from their venture. They approached us and asked us if we would pay them $40 million to take over their assets.

Of course we were interested. We had tried in the 1820's to get the right to build a canal. We had been turned down by Colombia because they were afraid of us. We tried again in 1846 to get the right to build the canal and were turned down because they were afraid of us, even though they did let us build a railroad on the condition that we agree to let them use the railroad to protect the sovereignty of the province of Panama.

I point out something I have not heard mentioned on the floor of the Senate. In 1868 the Secretary of State, William Seward, negotiated a treaty with Colombia which would have given the United States the exclusive right to construct an isthmian canal. Again it was rejected by the Colombian Senate.

Nevertheless, when we were approached in 1902 and 1903, we were willing to bargain. What happened? We went to Colombia and said, "We want to negotiate a treaty to build this canal. We want to take over the assets." All we asked for was the right to construct the canal and to maintain it until the year 2000. We agreed to pay

the French company, whose stock was held by a man named Bunau-Varilla, $40 million, to pay Colombia $10 million, and an annual annuity of a quarter million dollars.

Once we had done that, again the Senate of Colombia turned it down.

Mr. President, we had some idea they were going to turn it down, so we had been doing a little footwork in this country through Mr. Bunau-Varilla and through a lawyer in New York by the name of William Cromwell. We sort of expected it so we were laying the foundation to generate another rebellion.

Bunau-Varilla was very much interested in bringing this matter to a conclusion because his rights ran out in 1904. When the Colombian Senate rejected that treaty in August of 1903 his forces went to work. During August, September, and October, we helped to bring about a revolution. Bunau-Varilla led the people in the province to believe that if they would just declare their independence, American warships would appear off the coast to protect the revolutionaries and to prevent Colombia from putting down the revolution in their own country.

So on November 2 and 3, just as he had planned, the Panamanians declared their independence, just as they had been led to believe, our warships appeared off the coast. And just as they had been led to believe, we refused to comply with our commitments of the 1840's refusing to let the Colombians use our railroad to transport their troops.

So the revolution came about.

I do not think anyone can really say we fomented the revolution, but I think it is pretty obvious that Bunau-Varilla knew from us what was going to happen. After that, we recognized Panama as a nation within 3 days.

In less than 2 weeks, right here in Washington, Secretary of State Hay had negotiated a treaty with Bunau-Varilla. All that we asked of Bunau-Varilla, who had become, through his own devices, the new minister for the State of Panama, was to make a treaty with the State of Colombia. But this Frenchman, who had a great deal to gain if the treaty were passed and because we were going to pay his company $40 million—and he personally, as a stockholder, about $400,000—did not want the Senate to dillydally around. So when he got the treaty that Secretary Hay offered to him, he made it a little more agreeable than what we had even asked for. He struck out the 2000 year from the lease and put in "in perpetuity." He struck out the width of the Canal Zone of 5 kilometers and put in 10 miles. He gave us the right to control immigration and trade and even to disband their army—an agreement much more generous than anyone had hoped.

As a matter of fact, Senator Money of Mississippi, in 1904, claimed that the treaty "comes to us more liberal in its concessions * * * than we * * * ever dreamed of having * * * In fact * * * it sounds very much as if we wrote it ourselves."

The past president of the American Bar Association, a man by the name of James Carter, by the way, called the whole affair a "crime."

What I am trying to say is that the treaty with the new country of Panama was pretty generous to the United States and it was

from the day that treaty was signed that the trouble began. When Mr. Bunau-Varilla met the Panamanian delegates down at Union Station, three or four blocks from here, he confronted Mr. Amador and another Panamanian, Mr. Federico Boyd, and he said, "Oh, look, we have a treaty signed by the United States whereby they guarantee the independence of your state. After nearly 100 years of trying to become a free and independent state, your independence is guaranteed by this country."

Well, according to Mr. Bunau-Varilla's own statement, when Mr. Amador read that treaty, he almost fainted. What Mr. Bunau-Varilla did not tell in his autobiography was when Mr. Federico Boyd read the statement, he struck Mr. Bunau-Varilla right across the face. And, Mr. President, from that day until this, we have had continuous trouble with these extremely nationalistic people of Panama.

Some 8 or 10 times we have had to use military force to put down riots and trouble in Panama. From time to time, we have tried to pacify those people. In 1936, the Senate agreed to a new treaty in which we said, "All right, we will not use any force to protect the canal except with the permission of Panama." And that is the way it exists now.

But in 1964, when the riots occurred and some 20 Panamanians were killed, some several hundred were injured and we lost four of our people, President Lyndon Johnson met with former President Eisenhower and former President Truman. They decided that it was time that we did something to reach an understanding with these people so that we could live in peace and harmony and grow together and also enjoy the freedom in use of this canal. I believe, Mr. President, that these treaties do that, although they do not do everything that I would like them to do.

Mr. President, these treaties remind me, this whole matter reminds me of the years when I used to practice law. I know some of my colleagues here have had these experiences. From time to time, during my years of practice, I would have a client come in who was having an argument with his neighbor over a land line. He would come in, mad as the dickens; he was mad as a wet setting hen, we used to say. He would implore me, "I want to defend this land line and I am not going to give 1 inch. By golly," he would say, "I will see him dead and in Hades before I'll give 1 foot. I'll take it to the Supreme Court."

But you know, after 3 or 4 years of litigation, going to court and taking depositions and picking juries and paying me a few legal fees, my client began to get a little more conciliatory, saying, "Maybe we ought to do something about it; maybe we ought to give a little bit; let's get this thing over so we can move on and live in peace and harmony."

I think that is exactly what Lyndon Johnson and Dwight Eisenhower and Harry Truman were saying in 1964: We would like to keep things as they are, but by golly, if it is going to mean a continuous disruption in relations between our country and Panama, let us do something about it. I think that is what we have done.

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I. INTRODUCTION

I will speak specifically today to three topics in my remarks. I will address some of the history which has led me to the conclusion that the time for a new treaty arrangement with Panama is now. Next I will address the tough questions which we all have to answer about the second treaty dealing with the Panama Canal and, finally, I will speak to my personal convictions about the canal issue and my hopes for our country.

No issue to my recollection has aroused so much debate and controversy and none has generated so such mail from the American people. While at times the communications we received were less than pleasant, I am refreshed and reassured by the public debate on this issue. We have a great country and I believe that this greatness requires us to make decisions a lesser country could not. It is this time of decision which prompts me to speak about the Panama Canal treaties.

II. CHRONOLOGY OF PANAMANIAN HISTORY—1500-1820

Discovery and Development:

1501. Discovered by a Spanish explorer and explored the following year by Christopher Columbus.

1529. Explorer Cortez drafted a plan for a canal route.

1534. The King of Spain ordered a survey for a ship canal.

1535. The Camino Real, highway across the Isthmus, was in use; also about this time Panama was incorporated into the Vice Royalty of New Granada; Panama retained much of its independent identity; British interest as part of concern with Spain.

1814. Spanish attempts to construct a canal were interrupted by colonial revolts.

1820-46

1821. Panama, apart from New Granada, severed relations with Spain in the tide of Latin American independence movements.

Panama at this time joined with New Granada in the Republic of Greater Colombia.

1831. New Granada became an independent republic incorporating Panama as an independent state.

1841. Panama seceded from New Granada and maintained its independence for 13 months.

1846-1901, U.S. INVOLVEMENT

General—53 times, between 1846 and 1903, Panama attempted to secede from Colombia.

Unrest had always existed.

1846. After many years of interest, from the time of acquiring Florida, the United States sought to secure some form of rights in Panama. Fear of British business interests prompted the United States to negotiate the Bidlack Treaty with New Granada. Under the treaty, the United States promised to insure that transit over the Isthmus remained open and that New Granada would have its sovereignty over the area insured by the United States.

1850. United States signed the Clayton-Bulwer Treaty with England setting forth that neither the United States or Britain would exercise exclusive control over any canal over the Isthmus or fortify a canal.

1853. Panama again seceded from New Granada.

1856. U.S. troops were landed to protect the Panama Railroad, the first time U.S. troops were on the ground in the country.

1868–69. Secretary of State William H. Seward negotiated a treaty with Colombia which would have given the United States the exclusive right to construct a canal. It was rejected by the Colombian Senate.

1878. French efforts at constructing a canal got under way; no conclusive decision over the French involvement in a canal project was ever made.

1885. Revolution in Panama against Colombia.

1889. Beginning of 5-year revolt against Panama.

1901. Negotiation of the Hay-Pauncefote Treaty abrogating the 1850 Clayton-Bulwer Treaty and clearing the way for U.S. negotiations.

1901–03

1902. Herran, the Colombian negotiator, began talks concerning the canal route for Colombia; Hay threatened that delay would result in renewed negotiations with Nicaragua.

1903. Three days after the Hay-Herran Treaty was signed concluding a deal over a canal route, Herran received delayed instructions not to sign the treaty.

Hay threatened a break off in relations if the treaty was not ratified by Colombia; privately President Roosevelt indicated his awareness of the Panamanians' readiness to decalre its independence. News reports to this effect were released by the press.

Hay made it clear to Panama that the $40 million set up by the Congress to secure a route would go to the French Company, headed by Bunau-Varilla, and only the $10 million in the treaty would go to Colombia.

August 12, 1903, Colombia rejected the treaty.

Efforts at fostering a revolution in Panama were begun by Bunau-Varilla and William Cromwell, a lawyer with interests in the Canal Company.

Cromwell tried to get a Panamanian to give $100,000 for a revolution, guaranteeing him the presidency of the new country—this was before Colombia had rejected the Hay-Herran Treaty.

Bunau-Varilla met with the Panamanian revolutionaries and encouraged their activities throughout September of 1903; in October he promised a complete package for the Panamanians—money, a constitution, a military plan.

On October 15, U.S. ships were ordered to sail on a routine exercise toward the isthmus. On October 16, Bunau-Varilla was made aware of this fact.

Bunau-Varilla secured a promise that, for his assistance, he would be appointed Panama's first minister to the United States. He called for a revolution on November 3, the day he calculated the U.S. squadron would appear off the coast of Panama.

On November 2, a U.S. ship, the *Nashville* arrived and the revolution commenced; orders were on board the *Nashville* to insure that the line of transit across the isthmus was kept open even against government—Colombian—troops. On November 3, the revolution was essentially completed. The only clear legal rule against which the U.S. action would be judged was the 1846 Bidlack Treaty which provided that the United States would insure Colombia's sovereignty over the Isthmus of Panama.

On November 6, the United States recognized the independence of Panama.

Negotiations began which led to the Hay-Bunau-Varilla Treaty. Bunau Varilla exerted the same pressure and threats against Panama as Secretary Hay had against Colombia.

Bunau-Varilla negotiated treaty and signed it; Panamanians were outraged; Federico Boyd, one of the negotiators who arrived too late, struck Buanu-Varilla across the face at Union Station.

Bunau-Varilla on his own sent a cable to Panama stating that if Panama did not ratify the treaty, the United States would withdraw it protection and sign a canal treaty with Colombia.

The terms of the treaty negotiated and signed on November 18 have been reviewed many times here in the Senate, but I believe they were best summarized by Senator Money, of Mississippi, when in 1904 he claimed that the treaty:

> . . . comes to us more liberal in its concessions . . . than we . . . ever dreamed of having . . . In fact, it sounds very much as if we wrote it ourselves . . .

The past president of the American Bar Association, one James Carter, called the whole affair "a crime."

1904–64

General—Period of unrest and dissatisfaction with the treaty.

Need for U.S. intervention in Panama eight times between 1904 and today, excluding the use of troops in the riots of 1959 and 1964.

United States has intervened 39 times in Latin America since 1891 with military force.

Interpretative problems arose immediately as in 1904, interpretation of treaty to allow United States to control customhouses; settled by famous Taft agreements.

In 1904 the United States forced Panama to include a right of U.S. intervention in the country's constitution.

Treaty used in 1920's as basis for intervention.

In 1921, Panama was threatening to invade Costa Rica in attempting to settle a border dispute which had existed since colonial days. Based on the 1903 treaty's call for the United States to guarantee Panama's independence, the United States forced Panama to withdraw.

In 1926, a new treaty was negotiated to soothe Panamanian anger but included provisions for U.S. intervention and was rejected by the Panamanian Assembly.

Through the 1920's and into the 1930's, there was unrest and dissatisfaction with the treaty. Finally, in 1936, a revision was made increasing the toll rates.

During the war, the United States secured additional bases in Panama, agreeing to withdraw within a year after hostilities

ended. The United States was slow to withdraw. Post-World War II irritation had begun.

The central issues of the 1950's were over discriminatory policies within the Canal Zone which affected Panama.

Inadequate toll payments to Panama after the large increase in traffic through the canal.

U.S. commissaries within the zone which adversely affected Panamanian business.

Segregation in housing and schools within the zone.

Discriminaiton in pay, based on the "U.S. rate" and the "local rate."

In attempting to resolve some of these problems, President Eisenhower signed the 1955 treaty revising the original 1903 treaty.

Unrest and unhappiness continued until 1959 when the first of the "flag incidents" broke out. Panamanian students seeking some public recognition of their country's stake in the canal requested that their flag be flown along side the U.S. flag. Tempers flared and violence erupted.

On December 2, 1959, President Eisenhower stated: "I do—believe we should have visual evidence that Panama does have titular sovereignty" in the zone. Negotiations began at this point on measures which lead us up to the treaties we have today.

In 1964, riots over the flag broke out and 25 deaths resulted; serious negotiations began which have led to the current treaties.

At this point, it is worthwhile to review some of the statements made by four of our Presidents about the canal issue:

THE 1960'S AND THE VIEWS OF THE PRESIDENTS

President Eisenhower spoke to the problem created by the treaties:

I think that not all of the difficulties that have come about have been entirely because of their demands. It is perfectly true there was a treaty made many, many years ago, more than 50, now. And the conditions of that treaty were changed from time to time as the whole condition of affairs in the world so demanded, just exactly like our Constitution has been amended 22 times.

President Kennedy, in 1962, arranged for the United States and Panamanian flags to be flown jointly in the Canal Zone. In 1961, he described our relationship with Panama based on the 1903 treaties:

My Government recognizes that differences will inevitably arise between even the friendliest nations, and believes that these differences must be discussed thoroughly and frankly, in order to clarify the interests and attitudes of both parties. It seems clear, therefore, that when two friendly nations are bound by treaty provisions which are not fully satisfactory to one of the parties, arrangements should be made to permit qualified representatives of both nations to discuss these points of dissatisfaction with a view to their resolution.

President Johnson had to deal with riots brought about by another flag-raising incident. The issue even went to the Organization of American States and the United Nations. He said of the canal and the treaties:

[The] life (of the Canal) is now limited. The canal is growing old, and so are the treaties for its management, which go back to 1903.

My Advisers have recommended that we should propose a new treaty for the existing canal. After careful review with my senior advisers, I have accepted this recommendation.

* * * * * * *

These changes are necessary not because of failure but because of success; not because of backwardness but because of progress. The age before us is in an age of larger, faster ships. It is an age of friendly partnership among the nations concerned with the traffic between the oceans. This new age requires new arrangements.

The strength of our American system is that we have always tried to understand and meet the needs of the future. We have been at our best when we have been both bold and prudent in moving forward.

President Nixon proceeded with negotiations begun under Johnson and noted:

The world has changed radically during the 70 years this treaty has been in effect. Latin America has changed. Panama has changed. And the terms of our relationship should reflect those changes in a reasonable way.

For the past nine years, efforts to work out a new treaty acceptable to both parties have failed. That failure has put considerable strain on our relations with Panama. It is time for both parties to take a fresh look at this problem and to develop a new relationship between us—one that will guarantee continued effective operation of the Canal while meeting Panama's legitimate aspirations.

III. TOUGH ISSUES

I would like to address the four major issues which I believe confront this body as we draw to a close on this most important and, I believe, well executed debate. In answering these issues, each Senator will determine how he views the facts and how he views the future.

These major points are:

Our defense considerations;

The provisions for a new canal;

The economics of the treaty; and

The ability of Panama to operate the canal.

1. DEFENSE

The primary concern in my mind is defense.

This centers on keeping the canal open which has been and is our primary national interest in Panama.

As President Nixon stated:

It is time for both parties to take a fresh look at this problem and to develop a new relationship between us—one that will guarantee continued effective operation of the Canal while meeting Panama's legitimate aspirations.

The Neutrality Treaty which we have hammered out goes a long way to resolve many defense concerns. Indeed, there are several improvements over the current treaties.

The treaty provides that the canal remain neutral permanently and this is part of a separate treaty independent of the business parts of the Panama Canal Treaty. This concept has been in every treaty governing the isthmus since 1846 and secures our primary interest that the canal be open and that we be free to insure that fact.

The Neutrality Treaty improves our situation over the past and is an advance for U.S. foreign policy.

Under the 1936 Treaty, defense of the canal had to be undertaken after consultation with Panama. The new treaty leaves the

determination of the need for action to each of the parties. The 1903 and 1936 treaties were vague on the rights of warships, while the new treaty is specific on the rights of U.S. warships to go to the head of the line. The earlier treaties were vague and employed many of the terms of international law; the new treaty is specific and uses the language hammered out by the President and the Congress.

I believe that the Neutrality Treaty satisfies the major concerns I have about defense.

The Panama Canal Treaty:

I feel that the treaty before us now has some advantages for the United States and Panama in the area of defense. Let me be specific.

The Panama Canal Treaty insures that for the next 22 years the United States, in no uncertain terms, has primary responsibility for the canal. As General Torrijos said after the September 7 signing:

> We are now under the protective umbrella of the United States.

In addition, the new treaty contains a status of forces agreement which we have not had in the past. This agreement spells out the relationship of the U.S. military personnel outside of the Canal Zone with Panama for the next 22 years and is an important improvement.

The treaty also creates a combined board to regulate military concerns such as coordinated defense of the canal. I believe that it is clear that this board is a mechanism for coordination; it is not a joint command which would deny the United States the right to act independently.

Taken as a whole and in conjunciton with the Neutrality Treaty, I believe that our defense intersts are insured by the new agreements. As a member of the Armed Services Committee, I sat through many hours of discussion and open debate over the merits of the treaty. On the whole, the discussion impressed me as favoring the new treaties insofar as military considerations are involved.

2. SEA LEVEL CANAL

There has been concern expressed about the Panama Canal Treaty's provisions for a new canal. The treaty provisions for a new canal. The treaty provides that the parties should jointly undertake a study of the feasibility of a new canal or a third set of locks. I believe that all the Senate agrees on the merit of this provision.

The treaty also provides that no canal should be built in Panama without the agreement of the United States. It also states that the United States should not negoiate with any other country to build a canal unless the parties otherwise agree. These provisions reflect the basic reality that there really is no other route for a canal. A $20 million study by the Presidential Inter-Oceanic Canal Study Commission came to just that conclusion a few years ago. In short, the new treaty simply states the obvious.

We have just accepted a reservation which directs the United States to waive its rights under article XIII by agreement with Panama. I am not adverse to this idea, although I believe it is a bit unnecessary.

3. ECONOMICS OF THE CANAL TREATY

I believe that some of the most important debate has taken place over the economic provisions of the second treaty.

The treaty provides for an increase in the payments made to Panama out of canal revenues, which has been long overdue. In addition, it provides for an additional payment if profits are high enough, an incentive for the Panamanians to keep the canal in smooth working order for the next 22 years.

I believe that the statement of Senator Muskie on the 28th of February answers many of the questions which have been posed about the economics of the treaty. In that address he spoke fairer compensation to Panama with which I fully concur. The time has come to work more closely with our neighbor. The study conducted by the Budget Committee, chaired by Senator Muskie bear out his conclusions that the canal can provide sufficient revenue under raised tolls to meet the commitments undertaken by these treaties.

Payments for pensions and retirement plans and a reduction of costs by military consolidation were all dealt with ably by the Senator at that time.

Since February 28, we have seen many attempts to find any minor flaw in the treaty insofar as money is concerned. I can only say that the basic analysis of Senator Muskie still stands and I have faith in the work of the Budget Committee on this point. Second, I am sure that there are some flaws in any treaty, but none has been pointed out to me which would constitute sufficient cause to reject the entire package.

As I understand it, most of the costs incurred under these treaties will be handled by canal tolls and ordinary customary loans from internation development bodies will be sought. I believe that to be satisfactory.

For the United States, it appears that we are running no loss to our own economy. The canal's use has been diminishing constantly and less than 1 percent of our GNP goes through the canal today. I do not believe we are going to hurt this way.

4. CANAL OPERATION BY PANAMA

I am confident after visiting the Canal Zone and Panama in 1976 that the Panamanians can do the job. At present, they fill 80 percent of the canal jobs and I believe that the plans for training in the next 22 years will assure efficient canal operation. Panama's public commitment to do this is one which I believe will press them to provide the best service possible.

I fell that the same motives that prompt the Panamanians to seek control of the canal will likewise press them to keep the canal open and in good working order.

IV. CONVICTIONS

Let me address this body on some of the overall questions with which I have struggled during the course of the debate. I believe that in the answer to each of these questions, we can find the guidance for the decisions we must undertake here.

NATIONAL INTEREST

The first and most important question is whether the treaties signed by the President are in the best national interest of the United States. National interest is a vague term and many people give it a different content. I mean by the national interest decisions to which we are ready to make a commitment and which are vital to our national survival.

The statements by the distinguished majority and minority leaders before the passage of the Neutrality Treaty convinced me that they believe in these treaties and that the treaties will enhance the position of the United States in the world.

The change in relations between our two countries is vital to Panama's national interest as well. We have genuine interests in Panama and Panama must be aware of that. We have an obligation to see that the treaties we send to Panama are realistic and do not unduly infringe upon the national aspirations of Panama.

It is my reponsibility to my State of North Carolina to insure that the national interest of the United States is furthered by what we do here and I believe that these treaties, yet to be finalized go a long way in that direction.

RETREAT BY THE UNITED STATES

Is this effort a retreat for the United States?

Many among the American people fear that after Vietnam and inaction in Africa, we are retreating and pulling out of world affairs. Mr. President, no vote will ever be cast by this Senator which represents a retreat for our good and great country.

I have been against the pullout from Korea, I have been for a strong defense and in particular the B–1 bomber, I have expressed my fullest support for our friends in the Mediterranean and in particular our most important commitment in Israel. Commitment is a crucial word to me and I feel that five American Presidents have been committed to improving our relationship with the Republic of Panama, one of our best friends in Latin America. To cooperate with a friend and to honor a commitment is in no way retreat. It is the most direct sign a nation can give of its greatness.

Our greatness is not diminished by signing a treaty with Panama. It is enhanced by the demonstration of our moral will to deal fairly with even the smallest of countries.

THE FUTURE

During the course of the debate, we have all been asked to speculate about the future. I believe that after the extensive hearings before the Foreign Relations Committee and the investigations of the Armed Services and Intelligence Committees on which I sit, we have the best information before us. On the basis of that information, we are asked to cast our gaze toward the future. Senators on both sides of this issue have expressed their sincere concern for the possible repercusions of these treaties. Thousands of my constituents have addressed their fears and uneasiness about these new arrangements to me while others have expressed their great hope for the future. There has been a great outpouring of

concern by the American people on this issue. Speculating about the future is always difficult.

I guess that I am an optimist. I believe that the future can best be served by the new treaties and the arrangements contained in them.

For the future, I believe we can see three possible benefits with Panama, there should be improved relations, a better guarantee that the canal will remain open and more stability for Panamanian politics. In Latin America, I believe we will see improvement in our relations with many states. Some will continue to be antagonistic, but for our friends this action will be a strong tool for them to resist Communist pressures within their own governments. In the world, I believe we will acquire the image of a great and moral country, one which practices what it preaches. To the small countries of Latin America, Asia, and Africa, we will stand as an alternate world to do the neocolonialism of the Soviet Union—a friend with whom one can work freely, not as a shackled slave.

We can always expect the worst and often we are not disappointed. On the whole, I believe that this body has taken into account as many possibilities as is humanly possible. At some point, with the debate as extensive as it is, the issue becomes a matter for the exercise of judgment, discretion, and experience. For myself, I believe that the future will be better served by the new treaties. These treaties are no panacea. Treaties are only as good as the commitments made to them. I would caution against too much optimism or too much pessimism. We need a realistic view of the future and of what we can achieve.

IS THIS THE BEST COURSE?

Let me conclude that I believe that the course we are taking is the best one for our cuntry. I am guided by the words of Lyndon Johnson who said of the Panama situation:

> These changes are necessary not because of failure but because of success; not because of backwardness but because of progress. The age before us is an age of larger faster ships. It is an age of friendly partnership amoung the nations concerned with the traffic between the oceans. This new age requires new arrangements.
>
> The strength of our American system is that we have always tried to understand and meet the needs of the future. We have been at our best when we have been both bold and prudent in moving forward.

President Johnson set forth the challenge for all of us, that is to act with courage and with foresight. As men and women entrusted with the burden of making decisions for the the future, we must utilize all the abilities at our command and act to protect and degend the interests of our great land. I plan to do no less.

Mr. MATSUNAGA. Will the Senator from North Carolina yield?

Mr. MORGAN. I am delighted to yield.

Mr. MATSUNAGA. I wish to congratulate and commend the Senator from North Carolina (Mr. Morgan) for the courageous position he has taken. The Senator, being from the State that he comes from, where sentiment was overwhelmingly against the treaty, nevertheless took his position from the very beginning. That took a lot of courage. Now, the sentiment is going the other way and the polls indicate that the American people today favor the treaties.

The Senator from North Carolina (Mr. Morgan) can take much of the credit for it, because it was his courage that took him into his own State, as well as to other States by voice over national radio, and helped to convince the American people that what the Senate, at least two-thirds of the Senate, is attempting to do is the right thing to do.

Through the leadership of Senators like the Senator from North Carolina, I think we have convinced the people that it is much more important to the United States that we look upon ourselves as a Nation which strives to that which is right. We know that we have the greatest Nation on Earth. We know that we are the strongest on Earth. But we must use that strength in order to do that which is right and we are striving to do that which is right.

Again, I congratulate and commend the Senator from North Carolina for the leadership he has shown in this matter.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senator from Florida (Mr. Chiles) be made a cosponsor of our reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. I commend the Senator from North Carolina. We have very little time and I hope he will continue after these two rollcalls.

I think the great disadvantage of this debate is that discussion of something so important as the Panama Canal Treaty has been disjointed. Here we have one of the most comprehensive, cogent statements I have heard on the subject of the Panama Canal treaties. I congratulate Senator Morgan, and I hope he will continue, because I shall have more to say on what he has said after these two rollcalls.

Mr. MORGAN. I thank my distinguished colleague.

Mr. CHURCH. Mr. President, I merely want to join in complimenting Senator Morgan for what I think is an exceptionally fine address. Though I was not actually in the Chamber. I was in the majority leader's office and I listened to him over the loudspeaker. I want him to know that I think he has taken an admirable stand and he has explained his position so lucidly that I am sure it will be taken to heart by the people he represents in his great State.

Mr. MORGAN. I thank my distinguished colleague.

Mr. President, in the 1 minute I have remaining, let me say that the founders of this great country of ours, in providing that treaties should be ratified by the Senate, understood that in dealing in foreign affairs, the issues would not always be easy and that, sometimes, the Members of the Senate would have to take stands that might appear to be contrary to popular opinion. That is why they provided that those of us in the Senate, who have 6-year terms, would be able to study the issues in depth. That is what Mr. Madison was writing about when he wrote the 75th Federalist papers.

I think, Mr. President, that that is our responsibility in the Senate. I shall try to continue my remarks after the votes.

The PRESIDING OFFICER. The hour of 5 p.m. having arrived, the question is on agreeing to amendment No. 99.

Mr. HOLLINGS. Do we have the yeas and nays?

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, for the information of the Senate, the leadership supports both of these reservations.

It is my understanding that the yeas and nays have not been ordered. I ask for the yeas and nays on both votes.

The PRESIDING OFFICER. Is there objection to ordering them on both votes on one motion?

Without objection, it is so ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Louisiana. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. Biden), the Senator from Mississippi (Mr. Eastland), the Senator from Maine (Mr. Hathaway), the Senator from Rhode Island (Mr. Pell), and the Senator from Connecticut (Mr. Ribicoff) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pell), and the Senator from Connecticut (Mr. Ribicoff) would each vote "yea."

Mr. BAKER. I announce that the Senator from Alaska (Mr. Stevens), and the Senator from Wyoming (Mr. Wallop) are necessarily absent.

I further announce that the Senator from Kansas (Mr. Dole) is absent attending the funeral of a relative.

I further announce that, if present and voting, the Senator from Alaska (Mr. Stevens) would vote "yea."

The result was announced—yeas 65, nays 27, as follows:

[Rollcall Vote No. 99 Ex.]

YEAS—65

Allen	Hatch	Nunn
Baker	Hatfield, Paul G.	Packwood
Bartlett	Heinz	Pearson
Bayh	Helms	Percy
Belimon	Hodges	Proxmire
Bentsen	Humphrey	Randolph
Brooke	Inouye	Roth
Bumpers	Jackson	Sarbanes
Burdick	Johnston	Sasser
Byrd, Harry F., Jr.	Laxalt	Schmitt
Byrd, Robert C.	Long	Schweiker
Cannon	Lugar	Scott
Chiles	Magnuson	Sparkman
Church	Mathias	Stennis
Curtis	Matsunaga	Stone
Danforth	McClure	Talmadge
DeConcini	McIntyre	Thurmond
Domenici	Melcher	Tower
Eagleton	Morgan	Weicker
Ford	Moynihan	Young
Garn	Muskie	
Goldwater	Nelson	
Hansen		

NAYS—27

Abourezk	Gravel	Kennedy
Anderson	Griffin	Leahy
Case	Hart	McGovern
Chafee	Haskell	Metzenbaum
Clark	Hatfield, Mark O.	Riegle
Cranston	Hayakawa	Stafford
Culver	Hollings	Stevenson
Durkin	Huddleston	Williams
Glenn	Javits	Zorinsky

NOT VOTING—8

Biden	Hathaway	Stevens
Dole	Pell	Wallop
Eastland	Ribicoff	

So amendment No. 99 of the Senator from Louisiana was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to vote on reservation No. 14. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

[Mr. Burdick assumed the chair.]

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. Biden), the Senator from Mississippi (Mr. Eastland), the Senator from Maine (Mr. Hathaway), the Senator from Rhode Island (Mr. Pell), and the Senator from Connecticut (Mr. Ribicoff) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pell) and the Senator from Connecticut (Mr. Ribicoff) would each vote "yea."

Mr. BAKER. I announce that the Senator from Alaska (Mr. Stevens) and the Senator from Wyoming (Mr. Wallop), are necessarily absent.

I also announce that the Senator from Kansas (Mr. Dole) is absent to attend the funeral of a relative.

I further announce that, if present and voting, the Senator from Alaska (Mr. Stevens) would vote "yea."

The result was announced—yeas 90, nays 2, as follows:

[Rollcall Vote No. 100 Ex.]

YEAS—90

Abourezk	Bentsen	Case
Allen	Brooke	Chafee
Anderson	Bumpers	Chiles
Baker	Burdick	Church
Bartlett	Byrd, Harry F., Jr.	Clark
Bayh	Byrd, Robert C.	Cranston
Bellmon	Cannon	Culver

Curtis	Inouye	Pearson
Danforth	Jackson	Percy
DeConcini	Javits	Proxmire
Domenici	Johnston	Randolph
Durkin	Kennedy	Riegle
Eagleton	Laxalt	Roth
Ford	Leahy	Sarbanes
Garn	Long	Sasser
Glenn	Lugar	Schmitt
Goldwater	Magnuson	Schweiker
Hansen	Mathias	Scott
Hart	Matsunaga	Sparkman
Haskell	McClure	Stafford
Hatch	McGovern	Stennis
Hatfield, Mark O.	McIntyre	Stevenson
Hatfield, Paul G.	Melcher	Stone
Hayakawa	Metzenbaum	Talmadge
Heinz	Morgan	Thurmond
Helms	Moynihan	Tower
Hodges	Muskie	Weicker
Hollings	Nelson	Williams
Huddleston	Nunn	Young
Humphrey	Packwood	Zorinsky

NAYS—2

Gravel	Griffin

NOT VOTING—8

Biden	Hathaway	Stevens
Dole	Pell	Wallop
Eastland	Ribicoff	

So reservation No. 14 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the reservation was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. (Mr. Chiles). The Senator from Illinois.

Mr. PERCY. Mr. President, when I returned from a visit to the Canal Zone in company with some of my colleagues in January, I said at that time I would not vote to ratify the Panama Canal Treaties as they had been signed by President Carter and General Torrijos because they were flawed in a way subsequently acknowledged by the President.

Not satisfied with the clarification that was not legally binding, the Senators and I decided, and the leadership did, that the Neutrality Treaty itself would have to be amended to provide for the United States right to defend the canal against any aggression and to guarantee that U.S. warships in time of emergency can go to the head of the line and pass through the canal.

Now that these amendments have been incorporated, I support ratification of the treaty. With these amendments I believe the treaties serve the best interests of our country.

Nevertheless, our work will not be complete when we vote on the treaty on Tuesday. There will still be the implementing legislation to consider. In the context of the implementing legislation I shall

want to pursue the concern I have already expressed about costs to the U.S. Government under this treaty.

Mr. President, there are on the floor of the Senate at this time members of the Armed Services Committee and members of the Committee on Foreign Relations who heard testimony on these treaties.

The Armed Services Committee clearly pointed out in their subsequent report that there would be a cost in excess of some $700 million to the Treasury of the United States and to the American taxpayers under the present plan.

Now, this cost is not of payments being made to Panama. They would not receive a penny. The only payments they will receive come from toll revenue. But the costs to the American taxpayer would be costs that were real costs in the form of interest income that would have to be given up and the cost of early retirement for civil servants, just to mention two items.

It is my firm belief that a significant percentage of these costs can be offset by higher tolls over the next 22 years, and I submit to my colleagues that this is a better way to deal with the costs than appropriating taxpayers' funds or just writing off canal revenues, which until now have gone to the U.S. Treasury.

Today I am providing further data on how the cost of the treaty to the American taxpayer can be reduced when the implementing legislation is considered by Congress.

Using the figures developed by the Senate Budget Committee and the Congressional Budget Office, it is presently estimated that the cost to the Government over the life of the proposed treaty is likely to be about $700 million more than it would under the revised 1903 treaty. One large component of this total is $276 million for a civil service early retirement system for eligible employees of the canal enterprise, figured to be $9.2 million per year over 30 years. The other involves the loss of an annual interest payment to the U.S. Treasury at a current rate of about 6.3 percent on the U.S. investment in the canal now about $20 million per year. The administration intends to recommend that this annual interest payment not be continued.

I have expressed my very strong objection to this to the State Department. I think it is a case of overlooking the fact that $20 million is a lot of money, and that is a cost to the American taxpayer, if that interest income is given up. It is my strong feeling that any actual loss of revenue to the U.S. Treasury should be reviewed as a true "cost" of the revised treaties.

The United States historically has operated the Panama Canal at tremendous benefit to the public by generally setting tolls just to cover operating costs. We have in a sense been subsidizing the canal users for 64 years. In real terms, toll rates for use of the canal are actually lower today than they were in 1914. No attempt was made to reap the kind of revenues which the canal would have been perfectly capable of generating, and which could have added hundreds of millions of dollars to the U.S. Treasury.

This was done by the Panama Canal Company with the full concurrence and support of the President of the United States, the executive branch of the Government, and the Congress of the United States. It was a policy that we had adopted, and it was one

of the benefits that the world experienced as a result of the operation and ownership of the canal by the United States. This was our contribution to world trade.

But the rules of the game are being changed now. World opinion and a good bit of American public opinion feel that the injustices to Panama over a period of almost three-quarters of a century should be rectified. A nation that still today, after four upward revisions, still only receives less than 1 percent of the toll revenue raised by the Canal Company is not, in my opinion, being adequately compensated for a swath being cut right through the center of that country, as has been described so many times on the floor of the Senate.

We have now 22 more years during which the United States will operate the canal, but because of these treaties we have an additional cost to bear of some $700 million. As Everett Dirksen said on the floor of the Senate, and I repeated his comment earlier today, "A billion here and a billion there, and pretty soon you are talking about real money." Some $700 million, in my way of thinking, is enough money to be concerned about, and we have enough time to do something about it.

I would think, in a spirit of partnership, it would be our objective to increase revenues to cover as much as possible of those contingency payments. Even though they are not required, they are an expectation and a hope, and certainly the 65 nations using the canal, and the shippers of those nations, can afford to pay a reasonable increase and a reasonable toll so as to meet the expectations and needs of Panama as well as the liquidation expenses and costs to be borne by the United States.

Under the new treaty, Panama will receive a substantial payment from revenues in recognition that Panama's chief natural resource is its geographical feature which allows it to be a gateway between the Pacific and the Caribbean. Even today, after four upward revisions in payments to Panama since the original treaty, Panama receives annuities which represent less than 1 percent of gross revenues of the canal.

I believe that changing the present arrangements with Panama so that they have a greater stake in the canal is fair and just, and also serves our interest by giving Panama a real incentive to keep the canal open, secure and operating efficiently.

At the same time, I think it is reasonable to propose that the U.S. taxpayer not be asked to bear all the costs associated with the changeover of the control of the canal without serious consideration of alternatives. In the same way that annuities to Panama will be figured into the toll formula as operating costs, we should in the implementing legislation, direct that the maximum possible of U.S. costs of the changeover be met through tolls. From a business point of view, this means we are trying to minimize costs to the taxpayer by taking reasonable advantage of the revenue-producing capacity of the canal—particularly in the early years, when we are most confident about its ability to generate revenues in excess of expected operating costs.

Naturally, there are some disadvantages to such an approach. Higher tolls could reduce traffic from what it would be if tolls were increased more gradually.

This approach also will not appeal to some special interests. Some shipping lines would be affected more than others. Any decreases in traffic as a result of toll increases will adversely affect Panama's annuities based on tonnage. However, any loss of tonnage payments, particularly in the early years, would not be large, and could be offset through contingency payments to Panama, provided for in the revised treaties, from canal operating surpluses gained from a higher toll rate increase.

But this approach does have the clear advantage to us of having the adjustment costs shared by the actual users of the canal who receive direct benefits instead of being borne by the American taxpayer who only indirectly benefits—if at all. If, as I believe, this treaty will serve the interests of all nations in having a secure and open canal, then it is only reasonable that we ask the other user nations to share in the costs of protecting these interests.

Let me make clear that I am not sugesting that whatever we may choose to do be made part of the treaty through understandings or amendments. These issues are a matter of our own legislative prerogatives, and therefore should be dealt with in the legislation implementing the treaties. We will want to evaluate the various cost components and thoroughly consider the complex economics when deciding on what the toll formula will contain. We can also use the opportunity to look for more effecient ways of operating the canal. And we will want to closely consult with Panama in the spirit of our newly revised partnership.

I am suggesting that when the time comes, there will be options open to us regarding how we deal with the costs. We can decide exactly how much of the costs we may want to meet through tolls.

There is general agreement that tolls can and will be raised at the outset of the treaty period to cover the new annuities to Panama. The most recent study we have available, prepared by Arthur Anderson & Co., of cash requirements for running the canal under the proposed treaty, including the annuity payments to Panama, indicated that toll increase of 19 to 27 percent will be required at the outset for the first few years of the treaty. These calculations do not, I should point out, include continuance of the interest payments to the U.S. Treasury, nor would they attempt to assure payment to Panama of the $10 million contingent on surplus revenues. For purposes of our discussion, let us use a 25-percent figure.

According to the most current study available on toll revenues, perpared by Dr. Ely Grandes and Randall Chun of Internatinal Research Associates, a 25-percent toll increase would bring in about $47 million more than current toll rates would in the first year it was applied.

This $47 million is about equal to the additional revenue the Arthur Anderson study indicates that the Panama Canal Commission will need during the first year of operations under the new treaty.

Based on all the studies of future canal costs and revenue potentials, I believe that the toll levels can be set in such a way to not only cover the new annuities to Panama, but also to offset 75 to 80 percent of the potential costs to the U.S. taxpayer, without unduly affecting the long-term traffic patterns or economic viability of the

Panama Canal. Let me outline such a program, with the proviso that the numbers I use should be considered preliminary and subject to further detailed analysis.

Let us begin with a 54-percent toll increase, insteasd of the 25-percent increase currently planned. This would, in the first 7 years of the treaty (including 1985) yield an additional $271 million in revenue over the 25 percent increase, with the largest increments occurring in the earliest years. I would suggest that this additional revenue, and that which would accrue beyond 1985, be used to insure the payment of all civil service early retirement adjustment costs, continuation of the interest payment to the Treasury—although on a reduced base as explained later—and to assure sufficient payment from the surpluses to Panama to offset any loss in the 30-cent-per-canal-ton annuity payment. This loss is the result of the decrease in traffic (about 8 percent by 1985) as a result of a 54-percent increase as opposed to a 25-percent increase.

Mr. President, I ask unanimous consent that three tables which are pertinent to my remarks be printed in the Record at this point.

There being no objection, the tables were ordered to be printed in the Record, as follows:

TABLE I.—EFFECTS OF TOLL INCREASES ON REVENUE

	1979	1980	1985	1990
TOTAL REVENUE (THOUSANDS)				
Percent increase in tolls:				
0	$194,044	$197,485	$209,933	$223,631
25	240,873	243,392	251,090	267,572
50	280,943	281,993	278,954	297,304
54	286,539	287,325	282,186	300,796
INCREASES IN REVENUE (MILLIONS)				
Comparison of toll changes:				
25 percent compared to 0	46.1	45.9	41.2	43.9
50 percent compared to 0	86.9	84.5	69.0	73.7
54 percent compared to 0	92.5	89.8	72.2	77.2
50 percent compared to 25 percent	40.1	38.6	27.9	30.0
54 percent compared to 25 percent	45.7	43.9	31.1	33.0

Source: Brandes, Ely M.; Panama Canal Traffic and Reserve Study: 1978–2000; International Research Associates, January 1978; tables 34–7, pp. IV–29–32.

TABLE II.—EFFECTS OF TOLL INCREASES ON PANAMA CANAL NET TONS TRANSITING CANAL

	1979	1980	1985	1990
TOTAL NUMBER PANAMA CANAL NET TONS TRANSITING CANAL (THOUSAND NET PCT'S)				
Percent increase in tolls:				
0	155,235	157,988	167,946	178,904
25	154,159	155,771	160,698	171,246
50	149,386	150,396	148,775	158,562
54	149,311	150,308	148,622	158,404
DECREASE IN NET PCT'S TRANSITING CANAL (MILLIONS NET PCT'S)				
Comparison of toll changes:				
25 percent compared to 0	1.1	2.2	7.2	7.7
50 percent compared to 0	5.8	7.6	19.2	20.3
54 percent compared to 0	5.9	7.7	19.3	20.5
50 percent compared to 25 percent	(−3)4.8	(−3)5.4	(−7)11.9	(−7)12.7
54 percent compared to 25 percent	(−3)4.8	(−4)5.5	(−8)12.1	(−8)12.8
Loss in $0.30 PCT annuity to Panama resulting from 54 percent toll increase compared to 25 percent toll increase (millions)	$1.4	$1.7	[1] $4.0	[1] $5.6

[1] Based on 5 percent annual increase in wholesale price of manufactured goods index.

Source: Brandes, Ely M.; Panama Canal Traffic and Reserve Study: 1978–2000; International Research Associations, January 1978; table 38, p. IV–34.

TABLE III.—POSSIBLE USE OF ADDITIONAL REVENUE GENERATED BY A 54-PERCENT TOLL INCREASE

[In millions]

Item	1979	1980	1981	1982	1983	1984	1985	1990
Additional revenue from a 50-percent toll increase over that of a 25-percent increase	$45.7	$43.9	$41.3	$38.8	$36.2	$33.7	$31.1	$33.0
Projected contingency payment—offset of loss in traffic-based annuity plus $2,000,000	3.4	3.7	4.2	4.7	5.1	5.6	6.0	7.6
Remainder	42.3	40.2	37.1	34.1	31.1	28.1	25.0	25.4
Interest payment to Treasury	18.3	18.3	18.3	18.3	18.3	18.3	18.3	18.3
Remainder	24.0	21.9	18.8	15.8	12.8	9.8	6.7	7.1
Payment to civil service for early retirement benefits	9.2	9.2	9.2	9.2	9.2	9.2	9.2	9.2
Additional revenue available to establish civil service early retirement reserve fund to be invested at 6 percent minimum interest	15.8	12.7	9.6	6.6	3.6	.6	—2.5	—2.2

Mr. PERCY. In figuring the offset of tonnage-based revenue loss of Panama, with whom, after all, we are trying to forge a positive relationship, I have estimated the likely loss in revenue and added, above that, about $2 million per year to give some reasonable assurance to Panama.

Of course there can be no iron-clad guarantee to Panama that contingency payments will be made, since they are not required to be made under the treaty. We should, however, demonstrate our good faith by directing that revenues should be created to provide this offset.

I have then provided for an annual interest payment to the Treasury, because as I stated earlier, I view the loss of the interest payment as a cost of the treaty.

In the early 1950's, partly because the canal was for the first time consistently producing revenue over and above cost, the Bureau of the Budget placed a valuation of $373 million on the assets held by the Panama Canal Company as of June 30, 1951, and determined that the Canal Company should, when revenues permitted, pay the Treasury Department interest on that property. The interest level was based on a computed average effective

coupon rate borne by all marketable Treasury bonds outstanding as of July 31 of each year.

Over the years, the original base figure of $373 million has been reduced, for three basic reasons: First, as a result of the 1955 treaty, about $23 million of this property was transfered to Panama. I should note that at that time the United States requested no compensation from Panama for the transfer. Second, over the years, the Panama Canal Company occasionally had revenues beyond those needed to pay interest. These funds were used to pay off some of the principal to the Treasury. Such payments of principal have amounted to $40 million since 1955. Finally, there have been several transfers of property between the Panama Canal Company and other U.S. Government agencies, particularly the Department of Defense, which have resulted in changes in the principal on which the Panama Canal Company pays interest.

The interest payment to the Treasury will amount to $20.1 million in fiscal year 1978.

However, annuity payments Panama now receives from the U.S. Government under the present treaty of $1.8 million (the Panama Canal Company pays an additional $.5 million a year) will cease under the new treaty. I see this as a real cost savings. Figuring in this saving, net revenues to the Treasury will amount to $18.3 million in fiscal year 1978. This $18.3 million interest payment is the figure I use in my calculations.

Upon implementation of the treaty, property valued at about $92 million will be turned over to Panama, reducing the principal on which interest has been paid in recent years from $319 million to about $227 million. If the payments to the Treasury were to be continued at the present interest rate (6.3 percent) on the reduced amount of property, the annual payment to the U.S. Treasury would drop to $14.3 million per year—in effect a loss of $4 million as result of the new treaty. Therefore, I suggest the following adjustment: I would propose that the interest rates be adjusted to reflect the current average cost of notes to the Treasury of a 12-year-or-greater maturity. This rate is currently about 8⅛ percent. On a principal of $227 million, this would produce an annual revenue of $18.4 million a year, or about the current level of Treasury income.

Even after deducting the $18.3 million from the additional revenues accrued from the 54 percent toll increase, and the offset contingency payment to Panama, there would still be a sizable flow of income, starting at $24.0 million the first year and flattening out to between $6.7 and $7.1 million by 1985–90. This income flow can be used to cover all of the additional civil service early retirement costs caused by the treaty.

The Civil Service Commission estmates the unfunded liability of these costs at $148 million, which under its normal procedures would be amortized over a 30-year period with annual payments of $9.2 million per year. Over 30 years, this amounts to a total dollar outlay of $276 million.

In the first 6 years of the treaty, the income from a 54 percent toll increase over and above the amounts needed for canal costs, regular annuities, payments to the Treasury, and a projected contingency annuity, would still exceed $9.2 million per year. These

surplus funds could be deposited into a civil service early retirement reserve fund. Assuming a conservative return to this fund of 6 percent per year, over the 6 surplus years this fund would grow to about $62 million. In ensuing years, interest payments earned by the fund would be adequate to make up any shortfalls in annual revenues needed to meet the $9.2 million annual payment for early retirement costs. When the treaty terminates at the end of 1999, the fund would still have about $90 million (interest payments to the fund would exceed the annual outlay needed to top off income from tolls), which is more than adequate to fund the $8.2 million annual payment for an additional 9 years.

To summarize, I have suggested a program which generates $384 million in revenue, and thereby covers $276 million in projected civil service early retirement costs, and allows interest payments to the Treasury to continue over the life of the treaty at an $18.3 million level. This would leave us with a one-time appropriation for military consolidation of $43 million and an annual expense of $1 to $4 million in schooling and hospital costs for U.S. employees of the canal.

This seems to me—and I think will seem to the taxpayer—to be a reasonable package and a far better prospect than they now have if they face an added cost over the next 22 years of $700 million from the U.S. Treasury.

Naturally, there are many other options to choose from, depending on the level of toll increase deemed acceptable and the specific transition costs which we wish to offset through those increases.

The program I have outlined is based on the best projections we now have available. In the future should some unanticipated developments occur in the world economy or transport technology which would call into question the financial viability of the program I have outlined, then adjustments would have to be made. Likewise, over the next 22 years an event may occur that would allow the canal to generate more revenue than is now anticipated and thus permit the covering of all U.S. transition costs. This degree of uncertainty would, of course, also hold true under the present arrangements for running the Panama Canal. We must maintain flexibility. After all, the primary U.S. economic interest regarding the canal is that it continue to be an economically viable enterprise serving our own, Panamanian, and world commerce.

I would also like to clarify one other major point. The Brandes study, and my proposed system, are based on how world commerce would react to a single toll change based on current conditions. Future increases will be necessary to offset inflation. Insofar as inflation affects the cost of canal operations more or less equally as it affects alternatives to the canal, such periodic adjustments should be possible without damage to current traffic patterns, and in such a way so as to preserve the kind of real revenue projections made in the Brandes study and my examples.

Quite frankly, as a former businessman, I think I have only scratched the surface of what might be possible if we truly allow the Panama Canal Commission to conduct its operations like a business. For example, the Panama Canal Company is currently required to maintain a balance of about $45 million in the U.S. Treasury in a noninterest paying account, as is required for all

U.S. Government corporations. This could be regarded as a subsidy to the U.S. Treasury. Considering we can hardly expect the Panamanians to follow this procedure when they manage the canal, we could in the implementing legislation allow the Commission to deposit these accounts in commercial institutions and use the revenues to meet expenses, thereby reducing the pressures on tolls or increasing revenue to further reduce costs.

I have suggested some preliminary thoughts on how, if the Congress chooses, transition costs could be dealt within the implementing legislation at the appropriate time.

I have believed, and continue to believe, that the treaties serve our most important economic, security, and political interests by assuring that the canal will be kept secure and open and operating in partnership with Panama, so long as Panama accepts the amendments and changes in the treaty language that have been adopted now by the Senate.

With regard to the long-range financial viability of the canal, we should realize that, regardless of whether there are new treaties, the expense of operating the canal can be expected to go up during the remainder of this century. Canal Zone Governor Parfitt noted in recent testimony before the Armed Services Committee that the canal would have to raise tolls in the next 10 years to cover the regular operating costs even if there were no new treaties.

In the long run, uncertainties increase. We just do not know for sure what inflation rates will be or what technological developments in transportation could occur. It would be unwise to make absolute predictions 22 years into the future. The important point is that some financial uncertainties would exist, treaties or no treaties.

Under the treaty we will have control until the end of the century in those areas where we can make a difference: Control over tolls, defense, and the important management decisions affecting canal operations.

We must also consider what costs we would incur if we reject these treaties or amend them so that they will be clearly unacceptable to Panama, which amounts to killing the treaties. I think it is crucial. Any meaningful analysis should include these costs as well.

If we reject these treaties, we had better be prepared to pay to defend ourselves against the unrest and the attacks against the canal from extremists which testimony has indicated will surely come. Just a couple of weeks ago, Gen. William Westmoreland predicted terrorist attacks against the canal if the treaties were rejected.

Even assuming that we can keep the canal open most of the time, its excellent reputation for reliability will have suffered, and any prudent shipper, importer, and exporter will think twice about using the canal. Insurance rates would certainly rise to reflect the increased risks.

General McAuliffe, commander of the U.S. Southern Command, with whom most of us have met and talked while visiting the Canal Zone, says a force level of 40,000 troops, at an annual cost of $20 million, would be needed if violence spreads from one end of the canal to the other. Even this, he warns, would not assure that we could prevent interruption of canal operations. If, in the worst

situation, there is loss of life, how do you measure these costs, much less the costs in terms of our image as a great world power and ourselves?

These costs are just as real as, and ultimately more important than, the dollar figure we eventually attach to an early retirement plan, or the value of a commissary building in the Canal Zone.

Nevertheless, we have a responsibility to the U.S. taxpayer to recover by means of toll increases as many additional financial costs as we can.

In this connection, during consideration of the implementing legislation, I intend to press for language requiring confirmation of the U.S. directors of the Panama Canal Commission, to assure that they will be sensitive to our own concern on the matters affecting taxpayer interest.

Let us approve the second treaty and deal effectively and prudently with the costs when we consider the implementing legislation.

(Senator Paul G. Hatfield assumed the chair.)

Mr. PERCY. Mr. President, as I indicated at the outset, on my return from a visit earlier this year to the Panama Canal, I would not have voted to approve or ratify or give advice and consent to the treaties assigned by the President and General Torrijos because they were flawed in two major respects, as was subsequently determined by President Carter himself. A statement from the White House, a reservation or an understanding, were not adequate to meet that situation. Amendments were required in the language of the treaty itself, amendments that provided first, for the right of first passage at the head of the line of any U.S. warship, any time it is determined that it is in our national interest for that warship to proceed. We do not have a two-ocean Navy. On occassion, we have had to move ships rapidly. No one, looking at this treaty, is going to sign, ratify, approve, or advise and consent to a treaty that will in any way endanger the security of the United States and the security of many countries that depend upon the mobility of our naval forces to provide an element of protection to them. The Senate of the United States has changed that language and we urge Panama to accept it.

We also have amended the treaty to provide that unilaterally, at any time in the determination of the United States that there is a real threat to the neutrality of the canal itself after the year 2000 into perpetuity, the United States can use its military forces to insure preservation of the neutrality of the canal. I have talked to General Torrijos, as have other of my colleagues. We have talked to other Panamanians. It is in their interest, and they know it, that as to outside intervention, the Panama Canal must be protected. They do not envision their ability at any time, probably, in the future to protect the canal against outside forces that may intervene. For that reason, I think they welcome an assurance from the United States that we feel the right for us to intervene to protect the neutrality is a right that, really, is not just protecting the interests of the United States and Panama, but of world peace as well. An amendment to that effect has been adopted and we trust that it is acceptable to the Panamanians.

The final element that I have found, as I have toured Illinois and discussed from one end of the State to the other the Panama Canal treaties and my own position on them, is a great concern that we are incurring a considerable cost that is unnecessary. The suggestion that I have provided today as to how we can recover virtually all, if not all, of that $700-million cost, I think, removes another lingering doubt in the minds of many people that this is a fair and equitable agreement. We shall be managing the canal for the next 22 years. What I urge is having the American commissioners confirmed by the Senate, so that we can impart to them our strong feeling that this arrangement is only equitable and fair when it is equitable and fair to both parties.

We have reached out to make an arrangement that is fair and will provide a sound basis for a partnership with the Republic of Panama. So, too, I think it is in their self-interest to see that we manage this canal in the next 22 years so as to produce adequate toll revenue to meet operating and transition costs and maintain it in the condition in which we feel it must be maintained so as to turn it over in absolutely perfect condition to Panama.

Finally, just one word of advice to our friends in Panama. I should like to state publicly what I said to General Torrijos and to other officials in that country. There will be many demands made upon Panama and its Government for expenses. They have costs of health, they have costs of education, they have housing costs, they have road repair costs. I urge the Government of Panama, no matter who is managing the Government at that time, to give first priority and that first priority always and forever, to the revenue necessary to maintain the canal in absolutely top-flight operating condition. This is an old canal. The equipment is old. But it has been maintained exquisitely by the U.S. Government. Its operation has been perfect and it is a miracle of engineering that must be preserved at all costs.

This is not a big bonanza, this canal. It is not a big revenue maker. The U.S. Government has never made money on the canal, nor will we even when we maximize revenue in the next 22 years. But there is enough revenue to provide some surplus over and above 100 percent of all the funds needed to maintain the canal in top operating order.

Panamanians are an intelligent, highly trained, well-educated people. Their pride in this canal will be very great, indeed. I receive every assurance from the highest levels all the way through government that they were well aware of this, that the pride they would have in this canal would induce them to take every step necessary to maintain it in perfect operating condition.

I look forward, Mr. President, should the Senate advise and consent to the second treaty tomorrow, to help work out a relationship with Panama and a partnership that will last into perpetuity.

This is a new era, a new day. It is a hard adjustment for many people emotionally. It took me a long time to come to the conclusion, using reason rather than emotion, that this was the right thing, the best thing, for the United States to do in the long run to keep the canal open and operating, and operating efficiently.

It is in that interest that I hope we will approve these treaties and that we will provide constructive oversight over the next 22

years, to insure that the basis for a strong and viable partnership is maintained.

Mr. ROBERT C. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

TIME-LIMITATION AGREEMENTS

Mr. ROBERT C. BYRD. Mr. President, I have been discussing the following request with Mr. Laxalt, Mr. Church, Mr. Baker, and others.

I ask unanimous consent that with respect to the three amendments by Mr. Brooke and a substitute by Mr. McClure, there be a time limitation, all inclusive, of——

Mr. LAXALT. In accordance with our discussions, for 10 minutes, if that is agreeable to the Senators. This would contemplate back-to-back votes.

Mr. BROOKE. Let me say to the distinguished majority leader and to our distinguished floor manager (Mr. Laxalt), I believe, certainly, within an hour, and I will try to be brief.

Mr. LAXALT. We are contemplating two rollcall votes in the package, are we not?

Mr. BROOKE. That is right. I think it would contemplate three rollcall votes. I would expect a rollcall vote on the substitute and I hope the substitute is passed, but, if the substitute is not passed, then there would be a rollcall vote on my reservation. So that would be two, and there is one second rollcall vote, a third reservation will not require a rollcall vote.

Mr. ROBERT C. BYRD. How much time?

Mr. BROOKE. Three rollcall votes, a total of 45 minutes.

I did not expect the Senator from Illinois. I thought we were going on at quarter of 6 and now we are really backed up. I would think we need no more than 30 minutes of discussion, depending on the time of the opposition.

Mr. ROBERT C. BYRD. Yes.

I ask unanimous consent that on the three amendments by Mr. Brooke and the substitute by Mr. McClure there be a total time limit for discussion of 30 minutes—how is it to be divided?

Mr. BROOKE. I yield to my distinguished colleague from Idaho (Mr. McClure) as to how much time he would need out of that.

Mr. MCCLURE. I wonder if the Senator from Idaho might have 10 minutes on the substitute to the Brooke reservation?

Mr. BROOKE. That would leave me 10 minutes on one reservation, and 10 minutes on another.

Mr. ROBERT C. BYRD. If I understand, between the two Senators, they would want 30 minutes between them.

Mr. MCCLURE. Twenty minutes between the two Senators on the reservation and substitute, and he would have 10 minutes on the other two reservations.

Mr. BROOKE. Which is plenty.

Mr. ROBERT C. BYRD. A total of 30 minutes.

And how much, I ask one of the managers of the treaty, would we be agreeable to on this side?

Twenty minutes then to the distinguished Senator——

Mr. BROOKE. We might to able to shorten that time.

Mr. ROBERT C. BYRD. All right.

Mr. PERCY. If the Senator will yield, would it be possible to have a 10-minute rollcall on any of those rollcall votes?

Mr. BROOKE. Could we back them up and have the three—well, we have to vote on the substitute.

Mr. CASE. Why not vote now and then we can have the discussion. [Laughter.]

Mr. ROBERT C. BYRD. I would suggest, if we can get an agreement on the time, we do that as of now.

Mr. BROOKE. All right.

Mr. ROBERT C. BYRD. Thirty minutes to the two Senators, the Senator from Massachusetts and the Senator from Idaho, and 20 minutes to the Senator from Maryland, on the three amendments and the substitute by Messrs. Brooke and McClure respectively.

The PRESIDING OFFICER (Mr. Leahy). Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Now, Mr. President, I ask unanimous consent that on the disposition of those amendments there be a time limitation on Mr. Helms' amendment.

Mr. HELMS. One hour, equally divided, and we will not use that.

Mr. ROBERT C. BYRD. All right.

One hour, equally divided, with respect to the amendment by Mr. Helms.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be a 30-minute time limitation with respect to an amendment by Mr. Curtis, to be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I would prefer not to take any more time and to let the distinguished Senator from Massachusetts proceed.

Mr. MCCLURE. Would the Senator from West Virginia yield for a question?

Mr. ROBERT C. BYRD. I beg the Senator's pardon.

Mr. MCCLURE. Would it be possible to ask unanimous consent that it be in order to order the rollcall votes on those reservations which the Senator from Massachusetts and the Senator from Idaho are going to offer so that we can get that ordered now?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order to ask for the yeas and nays on the amendments by Mr. Brooke and Mr. McClure and on any tabling motions that may be made with one show of seconds at this time.

The PRESIDING OFFICER. Without objection, it is so ordered. Is there a sufficient second? There is a sufficient second. The yeas and nays were ordered.

UP UNDERSTANDING NO. 26

Mr. BROOKE. Mr. President, I send to the desk an amended version of my understanding regarding foreign assistance in Panama and ask for its immediate consideration.

The PRESIDING OFFICER. The understanding will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. Brooke), for himself and Mr. Harry F. Byrd, Jr., proposes and unprinted amendment understanding numbered 26.

Mr. BROOKE. Mr. President, I ask unanimous consent that further reading of the understanding be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The understanding is as follows:

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the understanding, which is to be made a part of the instrument of ratification, that nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama".

Mr. BROOKE. Mr. President, the change from the original understanding is technical in nature, altering the term "foreign military credit sales" to read "foreign military sales credits."

This understanding states that the United States has no obligation to provide any form of foreign assistance to Panama as a result of these treaties. The foreign assistance issue is to be handled independent of the treaties and their associated documents. In addition, the intent also is to indicate to Panama that no U.S. commitment exists regarding foreign assistance as a result of the negotiations that led to these treaties.

As the Senate has already agreed to an identical understanding during its consideration of the Neutrality Treaty, I do not believe there is any need to go into the matter in any depth. I understand that the floor manager of the treaty is prepared to accept this understanding and, therefore, I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, the understanding to which the Senator addresses himself is the understanding that was added to the previous treaty. It is completely consistent and consonant not only with representations made to us by the Executive but also with our full understanding of the situation, and we therefore are happy to accept that understanding, for the reasons that the Senator has stated in his presentation with respect to it.

Mr. BROOKE. I yield back the remainder of my time.

Mr. SARBANES. Was time assigned to the reservation, Mr. President?

Mr. BROOKE. I am working under a time agreement.

The PRESIDING OFFICER. The Senator from Maryland has a total of 20 minutes.

Mr. SARBANES. With respect to all the reservations?

The PRESIDING OFFICER. With respect to all the reservations.

Mr. SARBANES. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. SARBANES. Is it possible to go to a vote at this point on this amendment to the articles of ratification in the form of an understanding, without yielding back our time that is allocated for debate on other reservations?

The PRESIDING OFFICER. If the Senator is talking about a voice vote, yes.

Mr. SARBANES. I am prepared to go to a vote. If the Chair will put the question, I think we are prepared to vote.

The PRESIDING OFFICER. The question is on agreeing to the reservation offered by the Senator from Massachusetts.

The reservation was agreed to

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the reservation was agreed to.

Mr. BROOKE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP RESERVATION NO. 27

Mr. BROOKE. Mr. President, I send to the desk an amendment to the resolution of ratification and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. Brooke) proposes an unprinted reservation numbered 27 to the resolution of ratification.

Mr. BROOKE. Mr. President, I ask unanimous consent that reading of the reservation be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The reservation is as follows:

Before the period at the end of the resolution of ratification, insert a comma and the following: "Subject to the Understanding, which is to be made a part of the instrument of ratification, that before the first date of the three-year period beginning on the date of entry into force of this Treaty and before each three-year period following thereafter, the two parties shall agree upon the specific levels and quality of services, as are referred to in Article III, Paragraph 5 of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of such canal operating areas and such housing areas referred to in Article III, Paragraph 5 of the Treaty. If payments made under Article III, Paragraph 5 of the Treaty for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, of any costs of services disputed by the two parties pursuant to the reexamination of such costs provided for in this Understanding."

Mr. BROOKE. Mr. President, this understanding relates to the $10 million annual payment to Panama for services it is to provide to the Commission as anticipated in paragraph 5 of article III of the treaty. It replaces the previous understanding I submitted for Senate consideration on the matter. I am joined by Senator Harry F. Byrd, Jr., in offering this understanding.

As became apparent during hearings on this treaty and our consideration of it during the past month, a great deal of ambiguity existed regarding this payment for services. Estimates of the actual costs of the anticipated services in each of the initial 3 years the treaty would be in effect ranged from $4.4 million to $10 million or more. No provision existed in the treaty to insure that the quality of the services would be commensurate with need and stipulated payment. Nor was any attention given to establishing a procedure

by which differences between the two parties regarding cost and quality of services could be settled in a reasonable way. To ignore these obvious problems would have been to tolerate unnecessarily one of several tension-producing deficiencies in this treaty. We should not do so in this instance. Thus, I am offering this understanding which, hopefully, will accomplish the following:

First, it will provide for prior agreement between the two parties as to the levels and quality of services that are to be provided by Panama to the Commission. Such prior agreement will be required before the beginning of each 3-year period set forth in paragraph 5 of article III.

Second, it will limit the services to be paid to those essential to the effective functioning of the canal operating areas and housing areas to be operated by the Commission. This limitation is necessary to avoid a situation where necessary services might be purchased during the first 3-year period the treaty would be in effect if ratified in order to avoid any controversy with Panama over whether or not the full $10 million annual payment had been earned.

Third, it provides for a mechanism by which an excess payment or an underpayment to Panama could be adjusted for in a succeeding 3-year period. Specifically, if an excess payment over actual cost of services took place in any of the first 3 years the treaty was in effect, the rate of payment during the next 3-year period would be reduced by the amount of the excess. Conversely, if an underpayment resulted a similarly appropriate adjustment would be possible. This satisfies the principal of reciprocity that should characterize treaties and insures that the United States will receive appropriate value for dollar expended.

Fourth, it provides that any disagreement between the United States and Panama regarding the legitimate costs of the services actually provided would be settled by a binding audit by an independent auditor agreed upon by both parties. This should reduce the potential for lasting friction because of disagreements on this matter.

Mr. President, if the treaty is ratified, it will be important that we have taken every reasonable step to remove as many obstacles as possible to a successful U.S. effort to manage the Canal over the next 21-year period. This understanding is offered with that in mind. It imposes a necessary discipline on both parties.

I yield to the distinguished floor manager of the bill, and I reserve the remainder of my time.

Mr. SARBANES. Mr. President, the proposal which the distinguished Senator from Massachusetts has made is an evenhanded one. It addresses that consideration, in that the audit which will be made provides and the provision covers an excess or a deficit. Therefore, I think the Senator has come forward with an evenhanded proposal.

He also directs himself to the very important question of specific levels and quality of service.

We are prepared to accept the understanding which the Senator from Massachusetts has offered.

Mr. BROOKE. Mr. President, I have asked for the yeas and nays, but I ask unanimous consent that a vote on that understanding

follow immediately the vote to be taken on the substitute motion by the Senator from Idaho (Mr. McClure) and, if necessary, on the reservation I have offered, to which that substitute will be offered.

Mr. SARBANES. Did I correctly understand the Senator to say it would be immediately after?

Mr. BROOKE. Yes.

The PRESIDING OFFICER. The Chair is a little confused. Is the Senator from Massachusetts asking for a voice vote on the reservation he has just discussed?

Mr. BROOKE. No. The yeas and nays have already been ordered. I am asking unanimous consent that the vote not occur until immediately after a vote taken on the substitute motion of the Senator from Idaho (Mr. McClure) to the reservation that I will offer at this time; and, in fact, if the substitute motion is not agreed to, that there immediately follow a vote on the reservation.

The PRESIDING OFFICER. Without objection, it is so ordered.

UP RESERVATION NO. 28

Mr. BROOKE. Mr. President, I send to the desk a reservation in the form of an amendment to the resolution of ratification and ask for its immediate consideration.

The PRESIDING OFFICER. The reservation will be stated.

The legislative clerk read as follows:

The Senator from Massachusetts (Mr. Brooke) proposes an unprinted reservation numbered 28.

Mr. BROOKE. Mr. President, I ask unanimous consent that reading of the reservation be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The reservation is as follows:

Before the period at the end of the resolution of ratification, insert a comma and the following: "Subject to the reservation that exchange of the instruments of ratification shall not be effective earlier than March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979."

Mr. BROOKE. Mr. President, this reservation relates to the linkage between the coming into effect of the Panama Canal Treaty, if indeed it does come into effect, and the necessary implementing legislation. This present version of the reservation replaces reservation No. 12 that I previously offered on this matter. Senator Heinz and Senator Harry F. Byrd, Jr., also are sponsors of this reservation.

My original reservation would have forestalled the exchange of the instruments of ratification until such time as the appropriate implementing legislation had been enacted by Congress. However, upon further reflection, I have come to the conclusion that it makes sense to indicate certain time disciplines regarding the passage of the implementing legislation to which we will seek to adhere. What is suggested in this resolution would provide ample opportunity for us to act in a timely but not precipitous manner. By doing so, we could limit apprehensions that even after Senate ratification of the treaty, if we decide to take that action, Congress

would not move with all due speed to place the United States in a position to fulfill its obligations under the treaty.

The reservation as I am now submitting it provides the following timetable:

First, the exchange of the instruments of ratification shall not be effective earlier than March 31, 1979. It need not take place even at that date.

Second, the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treary shall have enacted before March 31, 1979. This stipulation sets the earliest dates the treaties could come into effect. It does not require that it do so on a specific date.

The effect of the reservation is to provide Congress a maximum period of approximately 1½ years to enact the necessary legislation. This should be sufficient time to do the proper job on a very complex piece of legislation. Moreover, it would provide us an opportunity to monitor the drift of events in Panama and elsewhere that would have an impact on U.S. capacity to manage the canal over the next 20 years or so. Given the emotions that have been evoked by this issue, I see great merit in not feeling forced to proceed immediately with the implementing legislation if the decisions is made to ratify the Panama Canal Treaty.

A relatively long time period between the decision to ratify, if it is made, and the effective date of the treaties is needed for several reasons. First, if the implementing legislation is needed, it will be extremely complex. Numerous statutes will be affected. All legal ramifications of the end to U.S. jurisdiction in an area we have controlled for three-quarters of a century will have to be explored. A new employment system will have to be established. In short, the passage of the Panama Canal Treaty of 1977 would entail a wholesale reorganization of the canal enterprise.

Second, any reasonable assessment of the legislative schedule for the rest of this year leads to the conclusion that it would be impossible to give the necessary in-depth attention to the implementing legislation it deserves this year. There is a backlog of important legislation on energy, farm problems, labor relations, and so forth. The administration, unwisely in my opinion, continues to talk about forwarding a SALT II Treaty to the Senate sometime in early summer. I use the term unwisely regarding SALT II because I have grave doubts that the proposals that have publicly surfaced so far are an acceptable basis for a SALT Treaty with an aggresive Soviet Union in seeking military superiority in the world.

Third, the implementing legislation would be of interest to many committees. This will inevitably add to the time necessary to consider it in an adequate manner.

Fourth, this is an election year. The necessity of campaigning will further restrict the capacity of Members to give the needed attention to this matter.

Fifth, there are likely to be many controversies between Congress and the executive regarding this legislation. For instance, it appears that the administration, in many of its calculations regarding the financial arrangements envisioned in the treaty, has assumed that the United States will forego the interest payments on

the U.S. investment that are presently going into the Treasury from canal revenues. I believe Congress would and should insist that those payments continue. And there are likely to be other financial items that are going to be handled in a manner different than presently contemplated by the administration. Such disagreements would naturally lengthen the time needed for consideration of the legislation.

There is, thus, ample reason to prolong the period before the treaties go into effect. Past experience with treaties indicates that what is contained in this reservation is not unique. For instance, in the case of the 1955 Panama Canal Treaty, Congress took 3 years in passing all the necessary legislation. It is true that the 1955 treaty entered into force at the exchange of the instrument of ratification. But the nature of that treaty and the means to implement it were far different than the one we are presently considering. In 1955, the United States kept all jurisdiction and the right to act as if sovereign in the Canal Zone. This meant that the implementation of the treaty was essentially a unilateral concern.

If the present treaty goes into effect, Panama will obtain general jurisdiction and will be intimately involved in all aspects of the new relationship. Failure of the United States to be in a position to implement its part of the agreement immediately when the treaty would go into effect would create a very difficult problem and greatly complicate the effort to manage the canal until the end of the century. This can only be avoided if there is an extended period before the treaty comes into effect to allow the enactment of the necessary legislation. The approximately 1½ years provided by this reservation should be sufficient for this purpose.

There is an additional important reason why sufficient time should be allowed to pass the implementing legislation. If the treaty came into effect before the United States had passed the legislation, we would find ourselves in the rather untenable position of being bound by a legitimte international obligation but unable to carry out our responsibilities under it. Such a situation would, at a minimum, be damaging to our international image. Moreover, it could precipitate a constitutional crisis if the executive acted to implement the treaties by Executive order rather than await the needed action by Congress. There is no reason to precipitate such a crisis if we can avoid it. By adopting the pending reservation, a major step will have been taken to lessen the likelihood that such a problem would develop.

The PRESIDING OFFICER (Mr. Paul G. Hatfield). Who yields time?

Mr. SARBANES. Mr. President, I suggest to the Senator from Idaho that perhaps if he could proceed with his substitute I could then address both proposals together, since I have less time than was allocated, and I think it would make a more logical way to try and respond to the two proposals, if that is agreeable to the Senator.

Mr. MCCLURE. Mr. President, I am happy to accede to the suggestion of the Senator from Maryland.

UP RESERVATION NO. 29

Mr. President, I have an amendment by way of a substitute to the reservation offered by the Senator from Massachusetts at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The reservation will be stated.

The legislative clerk read as follows:

The Senator from Idaho (Mr. McClure) proposes an unprinted reservation numbered 29 in the nature of a substitute for the Brooke reservation numbered 28.

Mr. MCCLURE. Mr. President, I ask unanimous consent that the reading of the substitute reservation be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The substitute reservation is as follows:

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that, before the date of exchange of the resolution of ratification, the legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America".

Mr. MCCLURE. Mr. President, for the convenience of members who may not have followed the preliminary discussions, I might simply refer to this as the text of the original reservation numbered 12 which was intended to be proposed by Mr. Brooke. It is printed and on every desk in that form.

Mr. President, I support the direction which the Senator from Massachusetts has taken, and I support fully the arguments that he has made with respect to the anomaly in which our country could find itself, having adopted a treaty which had been consented to by action of the Senate and then Congress either failing or refusing to enact the implementing legislation, which would place us in the awkward, untenable, and embarrassing position of having agreed to an international obligation which we were powerless to implement because of the failure or the refusal of the whole Congress to agree to the terms of the implementing legislation.

I think the reservation which he has offered has the virtue of at least saying for a period of time we are not going to deliver the documents to the Government of Panama until Congress has had the opportunity to look at the implementing legislation and act on it.

It has two failures, however, in my judgment which the original reservation did not have.

That would be cured if the Senate would adopt the substitute which I have now offered; that is, that, first of all, in the meantime prior to the date established by the Brooke reservation the Congress could have either failed, because they simply did not get around to it, to pass the implementing legislation or they could have failed because by design they did not wish to.

Oftentimes there is a consensus that develops in an utterly negative way outside of a debate and discussion and vote on the floor of the House or the Senate; the failure to schedule it, the failure in the House of Representatives to grant a rule by which it can be considered on the floor, the failure of the proposals in the committee before it gets to the floor. There are any number of ways in which Congress can act negatively, outside of a primal vote on the legislation.

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Second, it also has the anomaly of saying in the event it did get to the floor of Congress in either the House or the Snate and was specifically rejected by either body, that the President would then be free, following that date, to delier the instruments of ratification and of the treaty which, I think, is the worst of all worlds, and, perhaps, even worse than the anomaly of now ratifying and agreeing to one which we would not later implement.

But I think it has perhaps a worse effect, this idea of establishing a fixed date by which Congress must act, because we are involved in the most delicate of negotiations with the Government and the people of Panama. Our negotiations are with the Government, the discussions are, perhaps, with the people in Panama. They are being asked to accept reservations and changes that we have enacted in both the original treaty and in this one, and they will have to have time to react to those suggestions.

There are those who believe that the reservations we have adopted will require a separate plebiscite in Panama under their law, and that they will have to have the time in which to conduct the discussions and have the vote in Panama before they can accept what we have decided upon here. I hope that is true. I hope it is that binding on them, and without getting into that argument as to whether it is or is not, does or does not require that plebiscite, it is possible that that time will be required.

Beyond that, we will be, in the implementing legislation, discussing any number of details of the relationships between our country and theirs and the obligations which our country may be faced with under the implementing legislation.

Those may be time-consuming. They may be very delicate in their timing and in the negotiations themselves. There should be given to the people who will be conducting the negotiations an ample amount of time to bring them to a happy conclusion rather than constricting the time in such a manner that it may precipitate a crisis at the very worst possible time.

Finally, Mr. President, it seems to me that, if you set a deadline for action, that deadline, that date itself precipitates a crisis because it is the standard against which all of the agreement must be broken or passed. It is the final point at which, if we pass that date, we have thrown down the gauntlet if we have not yet agreed.

It seems to me in this kind of negotiation we would be well served not to have a deadline. We should not draw a line with our toe in the dust and say, "Don't step over it." Neither should we set a time in which we say, "You must by this time have agreed or there will be no agreement."

So, for all of those reasons, Mr. President, I hope the Senate will accept the wisdom of the Senator from Massachusetts in his original formulation of this suggestion, which is the form in which I have offered it as a substitute.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. I yield to the Senator from New York.

Mr. JAVITS. Mr. President, will the Chair advise me when I have used 3 minutes?

Mr. President, I understand that the reservation made by Senator Brooke's amendment is a reservation which we can live with. I

understand the reservation made by Senator McClure's amendment is a reservation which we cannot live with, and the reason is simply this: if the same procedure is engaged in respecting the implementing legislation, except more so, this treaty cannot take effect into some indefinite future, whatever that may be, and the reason is that vital elements in the implementation of the treaty, such, for example, as the appointment of the Panama Canal Commission, cannot be gone through with unless the implementing legislation is passed.

Now, it may very well be that the legal effect at the end of the road might be the same. But the failure to exchange instruments of ratification simply leaves the question wide open so that no matter what happens in Panama the treaty can be denounced before the instruments of ratification are exchanged. it is not a treaty in law until that happens, notwithstanding the action of the Senate.

So the implementation of legislation being up in the air, the whole question will be up in the air, and it could be for years, knowing how this body can, if it gets its teeth into it, operate.

This condition of instability and uncertainty is highly undesirable in such international affairs as involve our relations with Panama, and through this treaty to the whole of Latin America. It simply is an untenable position for us to get into and we should not permit ourselves to get into it.

One further thing, and that is that the implementing legislation which I have before me deals with the question of the control of military forces in the Panama Canal Zone and conforms the dealing with the question of military forces and how they are dealt with according to the requirements of the treaty.

I cannot think of anything more unsettling to the relations, Mr. President, which we have with Panama than if this question is demagoged in Panama. that really, with one hand, means we are agreeing to this treaty, which puts certain emoluments, as it were, upon the sovereignty of Panama and corrects a problem which has remained with us since 1903 and, on the other hand, we hold it out because of the McClure reservation until such time as we actually make it legal by passing the implementing legislation.

So I think, Mr. President, on grounds of policy and on grounds of law the McClure reservation should be rejected.

As to the other one, I understand, as I say, that we can live with that and, therefore, what action the Senate takes will be up to individual Members. But I am very clear upon the fact that the substitute would be a grave mistake, and I hope it is rejected.

I thank my colleague for the time.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I want to contrast the approach which the Senator from Massachusetts has taken with that proposed in the substitute. It seems to me it represents a fuller consideration of the problems that are connected with the substitute.

The distinguished and able Senator from Massachusetts has been a very strong and effective spokesman addressing himself to the question of the implementing legislation. I think it is fair to say that we now know pretty well what the administration at least proposes to include in the implementing legislation, although, of course, it is up to Congress to enact the implementing legislation,

and we will have the opportunity, we being both the Senate and the House of Representatives, to pass upon the implementing legislation and to shape or to mold it.

The substitute, in effect, would not allow the treaty to take effect at any point unless the implementing legislation had already been enacted and that, of course, opens the tremendous possibility of playing mischief with the implementing legislation.

It also, as the distinguished Senator from New York points out, really underscores simply holding out an empty promise to the other party to the treaty. I mean it is really almost an empty act, that may be impossible.

The proposal which the Senator from Massachusetts is now offering places the maximum impetus for arriving at the implementing legislation without making the treaty action an empty one or a hoax on the other party. He has calculated a timespan which I think is reasonable under the circumstances. It in effect embraces the balance of this Congress and, if we are really not able in that period of time to finally enact the implementing legislation, it gives us an opportunity at the beginning of the next Congress to have almost 3 months in which to enact the implementing legislation.

Furthermore, the provision he has now offered states that if the implementing legislation is enacted earlier than that, then we should proceed with the exchange of articles of ratification, and 6 months later, then, with the implementation of the treaty. However, it provides a safeguard against mischief with respect to the implementing legislation by saying that if we arrive at March 31, 1979, and have not been able to enact it, then the exchange of the article of ratification will take place and 6 months later the treaty will go into effect.

I am very frank to say to the Senator from Massachusetts that I find it a very imaginative and ingenious approach that he has taken to the problem to which he has repeatedly addressed himself on the floor of the Senate, and which he has underscored; and I think there is a very significant difference, a truly fundamental difference, between that approach and the approach taken in the substitute.

It is for that reason that I rise to articulate a position in opposition to the substitute and in support of the proposition which the Senator from Massachusetts has now placed before the Senate.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. SARBANES. I am happy to yield to the Senator from New York.

Mr. JAVITS. It seems to me that we have here the difference between acceleration and deceleration. I think the proposal of the Senator from Massachusetts accelerates the adoption of the legislation. I think by fixing no date, the Senator from Idaho (Mr. MCCLURE) decelerates the adoption of the implementing legislation, and jeopardizes everything we have been doing in the last few months and until tomorrow.

I thank my colleague for yielding.

Mr. SARBANES. Mr. President, I reserve the remainder of my time.

Mr. MCCLURE. Mr. President, how much time does the Senator from Idaho have remaining?

The PRESIDING OFFICER. There is 2 minutes remaining to the Senator from Idaho.

Mr. MCCLURE. Mr. President, I think that 8 minutes I am supposed to have consumed must have included some minutes my friend from Massachusetts consumed, but I will not use up my time talking about that.

It is suggested that to adopt the substitute which I have offered will have the result of holding out an empty promise; but in truth and in fact precisely the opposite is true. To consent to the ratification of the treaties confessing the possibility that Congress will not adopt the implementing legislation is to do precisely what both the Senator from New York and the Senator from Maryland have suggested—promising something which Congress is not willing to fulfill, to put us in the position of having undertaken an obligation which Congress is unable or unwilling to discharge.

It has been suggested that it accelerates the adoption of the implementing legislation to have a time certain. That presupposes and presumes that Congress is going to adopt it. I would say to my friend from New York there ought to be at least some question about whether Congress has the right to debate it, and perhaps even the right to reject it. If as a matter of fact they have debated and rejected the implementing legislation prior to that date, we are then in the anomalous position of having rejected implementing legislation but having empowered the President to go ahead and ratify the treaty and allow it to go into effect after Congress has said, "No, we will not do what we had promised to do." That seems to me to be an anomaly which we should avoid by adopting the substitute, conditioning the delivery of the documents upon the adoption of implementing legislation.

I would suggest that when this matter was first brought up as an amendment to the treaty, I understood a number of the arguments against it to be that it ought to be involved with the delivery of the instruments, and not in the text of the treaty itself. Why, if it was an argument against the delivery of the treaty, do the proponents of the treaty object to doing, then, what would be an alternative?

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. JAVITS. Mr. president, will the Senator yield?

Mr. SARBANES. I yield to the Senator from New York such time as he may require.

Mr. JAVITS. The point the Senator from Idaho makes is very adequately answered by the fact that any businessman will tell you, "If you want to settle something, give me an answer yes or no." The problem with his proposal is that it protracts it into the indefinite future. The virtue of Senator BROOKE's proposition is that it gives you a definite time in the future, and you know whether you are on or off, and can do something about it if the Senate rejects this legislation. Under the McClure reservation, it is forever, and you are out in the wild blue yonder and do not know what the result is going to be. Precisely for that reason it ought to be rejected.

Mr. SARBANES. Mr. President, I want to emphasize also the very perceptive point by the Senator from New York that one approach is acceleration and the other is deceleration. The implementing legislation deals with matters within our own jurisdiction, and

some of those matters are of deep import. But I feel the likelihood that those matters will be resolved in a positive and constructive fashion is sensitive to a lot of concerns which Members of this body share on both sides of the treaty issue. You get the concerns involved in the rights of Americans who have worked in the zone, much of which is dealt with in the implementing legislation. The resolution of those concerns is enhanced by the approach of the Senator from Massachusetts, because the sooner you can arrive at such a solution and enact the implementing legislation, the sooner you can move to the treaty arrangement.

Therefore, I think it will serve to help to structure the concerns of the implementing legislation in such a way that both the administration and Congress will be more responsive to some of the concerns the legislation seeks to deal with. The approach of the substitute holds out the prospect of no action whatever over an indefinite time and, therefore, carries with it, again, the possibility of making our action here an empty and vain one, and we really ought not to be seeking to do that by indirection if it cannot be achieved by direction, which I hope it cannot be.

For that reason, again, Mr. President, I oppose the substitute and support the proposal made by the Senator from Massachusetts.

Mr. BROOKE. Mr. President, unless the distinguished Senator from Idaho wishes to speak further on this issue, I am prepared to yield back my remaining time.

I ask unanimous consent that after the vote on the McClure substitute, the other two votes be 10-minute votes, if the other two are necessary. I know one will be necessary.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. Mr. President, I move to table the McClure substitute.

Mr. MCCLURE. Mr. President, will the Senator withhold that just long enough for me to propound a parliamentary inquiry?

Mr. SARBANES. Yes.

Mr. MCCLURE. What is the effect on the Brooke reservation if the McClure substitute is tabled?

The PRESIDING OFFICER. If the McClure substitute is tabled, then a vote will occur on the Brooke reservation.

Mr. MCCLURE. It leaves the Brooke reservation untouched?

The PRESIDING OFFICER. The Senator is correct.

Mr. MCCLURE. I thank the Chair.

Mr. BROOKE. Mr. President, I yield back the remainder of my time.

Mr. SARBANES. Mr. President, I yield back the remainder of my time and move to table the McClure substitute. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there objection at this time to limit the rollcall votes to 10 minutes? Without objection, it is so ordered.

Mr. SARBANES. That is the votes subsequent to the vote on the McClure reservation.

Mr. MCCLURE. The first vote will be 15 minutes.

The PRESIDING OFFICER. The first vote is 15 minutes and the subsequent votes will be 10 minutes.

The question is on agreeing to the motion to table. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Delaware (Mr. Biden), the Senator from Mississippi (Mr. Eastland), the Senator from Maine (Mr. Hathaway), the Senator from Massachusetts (Mr. Kennedy), the Senator from South Dakota (Mr. McGovern), the Senator from Rhode Island (Mr. Pell), the Senator from Connecticut (Mr. Ribicoff), the Senator from Alabama (Mr. Sparkman), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pell) and the Senator from Connecticut (Mr. Ribicoff) would each vote "yea."

Mr. BAKER. I announce that the Senator from Alaska (Mr. Stevens), the Senator from Wyoming (Mr. Wallop), and the Senator from North Dakota (Mr. Young) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. Stevens) would vote "nay."

The result was announced—yeas 56, nays 31, as follows:

[Rollcall No. 101 Ex.]

YEAS—56

Anderson	Hart	Metzenbaum
Baker	Haskell	Morgan
Bayh	Hatfield, Mark O.	Moynihan
Bellmon	Hatfield, Paul G.	Muskie
Bentsen	Hayakawa	Nelson
Bumpers	Heinz	Packwood
Byrd, Robert C.	Hodges	Pearson
Case	Hollings	Percy
Chafee	Huddleston	Proxmire
Chiles	Humphrey	Randolph
Church	Inouye	Riegle
Clark	Jackson	Sarbanes
Cranston	Javits	Sasser
Culver	Leahy	Stafford
Danforth	Long	Stevenson
Durkin	Magnuson	Talmadge
Eagleton	Mathias	Weicker
Glenn	Matsunaga	Williams
Gravel	McIntyre	

NAYS—31

Allen	Garn	Nunn
Bartlett	Goldwater	Roth
Brooke	Griffin	Schmitt
Burdick	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
Cannon	Helms	Stone
Curtis	Johnston	Thurmond
DeConcini	Laxalt	Tower
Dole	Lugar	Zorinsky
Domenici	McClure	
Ford	Melcher	

NOT VOTING—13

Abourezk	McGovern	Stevens
Biden	Pell	Wallop
Eastland	Ribicoff	Young
Hathaway	Sparkman	
Kennedy	Stennis	

So the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to unprinted amendment No. 28. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Delaware (Mr. Biden), the Senator from Mississippi (Mr. Eastland), the Senator from Maine (Mr. Hathaway), the Senator from Massachusetts (Mr. Kennedy), the Senator from South Dakota (Mr. McGovern), the Senator from Rhode Island (Mr. Pell), the Senator from Connecticut (Mr. Ribicoff), the Senator from Alabama (Mr. Sparkman), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pell) and the Senator from Connecticut (Mr. Ribicoff) would each vote "yea."

Mr. BAKER. I announce that the Senator from Alaska (Mr. Stevens), the Senator from Wyoming (Mr. Wallop), and the Senator from North Dakota (Mr. Young) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. Stevens) would vote "yea."

The result was announced—Yeas 84, Nays 3, as follows:

[Rollcall Vote No. 102 Ex.]

YEAS—84

Allen	Glenn	McIntyre
Anderson	Goldwater	Melcher
Baker	Gravel	Metzenbaum
Bartlett	Griffin	Moynihan
Bayh	Hansen	Muskie
Bellmon	Haskell	Nelson
Bentsen	Hatch	Nunn
Brooke	Hatfield, Mark O.	Packwood
Bumpers	Hatfield, Paul G.	Pearson
Burdick	Hayakawa	Percy
Byrd, Harry F., Jr.	Heinz	Proxmire
Byrd, Robert C.	Helms	Randolph
Cannon	Hodges	Riegle
Case	Hollings	Roth
Chafee	Huddleston	Sarbanes
Chiles	Humphrey	Sasser
Church	Inouye	Schmitt
Clark	Jackson	Schweiker
Cranston	Javits	Scott
Culver	Johnston	Stafford
Curtis	Laxalt	Stevenson
Danforth	Leahy	Stone
DeConcini	Long	Talmadge
Dole	Lugar	Thurmond
Domenici	Magnuson	Tower
Eagleton	Mathias	Weicker
Ford	Matsunaga	Williams
Garn	McClure	Zorinsky

NAYS—3

Durkin	Morgan
Hart	

NOT VOTING—13

Abourezk	McGovern	Stevens
Biden	Pell	Wallop
Eastland	Ribicoff	Young
Hathaway	Sparkman	
Kennedy	Stennis	

So the amendment (UP amendment No. 28) was agreed to.

[Mr. Hodges assumed the chair.]

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BROOKE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Paul G. Hatfield). The question is on agreeing to unprinted amendment No. 27. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Delaware (Mr. Biden), the Senator from Mississippi (Mr. Eastland), the Senator from Maine (Mr. Hathaway), the Senator from Massachusetts (Mr. Kennedy), the Senator from South Dakota (Mr. McGovern), the Senator from Rhode Island (Mr. Pell), the Senator from Connecticut (Mr. Ribicoff), the Senator from Alabama (Mr. Sparkman), and the Senator from Mississippi (Mr. Stennis) are necessarily absent.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. Pell) and the Senator from Connecticut (Mr. Ribicoff) would each vote "yea."

Mr. BAKER. I announce that the Senator from Alaska (Mr. Stevens), the Senator from Wyoming (Mr. Wallop), and the Senator from North Dakota (Mr. Young) are necessarily absent.

I further announce that, if present and voting, the Senator from Alaska (Mr. Stevens) would vote "yea."

The result was announced—yeas 84, nays 3, as follows:

[Rollcall Vote No. 103 Ex.]

YEAS—84

Allen	Chiles	Goldwater
Anderson	Church	Gravel
Baker	Clark	Griffin
Bartlett	Cranston	Hansen
Bayh	Culver	Haskell
Bentsen	Curtis	Hatch
Brooke	Danforth	Hatfield, Mark O.
Bumpers	DeConcini	Hatfield, Paul G.
Burdick	Dole	Hayakawa
Byrd, Harry F., Jr.	Domenici	Heinz
Byrd, Robert C.	Eagleton	Helms
Cannon	Ford	Hodges
Case	Garn	Hollings
Chafee	Glenn	Huddleston

Humphrey	Melcher	Sarbanes
Inouye	Metzenbaum	Sasser
Jackson	Morgan	Schmitt
Javits	Moynihan	Schweiker
Johnston	Muskie	Scott
Laxalt	Nelson	Stafford
Leahy	Nunn	Stevenson
Long	Packwood	Stone
Lugar	Pearson	Talmadge
Magnuson	Percy	Thurmond
Mathias	Proxmire	Tower
Matsunaga	Randolph	Weicker
McClure	Riegle	Williams
McIntyre	Roth	Zorinsky

NAYS—3

Bellmon	Durkin	Hart

NOT VOTING—13

Abourezk	McGovern	Stevens
Biden	Pell	Wallop
Eastland	Ribicoff	Young
Hathaway	Sparkman	
Kennedy	Stennis	

So UP amendment No. 27 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from North Carolina (Mr. Helms) is recognized for 1 hour to be divided between Senator Church and Senator Helms on his reservation.

Mr. HELMS. Mr. President, is there a unanimous-consent agreement in force with respect to a vote on this reservation?

The PRESIDING OFFICER. There is not.

Mr. LAXALT. Mr. President, we are in the process of attempting to work it out.

Mr. HELMS. I understand.

Mr. LAXALT. In any event, we are trying to work out a vote on the reservation, if it is acceptable to the Senator from North Carolina, in the morning.

Mr. HELMS. That is perfectly satisfactory to the Senator from North Carolina, and I thank my colleague from Nevada.

RESERVATION NO. 18

Mr. HELMS. Mr. President, I have a reservation at the desk which I call up and ask that it be stated.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from North Carolina (Mr. Helms) proposes reservation numbered 18.

Mr. HELMS. Mr. President, I ask unanimous consent that further reading of the reservation be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The reservation is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following reservation:

"The Panama Canal Commission is obligated to pay to the Republic of Panama amounts under this treaty only to the extent that the operating revenues of the Canal exceed expenditures of the Panama Canal Commission. Any year in which expenditures exceed operating revenues, the Commission shall expend its funds, to the extent that funds are available, for the following purposes and in the following order—

"(a) operating expenses of the Panama Canal Commission;

"(b) capital expenses of the Panama Canal Commission;

"(c) payments to the Republic of Panama under paragraph 5 of article III;

"(d) payments to the Republic of Panama under paragraph 4(b) of article XIII:

"(e) payments into the Treasury of the United States of America of interest on the direct investment of the United States of America in the Canal;

"(f) payments into the Treasury of the United States of America representing amortization of the assets of the United States of America in the former Canal Zone before the date of termination of the Panama Canal Treaty;

"(g) payments to the Republic of Panama under paragraph 4(a) of article XIII; and

"(h) payments to the Republic of Panama under paragraph 4(c) of the article XIII.

No amount obligated to be paid by the Panama Canal Commission under the Treaty, except for payments made under paragraph 4(c) of article XIII, which, pursuant to this reservation, is not paid, may be paid in future years, except as the two Parties may agree."

Mr. HELMS. Mr. President, one of the greatest concerns of the American people about this Panama Canal Treaty is the cost of the giveaway. The people appropriately are asking: Why require the American taxpayers to pay to give something away? The proponents of the treaties pretend that the U.S. taxpayers will not have to pay; instead they say the payments will come out of the tolls charged by the canal. The users of the canal will pay, the proponents have assured us, not the taxpayer. Furthermore, the proponents say that the increase in toll rates required will result in negligible increases in cost to the U.S. consumer.

But to assert that the canal will earn all of the costs of operation and payments to Panama requires an incredible manipulation of accounting concepts. The canal will pay its way only—and I emphasize the word "only"—if the enormous costs are absorbed by the taxpayers of the United States.

These costs are almost equal to the payments which Panama is expected to receive over the life of the treaty. They amount to $60 million per year—or $1.32 billion over the 22-year life of the treaty now before the Senate.

Mr. President, if we look at the situation realistically, the United States pays twice. First, the U.S. Treasury forgoes the income from the canal, income which could be used to alleviate the burdens on the U.S. taxpayers. This alone amounts to some $66 million estimated for the first year alone; over the years, that amounts to $1.45 billion. The fact that that income belongs to the U.S. taxpayers would be even more evident if the implementing legislation provides for all revenues to be paid into the U.S. Treasury and disbursed by appropriation to Panama. We will be setting a dangerous precedent if we

do not insist upon all payments going through the appropriations process in the Congress of the United States as the Constitution of the United States very clearly requires.

But then the United States pays again. The U.S. Treasury not only forgoes the payments made to Panama; it also forgoes the interest due on the net direct investment of the United States in the canal. The interest-bearing portion of this investment today amounts to $318.9 million. The annual interest is projected for the life of the treaty to be worth about $20 million. In addition, there is the question of the fixed assets of the canal organization, worth today about $557 million. About $92 million of these assets will be transferred on the effective date of the treaty, leaving assets of $475 million to be turned over in the year 2000. Unless the taxpayers—and I mean the U.S. taxpayers—are going to absorb that cost too, the U.S. Treasury must be reimbursed. Amortization of the $475 million would put $22 million in the U.S. Treasury every year.

Together, these two payments amount to $42 million every year which should be paid into the U.S. Treasury.

If that is the case, then why do not we provide in the implementing legislation for payments to the U.S. Treasury to be included in the toll base? The answer is that the canal cannot possible earn enough to pay both Panama and the United States.

In fact, there is evidence that the canal will not even earn enough to pay Panama at the 19.5 percent toll rate increase proposed by the administration. The assumptions that underlie the administration's projections of expenses do everything possible to understate the true cost.

For example, the projections assume that revenues from Alaskan oil will continue indefinitely; but even the Governor of the Canal Zone, Governor Parfitt, was deeply disturbed by such an assumption. If the proposed Los Angeles-Texas pipeline is built, the canal revenue projections would have to be reduced by $30 million every year.

Another assumption built into the projections is that the administration's target of reducing inflation to 5 percent will be met. The 5 percent target is an admirable hope, but it is hardly more than a pious wish. A much more conservative projection would be that inflation will continue to hover around 7 percent.

A third fallacious assumption by the administration and by the proponents of this treaty is that the necessary program of capital expenditures can be financed largely through depreciation. But the cash flow generated by depreciation on assets previously acquired and paid for has no relationship whatsoever to future expenditures for capital assets. That money is available for use for payment of any of the expenses of the agency; it does not reduce the total

expenditures required, according to studies by one of the foremost experts in canal finances, Mr. W. M. Whitman. Mr. Whitman was Secretary of the Panama Canal Co. for over 20 years, and is presently a consultant with the House Merchant Marine Committee.

The capital program, therefore, should be built into the tolls structure and financed entirely through tolls. The danger is that, if this is not done, the cash will be used to make payments to Panama or for other expenses. It would be far better to use the money to make some return to the U.S Treasury. However, by including the whole cost of the capital requirements in the toll base, rather than merely the cost in excess of depreciation, some $18 million per year must be added to operating expenses.

By truly stating the cost of the capital program, however, it is more difficult to project a balance sheet that looks good. For example, for the canal to break even would require a 28.5 percent toll rate increase, instead of the 19.5 percent increase proposed by the administration and the proponents of this treaty. This is another example of the understatement that has been used to try to convince Americans that the treaties are economically viable.

The Panama Canal cannot make enough revenue to pay both Panama and the United States. Yet it is not just and equitable that the United States should assume all the burdens of management, investment, and operation, while Panama gets only the benefits. The United States is taking the risk that the canal cannot even earn enough to pay Panama, yet alone the U.S. Treasury, the American taxpayer inevitably must pay through the nose. Yet Panama assumes no risk at all.

If we are going to have a meaningful partnership as so often discussed on this floor, a meaningful partnership, then Panama must share in the risks as well as the benefits. If Panamanians must be trained in proper management, they must learn the realities of finance. Moreover, something must be done to protect the taxpayers' interest.

My proposal with this reservation is this: to reverse the priorities of paying Panama and the United States. After making the two fixed payments of $10 million each to Panama, for a total of $20 million, we would then pay ourselves first to recover all costs of interest and amortization. Only after all costs to the U.S. Treasury were covered would Panama receive payments under the 30 cents a ton formula. It would be the understanding of the United States, added to resolution of ratification, that the United States would be obligated to make payments under the 30 cents a ton formula only to the extent that earnings were available after all costs to the U.S. Treasury were paid.

This would provide an equitable balance of risks and benefits between the two countries. Panama would be guaranteed $20 million a year, which is 10 times what she gets now; she would have a chance of earning up to $27 million more during the first years. The equities are a bit lop-sided when Panama is guaranteed up to $66 million a year, whereas the U.S. taxpayers are getting stuck for $60 million a year.

It must not be forgotten that the United States is bearing all the responsibility for investment, management, and operation. If a natural catastrophe or an act of war destroyed any of the locks and

dams, the United States would be liable for replacement no doubt to the tune of hundreds of millions of dollars. If a severe depression hits the world economy and canal revenues slide as a consequence, the U.S. taxpayer has to make up the difference in the costs.

Panama takes absolutely no risk, contributes absolutely nothing to management policies, supplies absolutely no capital, and takes over the whole operation lock, stock, and barrel in the year 2000.

Mr. President, that is a bad deal for the taxpayers of the United States. Such a solution is neither businesslike nor moral. It is not fair to the United States and it certainly is not fair to the American taxpayer.

My proposal is a balanced proposal. To sum it up, this is what it would do:

One. It would provide that capital costs be included in the expenses to be paid by the toll base.

Two. After all operating expenses are paid, then Panama would be guaranteed $20 million—the $10 million for services under article III, paragraph 5, and the $10 million fixed payment under article XIII, paragraph 4(b).

Three. Once Panama was paid $20 million, then the U.S. Treasury would be paid approximately $20 million for interest on the U.S. direct net investment in the canal.

Four. After the interest was paid to the U.S. Treasury, a sum of approximately $22 million would also be paid to the U.S. Treasury representing the amortization of assets.

Five. Finally, after all costs to the U.S. taxpayer have been paid, Panama would get any surplus up to an amount equal to that generated by the 30 cents a ton formula of article XIII; paragraph 4(a). On the basis of present information, this surplus would not be equal to the full payment under the formula ($46 million), because the canal simply cannot earn that much. But it would be as high as $27 million, depending upon the level of toll rates. The toll rate would be the subject of consultation between the United States and Panama. Other factors would have to be considered beyond remuneration for Panama. The two parties doubtless would consider the impact of high toll rates on individual commodity markets, trade routes, regional economic associations, and individual countries.

This proposal is more fitting as a reservation rather than as an amendment, since it does not involve any active participation by the Republic of Panama. All that it requires from Panama is Panama's passive acknowledgment of our statement of intentions. The funds are wholly within our control at all times, and it is up to us—the United States Senate—to present the proper accounting and distribution of funds and to direct the Federal bureaucracy to do so.

Mr. President, detailed studies have gone into the preparation of this amendment to insure its feasibility and necessity. It would be pointless to attempt to give all the statistics orally in a general debate, but I have placed on every Senator's desk a detailed resume of the calculations which perhaps deserve a word or two of explanation. This objective study was prepared by the Institute of American Relations, and I am grateful for their thoughtful, nonpartisan work.

The first point to be noted is that there is a practical maximum, a ceiling which governs the limit of revenue that the canal can earn. The amount of potential business for the canal is expected to increase slowly over the years; but if this business is to be obtained by the canal, tolls must be competitive with other alternatives. If tolls are increased rashly, the potential business will be driven away.

International Research Associates has calculated that the maximum increase in revenue possible by increasing tolls is 40 percent. After that point, significant amounts of traffic would be diverted, lowering the amount of cargo tonnage which transits the canal. In other words, with excessive toll rates, the canal would receive more money per ton for fewer tons. You reach a point where the gain curve flattens out or begins to go down. The point of diminishing returns is reached somewhere between increases of 50 and 75 percent. Even increases of 100 or 200 percent would not provide more than a 40-percent net gain in total revenues.

The color chart on the first page of the study illustrates the components of fiscal year 1979 as color blocks stacked up according to the priorities presently recognized in the treaty. The first black line from the bottom represents the present level of revenue from the canal, $258.2 million. The second black line represents the level of revenue obtained by the proposed 19.5 percent toll increase. The yellow band across the page represents the amount of tolls that could be recovered by a 75-percent toll increase, namely $336.2 million. The red band represents the level of costs which are not recoverable, no matter how high tolls are raised.

The blue block, therefore, represents the operating expenses. The green block represents payments to Panama under the treaty. The chart makes it graphically clear that the cost of the payments to Panama would require revenues of $313.3 million, plainly exceeding the $296.2 million raised by the proposed toll increase of 19.5 percent. Interest payments and amortization payments to the U.S. Treasury could be made only partially, and then only if rates were raised excessively to 75 percent. The maximum possible revenue would require $336.2 million, whereas to pay all the true costs would require $357.3 million.

The second column shows what would happen if the priorities are balanced, with Panama guaranteed $20 million and the United States guaranteed $42 million before any payments are made to Panama under the 30 cents a ton formula. It would be possible to pay all costs for the $20 million to Panama and for the $42 million to the U.S. Treasury under a 28.5 percent increase. The amount left over for Panama would depend upon the level of toll increases.

In the succeeding pages and tables, detailed data is given not only for fiscal year 1979, but also for fiscal year 1980, fiscal year 1981, fiscal year 1982, fiscal year 1983, and fiscal year 1984. The study stops at fiscal year 1984, because the Panama Canal Company feels that accurate projections cannot be made further in the future.

Table I demonstrates that, just to pay Panama under the priorities set in the treaty, would require toll increases ranging from 28.2 to 43.2 percent, rather than the 19.5 percent suggested.

Table II demonstrates what would happen if the U.S. Treasury were given payment priority over payments to Panama under the 30 cents a ton formula. If Panama were guaranteed $20 million, and the U.S. Treasury were to receive $42 million, toll increases required would range from 25.8 to 35.9 percent, increases that are within the range of mathematical possibility. Of course, if the 30 cents a ton payments to Panama were added on top, the canal would be bankrupt.

Table III demonstrates the maximum revenue that would be available to Panama under the 30 cents a ton formula if such payments were made only from surplus. The maximum toll revenues possible by raising toll rates 75 percent for a net gain of 40 percent would range from $272.9 million in fiscal year 1979 to $291.3 million in fiscal year 1984. After expenses, the $20 million fixed payment to Panama would range from $27.7 million in fiscal year 1979 to $8.5 million in fiscal year 1984.

Mr. President, I ask unanimous consent that relevant portions of this study by the Institute of American Relations, including the three tables, be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. I might add in closing Mr. President, that neither my calculations nor these studies by the Institute of American Relations have taken into account the so-called contingency payment of $10 million to Panama, if earned. It has been agreed by Governor Parfitt and all who have examined the situation that the Panama Canal Commisson will set toll rates at a level so that the necessary surplus will never be earned. The United States has no intention whatsoever of producing a surplus that will be paid to Panama under article XIII, paragraph 4(c). My reservation, therefore, places such payments in the final category, after payments under the 30 cents a net ton formula. Since the canal cannot earn even enough to pay the 30 cents a net ton formula, there will obviously be no surplus for the contingency payment. That provision of the treaty is, in any case, a mere rhetorical flourish, and is not to be taken seriously.

EXHIBIT 1

BALANCING RISKS AND BENEFITS—ESTABLISHING PANAMA CANAL PRIORITIES

It is a cardinal article of faith among the arguments put forward in explanation of the Panama Canal Treaty that the proposed Panama Canal Commission will be self-supporting on the basis of tolls.

However, if the accounting put forth by the official spokesmen for the Administration is examined carefully, it becomes evident that there are a number of fallacies in the methods used. Indeed, if a proper accounting is made of all costs involved, the PCC can be "self-supporting" only if the U.S. Treasury absorbs certain costs, costs which are almost equal to the benefits given to Panama.

Among the difficulties with the official projections are:

Assumption of inflation at 5 percent, instead of a more realistic 7 percent

Assumption that Alaskan oil revenues will be assured indefinitely, whereas the Canal Zone governor has testified that they are expected to drop sharply after 1981

Assumption that the program for capital expenditures can be financed largely through depreciation

Assumption that the United States should forego earned interest on its direct net investment in the Canal

Assumption that the United States need not amortize its investment, choosing merely to write off its investment in the year 2000.

When projections are recomputed in the absence of these assumptions, the financial picture changes dramatically. Instead of breaking even by raising tolls 19.5 percent, as officially proposed, the Canal could not break even in FY 79 without an increase in revenues of 49.8 percent. By FY 84, the necessary increase would be 63.3 percent over current revenues. The magnitude of the financial problem is evident when one understands that the maximum increase possible in Canal revenues is 40 percent, no matter how high the tolls are raised. Once toll rates increases reach the level of 50 percent to 75 percent, the curve of gain flattens out; the high rates begin to force traffic to be diverted to other routes, and tonnage drops. No matter how high the rates are raised, according to the sensitivity studies by International Research Associates, the net gain can never rise appreciably above 40 percent.

The result is, as the color chart demonstrates, that not even the 19.5 percent increase can make the Canal break even. It will take a 28.5 percent increae to pay the three major payments to Panama ($10 mil. for services, $10 mil. fixed payment, $46 mil. from the 30-cent a ton formula). For the U.S. Treasury to recover an additional $20 million for interest payments, tolls would have to be raised nearly 75 percent (for a 40 percent net). The $22 million in annual amortization payments would be virtually not recoverable.

The two columns on the color chart FY 79 figures reworked to reflect costs ignored in the official projections. The first column shows FY 79 operating costs, with blocks of components showing expenses, payments, and costs. The blue blocks are expenses of the company, the green blocks are payments to Panama, and the red blocks are costs assumed by the U.S. Treasury. The first black line from the bottom is the level of revenue with tolls at the present rates; the second black line is the proposed level at a 19.5 percent increase. The yellow band is the level at which excessive toll increases of up to 715 percent would be necessary. The red band is the level at which costs are not recoverable.

The second column shows FY 79 revised, so that the risks and benefits are equitably balanced between the United States and Panama in proportion to the contribution of each to the enterprise.

The priority of payments would be to pay Panama $20 million first, and then to reverse the order of payments to the U.S. Treasury and payments to Panama. This would allow the U.S. Treasury to be reimbursed for interest on the U.S. direct net investment and amortization, both to be paid out of tolls. Any surplus could then be paid to Panama under the 30 cents a net ton formula. The amount of surplus would depend upon the level of toll rates, and would be the subject of consultation between the two countries.

The tables which follow give the precise estimates of deficits under a true accounting, and the amount of toll increase necessary over present rates for each of the six fiscal years for which offical base data is available. All revenues and expenses, except as otherwise stated, are from Panama Canal Company projections.

Table I demonstrates that if proper rates of inflation and proper accounting of capital expenditures are included, PCC deficits will range from $55 million in FY 79 to $89.9 million in FY 84. Just to pay Panama alone would require toll increases ranging from 28.2 percent to 43.2 percent in FY 84. In just six years, the costs of running the Canal and paying Panama would have bumped against the threshold of the Canal's maximum earning capacity.

However, when the costs to the American taxpayers are added in, that is, the payments to the U.S. Treasury for interest and amortization, the viability of the Canal is destrpyed. Deficits at the present rate of tolls would range from $97 million the first year to $131 million by FY 84. To break even would require revenue increases ranging from 49.8 percent in FY 79 to 63.3 percent in FY 84. Such increases substantially surpass the revenues that can be generated. The U.S. Treasury, of course, would have to sustain the loss.

Table II demonstrates what would happen if the U.S. Treasury were paid first, before any payments were made to Panama under the 30 cents a ton formula. It assumes, however, that Panama would receive the fixed $20 million payments before say such payments are made to the U.S. Treasury.

Thus if Panama receives $20 million per year in fixed payments and the U.S. Treasury receives $42 million per year for interest and amortization, all such costs can be paid comfortably out of tolls. The deficit at present toll rates would range from $50.2 million per year in FY 79 to $74.7 million per year in FY 84; the deficit would require toll increases ranging from 25.8 percent to 35.9 percent, all within the mathematical range of possibility.

Of course, if the payments to Panama under the 30 cents a ton formula are added on top, the Canal would be bankrupt, since the deficits and amount of impossible toll increases necessary are the same as at the bottom of table I.

Table III demonstrates the maximum revenue that could be paid to Panama under the 30 cents a ton formula if such payments were made only from surplus. The maximum toll revenues possible by raising toll rates 75 percent for a net gain of 40 percent would range from $272.9 million in FY 79 to $291.3 million in FY 84. After expenses, the $20 million fixed payment to Panama and the $42 million payment to the U.S. Treasury are subtracted from the maximum revenue, the surplus available to Panama would range from $27.7 million in FY 79 to $8.5 million in FY 84.

Of course, other considerations would come into play in setting the toll rates, including the impact of high tolls on certain commodities, regions, or countries.

NOTES.—No assumption was made in this study of a decline in Alaskan oil revenues, despite the fact that such a decline is a distinct probability by 1981 if a pipeline is built. If such revenues are lost, some $30 million would be added to the PCC deficits each year. The probabilities are impossible to guess.

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The assumptions about interest and amortization are taken from the analysis by Comptroller General Elmer Staats presented to the Senate Armed Services Committee, on February 1, 1978.

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The need to include capital expenditures as an additional expense rather than be reduced by depreciation charges is explained in a study prepared by Mr. M. M. Whitman, former Secretary of the Panama Canal Company, and a Consultant with the House Merchant Marine Committee.

Mr. Whitman states: "In the Company's tabulation, capital costs are appropriately differentiated from 'operating expenses' but they are not reflected anywhere in the enumeration of costs except in the calculation of the deficiency of revenues to cover expenses 'including capital requirements in excess of depreciation.' This results in a misleading implication that new capital expenditures somehow are not costs until they exceed the amount of depreciation accruing on assets acquired with funds previously spent.

"Revenues include tolls, i.e., the charge made for the use of the canal, and under the tolls formula now provided by Act of Congress, depreciation on assets previously acquired (and paid for) is included as a cost to be recovered from tolls. This depreciation accrual, including in tolls revenue has no relationship to future expenditures for capital assets. However, such expenditures are regularly made. . . . The fact that the cash flow generated by depreciation on assets already required will be available to finance part of those expenditures in no way reduces the total of the expenditures required. The cash flow generated from inclusion of depreciation as an element of costs in the tolls formula is not earmarked for future capital expenditures. It is available for use for payment of any of the expenses of the agency or for repayment of the U.S. Government's investment in the Canal."

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All estimates for revenues, operating expenses, transition costs, and capital program are taken from the Panama Canal Company's Statement of Operations, February 1, 1978, and from the Company's Treaty Implementation Plan of the same date.

TABLE I: *Size of toll increases needed to pay all costs of Panama Canal (including payments to U.S. Treasury)*

Assumptions:
Panama is paid before the U.S. Treasury is paid.
Panama Canal Company projections of cost and income.
7 percent inflation factor.
GAO estimates on interest and amortization to U.S. Treasury.
W. M. Whitman study factor on capital program costs not recoverble by depreciation.

DEFICIT AS PERCENT OF TOLLS INDICATES SIZE OF TOLL INCREASE REQUIRED TO COVER ALL COSTS AS TRULY EXPRESSED

	Fiscal year—					
	1979	1980	1981	1982	1983	1984
Toll revenues	194.9	198.4	200.1	202.8	205.5	208.1
Other revenues	63.3	64.6	62.8	62.5	64.0	61.7
Total revenues	25.82	263.0	262.9	265.3	266.5	269.8
Operating expenses	219.8	218.6	211.0	206.6	205.9	209.8
Transition costs	7.8	3.5	4.9	2.5		
Inflation at 7 percent		11.2	22.2	32.5	43.5	52.2
Capital program	18.8	20.4	19.8	19.3	20.4	20.5
Total operating and capital	246.4	253.7	257.9	260.3	269.8	282.5
Surplus or (deficit)$_1$	11.8	9.3	5.0	2.6	(3.3)	(12.7)
3 payments to Panama*	66.8	67.6	68.0	68.7	69.3	77.2
Deficits$_2$	(55.0)	(58.3)	(63.0)	(66.1)	(72.6)	(89.9)
Deficits$_2$ as percent of tolls	28.2	29.4	31.5	32.6	35.3	43.2
Deficits$_3$ (D_2 plus interest)	(75.0)	(78.3)	(83.0)	(86.1)	(92.6)	(109.9)
Deficit$_4$ (D_3 plus amortization)	(97.0)	(100.3)	(105.0)	(108.1)	(114.6)	(131.9)
Deficit$_4$ as percent of tolls	49.8	59.6	52.6	53.3	55.8	63.3

*Payments to Panama include $10,000,000 fixed payment, $10,000,000 for services (no inflation factor included), and PCC estimates of amounts due under 30 cents per ton formula (7 percent inflation factor in fiscal year 1984).

Deficit$_3$ consists of deficiencies after payments to Panama, plus $20 million in interest on U.S. net investment paid to U.S. Treasury. Deficit$_4$ consists of deficiencies after payments to Panama, after interest payments to U.S. Treasury, plus $22 million in amortization costs paid to U.S. Treasury.

TABLE II: *Size of toll increase needed to pay U.S. Treasury before making payments to Panama under 30 cents per ton formula*

Assumptions:

Panama is paid $10 million fixed payment and $10 million for services before U.S. Treasury is paid for annual interest and amortization costs; thereafter Panama is paid under 30 cents per Panama Canal Net Ton formula.

Panama Canal Company projections of cost and income.

7 percent inflation factor.

GAO estimates on interest and amortization to U.S. Treasury.

W. M. Whitman study factor on capital costs not recoverable by depreciation.

	Fiscal year—					
	1979	1980	1981	1982	1983	1984
Total revenues (table I)	258.2	263.0	262.9	265.3	266.5	269.8
Total costs (table I)	246.5	253.7	257.9	260.3	269.8	282.5
Surplus or (deficit)	11.8	9.3	5.0	2.6	(3.3)	(12.7)
2 payments to Panama	20.0	20.0	20.0	20.0	20.0	20.0
Deficit$_2$	(8.2)	(10.7)	(15.0)	(17.4)	(23.3)	(32.7)
Deficit$_2$ as percent of tolls	4.0	5.4	7.5	8.6	11.3	15.7
Interest to U.S. Treasury	20.0	20.0	20.0	20.0	20.0	20.0
Deficit$_2$ (D_2 plus interest)	28.2	30.7	35.0	37.4	43.3	52.7
Amortization to Treasury	22.0	22.0	22.0	22.0	22.0	22.0
Deficit$_4$ (D_3 plus amortization)	50.2	52.7	57.0	59.4	65.3	74.7
Deficit$_4$ as percent of tolls	25.8	26.6	28.5	29.3	31.8	35.9
30 cents per ton to Panama	46.8	47.6	48.0	48.7	49.3	*57.1
Deficit$_5$ (D_4 plus 30 cents per ton)	97.0	100.3	105.0	108.1	114.6	131.8
Deficit$_5$ as percent of tolls	49.8	50.6	52.5	53.3	55.8	63.3

*Includes 7 percent inflation factor adjustment per treaty in fiscal year 1984.

Note: Deficit as percent of tolls indicates size of toll increase required to cover all costs as truly expressed.

TABLE III: *Estimated funds available to Panama under 30 cents per ton formula, with tolls set at maximum and U.S. Treasury paid first*

Assumptions:

40 percent net increase in toll revenues is maximum attainable due to traffic diversion (with 75 percent increase in rate) based on International Research Associates sensitivity studies.

Panama is paid $10 million fixed payment and $10 million for services before U.S. Treasury is paid for annual interest and amortization costs; thereafter Panama is paid remaining surplus.

Panama Canal Company projections of cost and income without toll increase.

7 percent inflation factor.

GAO estimates on interest and amortization to U.S. Treasury.

W. M. Whitman study factor on capital costs not recoverable by depreciation.

$10 million contingent payment to Panama not paid.

	Fiscal year—					
	1979	1980	1981	1982	1983	1984
Toll revenues (table I)	194.9	198.4	200.1	202.8	205.5	208.1
Maximum toll revenues	272.9	277.8	280.1	283.9	287.7	291.3
Other revenues (table I)	63.3	64.6	62.8	62.5	64.0	61.7
Maximum total revenues	336.2	342.4	342.9	346.4	351.7	353.0
Total expenses (table I)	246.4	253.7	257.9	260.3	269.8	282.5
$20,000,000 to Panama	20.0	20.0	20.0	20.0	20.0	20.0
$42,000,000 to U.S. Treasury	42.0	42.0	42.0	42.0	42.0	42.0
Expenses plus payments	308.5	315.7	319.9	322.3	331.8	344.5
Surplus to Panama	27.7	26.5	23.0	24.1	19.9	8.5
Comparison with full 30 cents per ton formula	46.8	47.6	48.0	48.7	49.3	*70.0

* Includes 7 percent inflation factor adjustment per treaty in fiscal year 1984.

Note: Assumption of 75 percent toll increase (to achieve 40 percent net increase in toll revenues) does not take into account impact on U.S. economy or impact on sectors particularly sensitive to canal routes (e.g. agricultural products, petroleum, coal).

Mr. CURTIS. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, may I inquire of the Chair how much time remains on both sides of the Helms amendment?

The PRESIDING OFFICER. The Senator from North Carolina has 14 minutes and the Senator from Maryland has 23 minutes.

Mr. SARBANES. Mr. President, I will take just a few minutes to address the substance of the amendment offered by the distinguished Senator from North Carolina.

First of all, I think it is important to point out that much of what is covered in his proposed reservation can be dealt with by Congress in the implementing legislation. In other words, it is within our control. As I recall, in the course of making his statement, the Senator touched on that fact, that that area of control is available to us.

I am very frank to say that I think that is much the better way to handle this problem. We obviously would have to make some judgments in working on the implementing legislation as to how we relate commitments undertaken in the treaty to the Republic of Panama with other payments that we may or may not decide should be realized from the toll revenues, and, of course, some of what the Senator has set out here—operating expenses, capital expenditures, for example—have to be realized. Other things that

we may choose to do or not to do—amortization of assets, which is something we have not done in the past, or the interest payments, something we have only done for a limited period of time in the past, in terms of our own financial management of the Panama Canal—those matters can be handled in the implementing legislation. We have to make a judgment on how seeking to realize them out of the tolls would affect the tolls over the period of time we have the primary responsibility—I should not say primary, I should say the responsibility of operating and maintaining the Panama Canal through the Canal Commission, which is, of course, from the time these treaties take effect until the end of the century, or noon on December 31, 1999.

Given those considerations, it seems to me not advisable to seek to place into the treaty or into the articles of ratification through a reservation, which, of course, will require the concurrence of the other party to the treaty before we actually have a binding document—not to place there matters which we can control here through implementing legislation. We might choose, even if one were to take exactly the approach which the Senator has suggested, and I do not know that one would, but, even if one were to do it at the outset, one later might wish to change it and, if it becomes a part of the agreement between the two parties, the change could not occur, of course, without the concurrence of the other party to the agreement; whereas, if we handled the matter ourselves here through implementing legislation, then we can change it as we deem appropriate at any subsequent time. Thus, in a sense, we give away some of out own freedom or control.

The priorities for payment to Panama are a different question, but they are intermixed, of course, with these other payments which the Senator seeks to draw out of the tolls. As I have pointed out, some of those payments are payments that are not even realized now by the United States with respect to the burden we place upon the toll structure of the Panama Canal.

I have made this point before with respect to other proposals and, therefore, I do not want to repeat it at great length. I do think that the very important distinction which is made with respect to matters we can deal with in implementing legislation as opposed to putting them into treaties is an important one. It is my own view that to the maximum extent possible we should observe our own control over subject matter that need not be included in the treaty. If we include it in one way or another in the treaty—and, of course, there are different ways to do so—it then is part of the agreement between the two parties and any modification, revision, alteration, and so forth, with respect to it requires the concurrence of the other party.

If it is a subject matter which we can handle through the implementing legislation, it seems to me that is where we ought to handle it. That imposes complete and ultimate control in ourselves, ourselves being the constitutional bodies of the Government of the United States that are necessary in order to bring about implementing legislation which, of course, is not the Senate alone as it involves the whole statutory process.

For that reason, which is a consistent one I have advocated with a number of proposals which have been made for alteration in the

treaty documents, I would oppose the amendment to the Resolution of Ratification offered by the distinguished Senator from North Carolina.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HELMS. Mr. President, perhaps my good friend from Maryland misunderstood the Senator from North Carolina. I intended to emphasize that we cannot count on the implementing legislation to cover the questions surrounding payments to the U.S. Treasury. Indeed I did raise the question of why we do not provide in the implementing legislation for these payments to the U.S. Treasury to be included in the toll base; but I raised it only to show that the question was irrelevant. The answer is that the canal cannot possibly earn enough to pay both Panama and the United States. If we wait for the implementing legislation, it will be too late.

Mr. President, the point is this: The Senate will make a grievous mistake if it delays the action that is sure to come on this question. Of course, the people who will pay for the mistake of the Senate in this connection will be the people who always pay for the Senate's mistakes—the taxpayers of this country.

I would say to the able Senator from Maryland that if the Senate accepts my reservation the United States can always decide later not to take payments to the U.S. Treasury first if circumstances warrant. I believe we will never have any difficulty with Panama, the other partner, as the Senator described it about that. But if we do not get authority to do it now, we will be unable to do it through implementing legislation. As for past practice, we did not have to take all of these payments in the past because we expected to own the canal in perpetuity, precisely as the 1903 treaty provides. As long as it was ours, we didn't have to worry about the cost of giving it away.

We will have to have a clear understanding with Panama at the time of ratification to agree to U.S. authority to pay the United States first; but I say again, Mr. President, that we had better face this question now instead of later, for later will be too late. We simply have to face the facts. The administration has cooked up some very pretty estimates in an attempt to show that the canal will be self-supporting, and that the treaty will not cost the taxpayers a dime.

When we look at the cold arithmetic of it, Mr. President, you are bound to come to the conclusion that, if you believe that, you will believe anything.

The only way that the administration and the proponents of the treaty can make the projections come out looking plausible is by understating the true cost. They understate the impact of the possible loss of Alaskan oil revenues. They understate the probable rate of inflation. They understate the cash needed for the program on capital expenditures. Even if the U.S. Treasury were to absorb the interest on the United States direct investment and the recovery of the cost of U.S. assets, there is very little likelihood that the proposed Panama Canal Commission can pay for itself.

Suppose there are several years of deficits, and tolls have already been raised to net the 40 percent maximum—a situation I have demonstrated is very likely to happen. It is not a "worst case"

supposition, either; in the view of the Senator from North Carolina, based upon the economic analysis placed on every Senator's desk, it is the most probable supposition.

So suppose that there are chronic deficits and tolls have been raised to the maximum; what happens then? There are two alternatives: To borrow from the U.S. Treasury, or to come to Congress and seek appropriations. What kind of a choice is that? The taxpayers get socked in either case. It is not very likely that Congress could refuse to honor an international obligation.

And if deficits are remaining, debts of the Panama Canal Commission in the year 2000, then the Treasury simply will have to absorb them.

But then, as I have pointed out, the Treasury is already slated to absorb $20 million in interest a year and $22 million in amortization costs—a total of almost a billion dollars over the life of the treaty. That is not counting the capital costs of over $400 million, a grand total of $1.32 billion.

Let us not kid ourselves, Mr. President, the U.S. taxpayer will get the bill for all of the money involved. They will be getting the bill for any annual operating deficits, deficits that are bound to arise once the maximum toll increase has been achieved.

I suggest that we look objectively at the reality of the situation. Let us not talk about fairness to Panama. The Senator from North Carolina feels that we ought to have fairness to both sides, to Panama and to the taxpayers of the United States. My point in presenting this reservation is to attempt to balance the risks and benefits.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER (Mr. Morgan). Who yields time?

Mr. SARBANES. Mr. President, I have listened carefully to the distinguished Senator from North Carolina. As usual, he makes a forceful argument.

I think it is a fact of the matter that we will have to look very carefully, and the Canal Commission, established by this treaty will have to look very carefully, at the projected traffic, expenditure, revenues, the toll base.

I read carefully the testimony before the able Senator's committee, the Armed Services Committee, which, for 1 full day, I believe, dealt with the economic aspects of the treaty. There was some very interesting testimony there which requires a lot of careful analysis, including, of course, the testimony of a management consultant which the committee itself engaged, who reached this conclusion:

> We have concluded that there may be opportunities for reducing some of the projected expenditures by some $30 to $40 million per year.

Governor Parfitt challenged that, or disagreed with that.

I must say to the Senator my own reaction to it was one of some surprise. It sounded to me like quite a large figure in terms of the opportunities for reducing projected expenditures. But that is the testimony and it was by an expert witness.

I only make that point to underscore, rather than now trying to take something that we can handle by statute and locking it into the treaty, the need for it to be dealt with by statute, by implementing legislation.

We earlier today adopted the proposal of the Senator from Massachusetts which, of course, means that there will be no exchange of instruments of ratification prior to March 31, 1979, unless the implementing legislation has been enacted prior to that date, in which case the exchange of the instruments of ratification would occur on that date.

We have now a very strong incentive, I believe, for enactment of the enabling legisltion. It will give us a better reading of this entire issue.

Aside from the priority arrangements which the Senator has established, about which I think one could quarrel because we do have questions of which obligations you meet and in which order, I do think we ought to reserve this matter to be dealt with in the legislation.

The Senator has characterized that as delaying the agony; I think that was the phrase that the Senator used. All I can say to that is that there has been an awful lot of agony associated with the consideration of these treaties. But I hope that we could, in this instance, in effect, carry this issue over into the implementing legislation. We shall be back again.

I hazard to predict, and I want to make this point because I think it is important, that, assuming that the Senate does advise and consent to these treaties, when we come to the implementing legislation, I, first of all, expect far less division and controversy among the Members of the Senate on the issues involving implementing legislation. I also hazard to predict that, to the extent that there may be division and controversy, the lines and the alinement will be then quite different from the lines of division that have existed while we have considered these treaties.

Mr. President, I reserve the remainder of my time.

Mr. HELMS. Mr. President, of course, the Senator from North Carolina hopes that the Senator from Maryland is correct and that everything works out fine and the tolls do provide enough revenue. But I shall have to repeat the question: What if they do not? If they do not, then the taxpayers of this country get stuck.

Mr. President, in conclusion I want to pay tribute to a man who has been of immense help in analyzing these costs. There is probably no individual in the United States—perhaps in the world—who has had more high-level experience and knowledge about the Panama Canal financial operations than Mr. W. Merrill Whitman. Mr. Whitman was Secretary of the Panama Canal Company for over 20 years. He has participated intimately in the development of the Company from its reorganization in 1950. Not even any Governor of the canal, with all due respect for the high capability of someone like Governor Parfitt, has had the years of experience which Mr. Whitman has had.

Mr. Whitman is presently an active consultant on canal affairs with the House Panama Canal Subcommittee and the House Merchant Marine Committee. He has given very generously to me of his expertise and knowledge, making available his detailed studies. It is appropriate to make special reference to what he has said about the need to include capital expenditures as an additional expense rather than being reduced by depreciation charges, and hiding the costs in the budget.

Mr. President, I ask unanimous consent that Mr. Whitman's statement be printed in the Record at this point.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY MR. WHITMAN

In the Company's tabulation, capital costs are appropriately differentiated from "operating expenses" but they are not reflected anywhere in the enumeration of costs except in the calculation of the deficiency of revenues to cover expenses "including capital requirements in excess of depreciation." This results in a misleading implication that new capital expenditures somehow are not costs until they exceed the amount of depreciation accruing on assets acquired with funds previously spent.

Revenues include tolls, i.e., the charge made for the use of the canal, and under the tolls formula now provided by Act of Congress, depreciation on assets previously acquired (and paid for) is included as a cost to be recovered from tolls. This depreciation accrual, including in tolls revenue has no relationship to future expenditures for capital assets. However, such expenditures are regularly made. . . . The fact that the cash flow generated by depreciation on assets already required will be available to finance part of those expenditures in no way reduces the total of the expenditures required. The cash flow generated from inclusion of depreciation as an element of costs in the tolls formula is not earmarked for future capital expenditures. It is available for use for payment of any of the expenses of the agency or for repayment of the U.S. Government's investment in the Canal.

Mr. HELMS. Mr. President, may I ask the time situation?

The PRESIDING OFFICER. The Senator from North Carolina has 7 minutes. The Senator from Maryland has 12 minutes.

Mr. HELMS. I thank the Chair.

Mr. President, I reserve the remainder of my time.

ORDER FOR RECESS UNTIL 7:30 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I make the following unanimous-consent request after consultation with Mr. Laxalt, Mr. Church, Mr. Sarbanes, Mr. Baker, and various other Senators involved, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 7:30 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, after the prayer tomorrow morning, the following Senators be recognized, each for not to exceed 15 minutes: Messrs. DeConcini, Robert C. Byrd, Lugar, and Dole; and that at 8:30 a.m. the Senate resume consideration of the treaty; that, at that time, Mr. Dole be recognized to call up his amendment to the Resolution of Ratification; that there be 30 minutes on that amendment, and that the time be divided in accordance with the usual form; that at 9 o'clock, Mr. Thurmond be recognized for debate on his two amendments, that there be 1 hour of debate on those two amendments, that the time be controlled in accordance with the usual form, and that the votes on the Dole amendment and the Thurmond amendment not occur at the close of the debate, but that, at 10 o'clock a.m., the vote occur with respect to the Helms amendment which has already been debated or is in the process of being debated; that there be a 15-minute rollcall; that immediately behind the disposi-

tion of the Helms amendment, the following votes occur, each to be a 10-minute rollcall vote; with respect to the Curtis amendment, the Dole amendment, and the first Thurmond amendment, then the second Thurmond amendment, and the amendment by Mr. DeConcini: and that, following the aforementioned votes—and I have discussed all of this with the distinguished minority leader, as I pointed out earlier: that following the votes that I have just referred to, there then be 40 minutes for debate on an amendment by Mr. Bartlett and that, at the expiration of that time or upon its being yielded back, a vote occur with respect to the Bartlett amendment that then, the debate begin on the so-called leadership amendment, with 15 minutes of control on the leadership amendment alloted to Mr. Melcher and with the remaining 2 hours and 15 minutes for debate on that leadership amendment to be controlled in accordance with the usual form; that the vote in respect to the leadership amendment not occur, however, at the expiration of that time; that at 2:30 p.m., Mr. Allen be recognized to call up his amendment No. 1—I shall refer to it as No. 1 because he has two amendments; his first amendment—that there be a 30-minute limitation on the Allen amendment and that a vote occur then with respect to the Allen amendment at the expiration of that time or when the time is yielded back; that upon the disposition of the first Allen amendment, Mr. Allen then be recognized to call up a second amendment; that there be 30 minutes for debate on that amendment, and that, upon the expiration of that time or its being yielded back, a vote occur in relation to the Allen amendment; following which the vote occur on the leadership amendment; following which, Mr. Griffiln be recognized to call up an amendment; that there be a 30-minute limitation to that amendment; and that upon the expiration of that time a vote occur in respect to the Griffin amendment; following which there be 1 hour of general debate to begin at 5 o'clock p.m. on the Resolution of Ratification; that the first 15 minutes of that 1 hour be under the control of the proponents of the treaty, the next 30 minutes under the control of the opponents of the treaty, the final 15 minutes to be under the control of the proponents of the treaty—and in each instance I may have overlooked the division and control of time—in each instance with respect to amendments, the division and control of time be in accordance with the usual form; which would mean, Mr. President, that the final vote would occur at 6 o'clock p.m. if we can hold all the rollcall votes without stretching any of them even a minutes, and, hopefully, some of the time on one or more amendments can be yielded back, which will give us some much needed flexibility.

That completes my request.

Mr. BAKER. Reserving the right to object, Mr. President, and I will not object, I wanted, though, to take this opportunity to commend the distinguished Senator from Nevada, the Senator from Maryland, the distinguished majority leader, and others who participated in construciting this schedule of activities for tomorrow. I think it is of great value to the Members of the Senate.

I would inquire of the majority leader and the distinguished Senator from Nevada as to their feeling about providing, say, for a 20-minute vote, or even a 30-minute vote, on the final vote on the Resolution of Ratification.

I doubt it will be necessary since I fully expect every Member of the Senate to be present and on the floor. But we did that in the case of the first treaty. I wonder if that might be provided for on this one.

Mr. ROBERT C. BYRD. Mr. President, I am very receptive to that suggestion, as is Mr. Laxalt, and I would include that in the request with the understanding that the warning bells would sound after 12½ minutes have expired, and with the further proviso that the clerk announce after each vote is cast how the Senator casting that vote voted.

This enabled all Members to be at their desk, to keep a running tally, it enabled the guests in the galleries, the press, the media, and the people listening throughout America, to hear clearly how the votes were cast, and it was conducive to order and decorum. I ask that be included in the request.

Mr. CURTIS. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. CURTIS. And I hope that I will not have to object. I understood that at a certain hour tomorrow morning there would be a vote on the Curtis amendment. That means a vote on the amendment and not a vote on a motion to table?

Mr. ROBERT C. BYRD. No. The request I made was with respect to or in relation to the Curtis amendment, which does not waive the right of Senators to make such motions as they desire.

Mr. CURTIS. It seems to me when we are short of time that they should forego the idea of tabling amendments because some of them might require two rollcalls.

Mr. ROBERT C. BYRD. Mr. President, the managers of the treaty may very well decide to have an up or down vote, but it was my thought after discussing this matter with the Senators that we would not waive the right of Senators to move to table, if they so desired at that time.

Mr. CURTIS. Of course, we all have rights.

Mr. ROBERT C. BYRD. Yes.

Mr. CURTIS. To object.

Mr. ROBERT C. BYRD. Yes.

Mr. CURTIS. But I am willing to waive that right, but I want some compensation. I want some consideration.

Mr. ROBERT C. BYRD. Well, I just hope the Senator will not object and maybe tomorrow morning the managers of the treaty would be willing to listen to the persuasive powers of the distinguished Senator from Nebraska.

Mr. CURTIS. Well, if he will consider it overnight. I will consider overnight the unanimous consent.

Mr. ROBERT C. BYRD. That is certainly within the Senator's rights and I do not question that at all.

The PRESIDING OFFICER. Is there objection?

Mr. BAKER. Mr. President, reserving the right to object, might I inquire of the Chair, is it not so that under the rules and precedents and the form of this unanimous-consent request that in the case of the amendment to be offered by the distinguished Senator from Nebraska that no tabling motion could be made, in any event, until the expiration of the full time allowed under this proposal and that nothing could be done under this formulation to reduce or

diminish the amount of time for debate, at least, that the distinguished Senator would have?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Further reserving the right to object, Mr. President, I must confess I am not acquainted with the substance of the distinguished Senator's proposed amendment. I would hope that we could arrive at some sort of accommodation on that point.

Might it be possible under this reservation of the distinguished Senator from Nebraska, would he give us some idea of what the amendment is?

Mr. CURTIS. Yes. I would be happy to.

This amendment adds to the resolution of ratification provision that subject thereto all outstanding claims by U.S. citizens or corporations owned and controlled by the U.S. citizens against the Republic of Panama for property belonging to such citizens or corporations which has been nationalized, expropriated, occupied, or seized by the Republic of Panama, such claims, and they were presented before September 7 last, shall be paid, or all grants, loans, guarantees provided under the treaty and related agreements shall be suspended.

I think it is important that the Senate go on record in favor or against insisting on these claims being paid. It will not call for a vote in the Republic of Panama. It imposes no impossible burden on them. It requires them to do what is now required by law, but the State Department has not forced them to do.

I do not think we are fair with these claimants or with the people we represent to have this disposed of by a motion to table. A motion to table carries with it a connotation that for some strategic reason or for some parliamentary reason, it should not be considered. In other words, it is a means of not facing the issue. I know the burdens on the leadership in trying to bring this to a conclusion, but it will not be me objecting. It will be those in charge of the bill forcing me to object. It is their responsibility, not mine.

Mr. ROBERT C. BYRD. Mr. President, may I state briefly the position in which the distinguished Senator from Nebraska puts the joint leadership, and I say this most respectfully.

If we agree that we will waive the rights of Senators to move to table the amendment by Mr. Curtis, there are other Senators who, I think, would have justification for criticizing the leadership and for complaining that they were not given the same right of an up-and-down vote. That is the problem.

We do have only a limited time tomorrow. Mr. Laxalt, Mr. Sarbanes, the minority leader, Mr. Helms, and others have tried to work out a schedule which is very tight and very close, indeed, in order to give every Senator who has an amendment a chance to call it up and have a certain amount of time to debate it, so that no Senator, when 6 o'clock arrives, will have been deprived of the opportunity to call up an amendment and to have some time for debate on it.

So I hope that the distinguished Senator will not object. The problem outlined does represent a tremendous amount of work, especially on the part of Mr. Laxalt and Mr. Sarbanes. I hope the Senator will not press his point, because if he does object, some Senator will conceivably be shut out of time for debate on their

amendments tomorrow. If we were to consent to the Senator's request, we would put ourselves in a position of being criticized by other Senators who likewise would like to have up and down votes.

I hope we can leave it in the hands of the managers tomorrow, and the distinguished Senator from Nebraska may be able to discuss the matter with them, and it may be that they will not exercise their rights to move to table.

Mr. CURTIS. I say to the distinguished leader that it is not uncommon in unanimous-consent requests to agree that the amendment shall be disposed of by a direct vote. I do not think the request is unusual; I do not think it is without precedent. I do not like to object at all, and it will not be me objecting. It will be the leadership forcing me to object.

Mr. ROBERT C. BYRD. Before the Senator objects, I hope he will once again allow me to say this: it is not a precedent; the Senator is correct. But I do not believe there has been a single instance during the 37 days of debate on these treaties in which the right to table has been waived by unanimous consent.

Mr. CURTIS. I am sure they have not missed the chance to avoid facing an issue square on. I agree with the Senator.

Mr. SARBANES. Mr. President, if the Senator will yield, I think the point the majority leader is making is that in the course of this debate, on either treaty, he does not believe a Senator's rights in this regard were waived. There have been instances in which we have had up-and-down votes, as opposed to motions to table.

I appreciate the thrust of the Senator's argument, and we will certainly take a careful look at that. Of course, I have not studied his amendment, nor, even more important, have I listened to the Senator's argument with respect to it. It just seems to me that we have come this far in handling the matter in that regard, and I hope the Senator will allow us to proceed.

Mr. CURTIS. I return the compliment by saying I hope that the Senator will agree to what I seek and will allow us to proceed. It will take less time to waive the motion to table than it will take to have it.

Mr. ROBERT C. BYRD. Mr. President, I am advised that a request on the leadership amendment inadvertently was for a vote on the amendment. I change that to a vote in relation to the amendment.

Mr. CURTIS. Mr. President, further reserving the right to object, I am afraid that what the Senator is doing is heading for nothing but chaos here.

Any Member can exercise his right for a motion to recommit the leadership's amendment, and that will call for two rollcall votes. It will upset the Senator's schedule. I would expect cooperation in return for my cooperation and that I would be allowed a vote on my amendment.

For the purpose of orderly procedure in arriving at a vote and scheduling, and not cutting out the time of Senators, it would be my hope that the distinguished majority leader would switch the leadership amendment back to a vote up and down on it, because that is the one amendment that will take double time if there are two rollcall votes.

Mr. ROBERT C. BYRD. Mr. President, may I temporarily withdraw the request? I understand the Senator from North Carolina has the floor.

Mr. BAKER. Before the majority leader withdraws the request, I wonder if he will yield for a question.

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. In the course of propounding the request, was the time fixed for the final vote?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. To begin at 6 and to run how long?

Mr. ROBERT C. BYRD. That would be a 20-minute rollcall vote, beginning at 6 o'clock.

Mr. CURTIS. Mr. President, how much time remains on the Helms reservation?

The PRESIDING OFFICER. The Senator from North Carolina has 5 minutes remaining.

Mr. HELMS. Mr. President, I am prepared to yield back the remainder of my time if the Senator from Maryland is.

Mr. SARBANES. How much time remains to the managers of the treaty?

The PRESIDING OFFICER. The Chair is advised that all their time is used.

Mr. SARBANES. Mr. President, I am prepared to yield back my time, also, so the Senator from Nebraska, who has been waiting patiently, may proceed to call up his reservation and debate it.

So I have no further intention of debating the Helms reservation.

Mr. HELMS. Mr. President, I wonder if I might direct a question to my friend from West Virginia, the distinguished majority leader. Does the proposed unanimous-consent request suppose that the yeas and nays will be obtained on all of these amendments or reservations?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. That is so whether the author of the amendment or reservation is on the floor or not?

Mr. ROBERT C. BYRD. Yes.

Mr. HELMS. I thank the Chair.

The PRESIDING OFFICER. Is all time yielded back?

Mr. HELMS. I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that it be in order at any time to order the yeas and nays on any of the amendments or any motions in relation to amendments.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CURTIS. Beg pardon? May I hear that again?

Mr. ROBERT C. BYRD. I merely asked that it be in order at any time to order the yeas and nays on any amendments or on any motions in relation to the same.

Mr. CURTIS. No objection.

(The following proceedings occurred during the consideration of Mr. Helms' reservation No. 18 and is printed at this point by unanimous consent.)

Mr. Danforth addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DANFORTH. Mr. President, will the Senator from Maryland yield?

Mr. SARBANES. I yield to the Senator from Missouri.

Mr. DANFORTH. Mr. President, I ask unanimous consent that I may be allowed to take up understanding No. 12 at this time. The statement accompanying it is two pages long. It will take about 5 minutes to read. I wonder if I could get unanimous consent to take it up at this time with the time not to be charged to either side on this particular reservation.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. A parliamentary inquiry, Mr. President: Do I have to ask unanimous consent? Do I need to ask unanimous consent to temporarily set aside the Helms amendment in order to take up the proposal of the Senator from Missouri?

The PRESIDING OFFICER. That is required.

Mr. SARBANES. I so ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I ask unanimous consent that the Senator from Missouri be able to offer his amendment at this point and that it be in order that it be considered.

Mr. President, I am prepared to allow the time to come out of the time allocated to me on the Helms amendment and then I will, following the disposition of the Danforth amendment, return to the Helms amendment.

Mr. HELMS. Mr. President, reserving the right to object, and I shall not object, I would ask the Senator to stipulate that this interim activity be placed elsewhere in the Record.

Mr. SARBANES. I include that in the unanimous-consent request.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UNDERSTANDING NO. 12

Mr. DANFORTH Mr. President, I very much appreciate the courtesy of the Senator from North Carolina, the Senator from Maryland, and other Senators waiting to call up their amendments.

I call up my understanding No. 12.

The PRESIDING OFFICER. The clerk will report.

The second assistant legislative clerk read as follows:

The Senator from Missouri (Mr. Danforth) proposes an understanding numbered 12.

Mr. DANFORTH Mr. President, I ask unanimous consent that further reading of the understanding be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The understanding is as follows:

Before the period at the end of the resolution of ratifiation, insert a comma and the following: "subject to the understanding, which is to be made a part of the instrument of ratification, that nothing in subparagraph 4(c) of Article XIII shall be construed to limit the authority of the United States of America through the United States Government agency called the Panama Canal Commission to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to Panama described in subparagraph 4(c) of Article XIII".

Mr. DANFORTH Mr. President, one of the hoped for results of ratification of the Panama Canal Treaty is to establish a new, mature relationship between the United States and the Republic of Panama. The new arrangements governing the operation of the Panama Canal will promote improved harmony of interest between our two nations and substantially increase the desire of Panama to insure an efficiently run canal. Howver, I am concerned that a possible misunderstanding concerning the $10 million contingent payment provided in subparagraph 4(c) of article XIII may occur which would provide the basis for continuing conflict between the United States and Panama. Such a conflict could undermine the spirit of cooperation brought about by these treaties.

Our negotiators have told me that they and their Panamanian counterparts agree about the authority of the Panama Canal Commission and this payment. But I believe it is prudent to set forth this understanding for myself, Senator Baker, and Senator Bellmon as a part of the instrument of ratification so that no confusion can occur at some later time.

I am concerned, Mr. President, that in the future, objections may arise to certain financial and management decisions which may be made by the Panama Canal Commission for the efficient operation and maintenance of the canal on the grounds that such decisions would reduce the Commission's surplus so that $10 million, or any lesser amount, would not be available for payment to Panama as provided in article XIII, section 4(c).

The Commission must be free to make expenditures which it deems are required to insure the same level of canal operations as existed under the Panama Canal Company. The contingent payment must not in any way act as a constraint on Commission decisions. This understanding makes it clear that the Commission's authority shall not be burdened or limited in any way by considerations of the contingent payment.

The understanding also makes it clear that tolls for users of the canal need not be set at levels designed to produce sufficient revenues to cover the $10 million contingent payment, or any portion thereof. The wording does allow Congress, if it so desires, to permit tolls to account for this payment. I have noted that the draft implementing legislation proposed by the administration does not allow for this payment in the toll base. But I do not want to bind this or some future Congress in this regard. I do, however, wish to establish the fact that the United States, through the Panama Canal Commission, is under no obligation whatsoever to compel canal users to bear explicitly this financial burden.

Mr. President, this understanding has been clared by the administration and they have no objection to it.

Mr. SARBANES. Mr. President, I simply wish to say that I know a great deal of care and thought has gone into developing this understanding on the part of the very able Senator from Missouri. I know of his concern to assure that the canal shall be efficiently operated and maintained, a concern which I think is shared by all parties. After all, the canal is the fundamental entity here, and I think the Senator has very carefully worked out an understanding to accomplish that objective and has done it with a great deal of

skill and a great deal of care. We are prepared to accept the understanding which the able Senator from Missouri has offered.

I am prepared to go to a vote on it at this time, if that is agreeable to the Senator from Missouri.

Mr. DANFORTH. That is agreeable.

The PRESIDING OFFICER. The question is on agreeing to the understanding (No. 12) of the Senator from Missouri.

The understanding was agreed to.

Mr. HELMS. I move to reconsider the vote by which the understanding was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DANFORTH. I appreciate the courtesy of the Senator from North Carolina and the Senator from Maryland.

[This concludes proceedings which occurred earlier in the day.]

The PRESIDING OFFICER. The Senator from Nebraska (Mr. Curtis).

UP RESERVATION NO. 30

(Subsequently numbered reservation No. 19)

Mr. CURTIS. Mr. President, I send a reservation to the desk and ask that it be stated.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from Nebraska (Mr. Curtis), for himself and Mr. Hatch, proposes an unprinted reservation numbered 30.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that if there are any outstanding claims by United States citizens or corporations owned or controlled by United States citizens against the Republic of Panama for property belonging to such citizens or corporations which was nationalized, expropriated, occupied or seized by the Republic of Panama, and such claims (a) were presented to the Republic of Panama prior to September 7, 1977, and (b) were found, or subsequently are found, by the Secretary of State of the United States to be compensable under international law, then all United States economic assistance to the Republic of Panama, including grants, loans, and guarantees, as provided under this treaty and related agreements, shall be suspended, and no further assistance may be made available to the Republic of Panama until such claims are compensated by the Republic of Panama. If the claimant and the Republic of Panama are unable to reach agreement on the amount of compensation to which the claimant is entitled, the Foreign Claims Settlement Commission of the United States (established pursuant to Reorganization Plan No. 1 of 1954, 68 Stat. 1279) shall, at the request of the claimant and within 60 days after submission of the request, evaluate the property, determine the amount of compensation to which the claimant is entitled, and transmit its determination to the Secretary of State. The amount of compensation which the Commission shall determine the claimant is entitled to shall be the fair market value of the property at the time of the nationalization, expropriation, occupation or seizure, which amount in no event shall be less than the book value of the property at such time determined in accordance with generally accepted accounting principles in the United States.

Mr. CURTIS. Mr. President, I call to the Senate's attention Panama's past seizure, without compensation, of property belonging to American citizens. In one of the two Panamanian expropriation cases I know of, a U.S. corporation had approximately 500,000 acres of land taken from it by the Government in 1970. Not one cent in compensation has been paid to date. Indeed, it was only because of the persistent intervention of the State Department that the Panamanian Government even agreed to discuss the case with the former property owner. More recently, I understand, the com-

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pany was told by the Panamanian Government that no further discussion would take place until the treaties are ratified.

In the other case, in December of 1974, Panama seized all the assets of an American-owned citrus fruit company. The Government of Panama has yet to offer any semblance of just compensation for these assets, which it is operating today, and from which it is grossing millions of dollars annually. What are we going to do if someone decides to seize the Panama Canal?

Mr. President, we want to be fair to the Panamanians, but I think that they too have an obligation to be fair to us. Yet the treaty makes no provision for assisting American citizens who now have claims against the Panamanian Government. In my judgment, these treaties ought to contain some provision to help our citizens obtain from Panama the compensation to which they are legally entitled.

As Senators will recall, Senator Hatch recently offered an amendment to the treaty to protect American citizens from future expropriations of American-owned property. During the course of debate on that measure, Mr. Church, the distinguished Senator from Idaho, stated that,

> In our relations with sovereign governments, we have always recognized that those governments have the right of eminent domain. . . . We have only insisted, when other governments exercise the right of eminent domain as to us, taking over private property and converting it to public ownership, that the private owners, if they be American citizens, are fairly compensated.

It is well understood, then, that where American property has been expropiated by a foreign government, our policy has been to assist the private owners in gaining just compensation for their loss. Indeed, well established international law and U.S. law requires that when privately owned property is seized, the owners must be compensated.

For these reasons, Mr. President, I am offering a reservation to the resolution of ratification which provides that economic assistance to Panama, as provided for in connection with the treaty, shall suspend until Panama compensates American citizens for property it has nationalized, expropriated, occupied or seized.

In order to preclude multiple or spurious claims, the reservation would apply only to claims presented to Panama prior to September 7, 1977, the date on which the treaties were signed, which are found by the Secretary of State to be compensable under international law.

If the claimant and Panama are unable to agree on the amount of compensation, the Foreign Claims Settlement Commission of the United States would be authorized to determine how much compensation is due. Once Panama satisfies these claims, either in an amount agreed upon with the claimants or in an amount determined by the Commission, economic assistance to Panama would be resumed. The effect of this Reservation, in other words, is to assure that this treaty-related assistance to Panama is conditioned upon that country meeting its obligations, under international law, to American citizens whose property has been taken. As the treaty now stands, there are no conditions whatever attached to the economic assistance provisions of these treaties and related agreements. Unless the Senate approves this Reservation, past Panama-

nian treatment of the outstanding claims suggests that our citizens may never receive the compensation that is owed to them.

As we know, certain citizens can secure their rights of compensation against a foreign government only if the U.S. Government acts in their behalf. The acts of Congress which restrict or forbid aid to countries which seize the property of U.S. citizens without paying just compensation have been approved by Congress in recognition of this fact. It is the same spirit of giving needed assistance to U.S. citizens who are seeking to secure their rights under international law that I urge my colleagues to approve this reservation.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. CURTIS. I would be happy to yield to the distinguished majority leader.

UNANIMOUS-CONSENT ORDER

Mr. ROBERT C. BYRD. Mr. President, I discussed earlier a unanimous-consent request with the distinguished manager of the treaty on my side, Mr. Sarbanes. In view of the fact that most of the reservations tomorrow or most of the amendments tomorrow will be offered by Senators from the same side of the aisle the Senator from Nebraska is on, Mr. Laxalt, the leader of the opposition in this instance, has indicated to me that it is his judgment that other Senators who have amendments will understand the peculiar circumstances in which we find ourselves at the moment, and that they will not feel constrained to criticize the joint leadership and the managers, the opposing managers, of the treaty for revising the unanimous-consent request to allow for an up and down vote on the amendment of the Senator from Nebraska.

Mr. CURTIS. I thank the distinguished leaders. In that case I shall not object.

Mr. ROBERT C. BYRD. That being the case, I so revise the request.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered, and the unanimous-consent request is agreed to.

Mr. ROBERT C. BYRD. I thank all Senators, the minority leader, and Mr. Laxalt, in particular, and Mr. Sarbanes.

Mr. CURTIS. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SARBANES. Mr. President, with respect to the amendment which has been offered by the distinguished Senator from Nebraska, I think I ought to point out that there is an established procedure for dealing with such problems. The good offices of the U.S. Government are used in certin regards, and the resolution of claims through its inclusion in the treaty by amendment to the Resolution of Ratification would be, to say the least, extraordinary.

Now, late last year two American companies, Citricos de Chiriqui and Boston Panama—and, of course, I do not know whether it is the factual situation of either or both of these companies that may prompt the amendment—presented separate claims that their properties were expropriated without adequate compensation by the Government of Panama.

Each corporation formally requested that the Government of the United States invoke sanctions, which are presently required by U.S. law when an expropriation occurs and when the host government does not provide adequate compensation.

Another recently raised case is that of the Isthmian Timber Company claim which first came to the attention of the Department in 1941.

Now again I do not know whether that claim is in terms a factual basis for the preception that an amendment of this sort is called for, but at that time with respect to the claim of the Isthmian Timber Company, the Department of State found the claim to be wanting and requested the company to supply additional information.

The company has never substantiated its claim. It did again request the Department's assistance in the spring of 1977, even though it had not responded or followed up on the earlier request for information.

The Department then informed the company that because of this long delay it had really forfeited any rights it might have had under international law.

The U.S. law requires certain sanctions to be invoked against host governments which expropriate the property of U.S. citizens and fail to take appropriate steps to provide compensation as required under international law.

These sanctions are extensive. They include suspension of bilateral assistance programs, the so-called Hickenlooper amendment to the Foreign Assistance Act; they include votes against loans by international devlelopment institutions to the host government, the so-called Gonzalez amendment; and they require, and they include suspension of GSP tariff status pursuant to the Trade Act of 1974.

Now, expropriation claims and other serious investment disputes are examined by an interagency group on expropriations. This group must determine if a host government action is expropriatory and, if so, whether the host government is taking appropriate steps to compensate the investor as required by United States and international law.

In addition, the interagency group coordinates U.S. Government action to insist on investors obtaining compensation.

Although the U.S. Government may become involved in detailed negotiations of a case, experience has shown that this is not usually desirable or necessary. Most often U.S. Government actions are limited to facilitate assistance such as arranging meetings for reminding the host government of its obligations to pay compensation or expressing concern over the lack of progress over resolution of a dispute.

So there is a procedure that is followed, including an interagency group on expropriations.

There are certain generalized sanctions in the law, and we really have established this process to get away from anything that may carry the overtones in effect of special legislation with respect to particular problems.

I think that is much the best way to proceed, and that is why this arrangement which I have outlined has been established.

Now, in the Citricos and Boston-Panama cases, it should be noted that both of these claims had remained dormant until the initiation of debate on the Panama Canal Treaties. The claims of both companies are now under review by the interagency group which are alluded to earlier, that had been established by our Government, and a legal review of each company's claim was started at a meeting in late February of the interagency group and is continuing.

Our Government has also encouraged the government of Panama to carry on negotiations with the companies. In the case of Citricos, negotiations have been underway since January, and the government of Panama has invited the company representatives to meet with the government commission on the 27th of April to establish the market value of the assets to be conceded.

With respect to Boston-Panama, meetings did occur with Government of Panama officials in February.

The Department of State is actively monitoring both claims, and, of course, can invoke existing legislative sanctions if and when appropriate, should it be determined that the obligations of the Government of Panama under international law to these investors have not been met.

I suggest to the Members of the Senate that it is both unnecessary and inappropriate to inject into the treaty ratification process issues which are adequately addressed under existing law with respect to the private interests of these two U.S. investors.

The State Department has encouraged the Government of Panama to resume negotiations with the representatives of these companies, and I, of course, have alluded to the meetings which have taken place and to one of the meetings which is scheduled to take place.

I think I also ought to underscore Panama's previous record for resolving expropriation disputes, and the fact that that record has been very good. Disputes involving United States, IT&T, Boise-Cascade, and the Panama Power and Light Company were each resolved in a manner fully acceptable to the company. In each instance, the U.S. Government played a facilitative role, but did not become directly involved in the merits of the dispute.

The U.S. Government recognizes the right of foreign governments to take over the property of U.S. investors so long as provisions are made for prompt, adequate, and effective compensation. As I indicated, negotiations are proceeding directly between the Government of Panama and the two parties of the only cases that have been brought to my attention, and the interagency committee established for this purpose in our own Government is monitoring this matter very closely.

In the light of those developments, and in the light of the existing statutory remedy, I do not think that the amendment which has been proposed to be added to the Resolution of Ratification to the Panama Canal Treaty is necessary or desirable.

Mr. President, I reserve the remainder of my time.

Mr. CURTIS. Mr. President, let us have the record clear. This reservation pertains only to those grants, loans, and guarantees as provided under the treaty and related agreements. It is relevant and pertinent to the treaty.

Also, the record should show that unless we take this action, the chances of American citizens being compensated are very, very dim.

This is an important principle. American citizens are urged to spend money all around the globe to help emerging countries to build up their economies. Unless the Senate goes on record tomorrow against the provision that if our property is expropriated they do not have to pay for it, it will be a sad day in the U.S. Senate.

Mr. President, I make no argument about some claim back in 1941 that there may have been laches and lack of diligence in presenting. That is not what is involved here.

I would also remind Senators that the very wording of my reservation causes it to deal with only those claims found by the Secretary of State of the United States to be compensable under international law. This is not taking advantage of Panama, or demanding anything that is not right. This will not destroy the treaties. This will not call for another plebiscite. This is a square-toed provision where the Senate will pass on the question of demanding that Panama pay. It is a square-cut choice. Tomorrow the Senate will vote for or against the principle that when Americans make investments in foreign countries and they nationalize, expropriate, or otherwise seize our property, they have to pay for it.

Maybe there will only be one vote for this amendment, but the Senator from Nebraska now speaking is not going to add to the retreat all around the world in protecting the interests of the United States, and say to the world, "You do not have to pay for our property if you seize it to nationalize it." That will be the only issue.

Mr. President, the distinguished Senator from Maryland has mentioned the Hickenlooper amendment, and says that there is provision in existing law to take care of this. Let us consider that. Why is not the proper remedy the invocation of the Hickenlooper and related amendments?

First, the Hickenlooper amendment to the Foreign Assistance Act provides that even in cases in which the Department has determined that an expropriation has occurred, the sanctions which are prescribed may be waived by the President "on national interest grounds."

The Department has not been willing to provide assurances to the injured corporations that it will not waive these sanctions. For example—and I would like copies of this correspondence to be printed in the Record—the attorneys for one of the affected U.S. corporations wrote to the Department on March 9, 1978, specifically requesting assurances that these sanctions would not be waived on national interest or other grounds.

As you will note, the Department's tardy reply, dated April 11, 1978, does not provide these assurances, nor even address this issue.

The parties have sought to invoke the sanctions which are available to them, and to every U.S. citizen whose property has been expropriated without compensation to no avail for many, many months. For example, I hold here copies of letters from one of the affected corporations seeking the invocation of these remedies, dated May 10, 1977, and December 12, 1977.

It is not correct that these were dug up after the treaty was signed. It is not true at all.

The Department of State has simply and clearly dragged its feet in responding. I will place copies of these letters, plus an inconclusive reply to one of them, dated January 19, 1978, in the Record.

When the Senate voted to make the Hickenlooper amendment law, it meant that the Department of State was to enforce this law. It did not intend that the Department only enforce it when the bureaucrats there felt that enforcement was convenient to them.

The reservation is necessary to assure that U.S. citizens with meritorious expropriation claims receive the compensation due them, It is necessary because the Department of State is plainly unwilling to see to it that this is done. These U.S. citizens have no other remedy.

Mr. President, I ask unanimous consent to have the following letters printed in the Record: A letter from the attorney for the Boston Panama Co., dated May 10, 1977; another letter from the same parties dated December 12, 1977; a reply from the Department of State by Terence A. Todman, Assistant Secretary for Inter-American Affairs, dated January 19, 1978; a letter from the attorney for the same company dated March 9, 1978; and a reply from the same Assistant Secretary, dated April 11, 1978.

There being no objection, the letters were ordered to be printed in the Record, as follows:

HELLER & TEMPLE,
Washington, D.C., May 10, 1977.

Re Boston Panama Company.

TERENCE A. TODMAN,
Assistant Secretary of State,
Department of State, Washington, D.C.

DEAR MR. ASSISTANT SECRETARY: I am writing in behalf of my client, the Boston Panama Company, a United States Corporation beneficially owned exclusively by United States Citizens.

As you are probably aware, the Company has long been seeking compensation for extensive Panamanian real property holdings expropriated without compensation by the Government of Panama. Until now, the Company believed that an amicable settlement with the Government of Panama could be reached through good faith negotiations. The Government, without providing any reasons, however, now indicates that it considers "the case closed". It has no intention of negotiating on the merits or compensating the Company.

The early history of this protracted controversy is summarized in a memorandum of September 20, 1974. A copy is attached hereto. Since October 1974, the Department of State has assisted the Company by encouraging the Government of Panama to enter negotiations.

In discussions throughout 1975–1976 with Panamanian officials, including the Ambassador to the United States, the Company was led to believe that if it could demonstrate that the expropriation by predecessor governments was unlawful and amounted to a denial of justice, that the current Government would consider the case on its merits and negotiate an equitable settlement. The Company has amply met this burden of proof.

In recent meetings between United States Ambassador Jordan and President Lakis of Panama, the President expressed an interest in equitably resolving this long-standing dispute. For this purpose, representatives of the Company, accompanied by Ambassador Jordan, met in Panama with President Lakis on May 3, 1977.

At this meeting President Lakis reiterated his interest in finding an equitable solution. However, he stated that the "political decision" as to whether the Government would enter into settlement negotiations rested with General Torrijos.

In subsequent discussions with Minister Manfredo and Doctor Reluz of the President's staff, Company representatives repeated their offer:

(1) to invest all compensation proceeds in Panama;

(2) to assure that the conduct of negotiations and the terms of any settlement would be held in strictest confidence; and

(3) to accept compensation in any form convenient to the Government.

Minister Manfredo, who participated in its earlier phases, was familiar with the history of the case, and appeared confident that a solution was imminent. He too stated, however, that General Torrijos' concurrence was essential before negotiations could proceed.

The Company was thereafter advised by Minister Manfredo that General Torrijos was unwilling to negotiate a settlement and, moreover, as far as the Government of Panama is concerned, that "the case is closed". This decision was made upon "political grounds", without regard to the merits of the Company's claim.

It is with regret, therefore, that we now request the additional assistance of the Department of State.

We ask first that, pursuant to 22 UCS 2351, the Department review and commence to implement all measures reasonably available to it for discouraging the Government of Panama from the arbitrary course it has elected to follow. Among these measures, we ask that the Department formally express to the Government of Panama its strong dissatisfaction with its unwillingness to negotiate a settlement in good faith, and on its merits.

Second, we ask that the Department promptly initiate all steps, pursuant to 19 USC 2462, to assure that the Government of Panama be denied all benefits provided by the Trade Act of 1974.

Third, we ask that the Department promptly initiate all steps required under the Foreign Assistance and related Acts pursant to 22 USC 283(r), 22 USC 284(j), and 22 USC 2370(e)(i), to assure that Panama is denied foreign assistance through AID, the IDB, and the IBRD.

Our request that the Department now invoke these drastic sanctions is made with reluctance and sorrow. We believe, however, that the Government of Panama's arbitrary treatment of this case as a "political" matter and its refusal to negotiate settlement on the merits, has left us no alternative. Should the Department be successful in encouraging the Government to reconsider its position my client, of course, is prepared to resume negotiations at any mutually convenient time.

Sincerely,

JACK I. HELLER.

HELLER & TEMPLE,
Washington, D.C., December 12, 1977.

Re Boston Panama Co.

TERENCE A. TODMAN,
Assistant Secretary of State,
Department of State, Washington, D.C.

DEAR MR. ASSISTANT SECRETARY: A copy of this letter was sent to you on December 6, but apparently was lost in the mail.

I am writing in behalf of my client, the Boston Panama Company, a United States Corporation beneficially owned exclusively by United States citizens.

This letter follows upon my letter to you dated May 10, 1977, a copy of which is attached.

In my May 10 letter I requested the Department of State to invoke all statutory sanctions against the Republic of Panama which becomes operable in the event of an uncompensated expropriation of property owned by United States citizens. Several days before that date the Government of Panama determined, on "political grounds," that the long standing expropriation case involving Boston Panama Company properties "was closed."

After delivery of my May 10 letter I subsequently agreed to forego pressing our request for the application of statutory sanctions pending the reopening of negotiations. Negotiations were resumed in mid October at a meeting in Washington attended by the Ambassador of Panama, his legal advisor, principals in the Boston Panama Company, and myself.

This meeting was cordial and productive. The Ambassador, who was unfamiliar with the details of the controversy, agreed to familiarize himself with its history. A number of avenues for achieving compensation were explored. We agreed that a second meeting would be called in the near future after the Ambassador had studied the matter.

To my best information the Ambassador, in fact, researched the background of the case. Among other matters he discussed its detailed history with Dr. Lopez Guevarra, the ranking legal advisor to the Panama negotiating team. Dr. Guevarra

has also been legal counsel to the Boston Panama Company and is intimately familiar with the details of the case. He confirmed to the Ambassador the factual bases of the Company's claim.

Despite my repeated efforts since mid October to arrange a second meeting with the Ambassador, none has been held. And, on December 1, I was told by a senior official at the Embassy of Panama that no further meetings would be held. The position of the Government of Panama is that it will not discuss, no less negotiate, a settlement until after United States ratification of the Canal Treaties.

Given this latest arbitrary action by the Government of Panama, my client is left with no alternative but to request herein, that you now initiate all steps towards invoking the statutory sanctions requested in my letter to you of May 10, 1977.

Sincerely,

JACK I. HELLER.

DEPARTMENT OF STATE,
Washington, D.C.

Mr. JACK HELLER,
Heller and Temple,
Washington, D.C.

DEAR MR. HELLER: I refer to your letter of December 12 as well as previous correspondence on behalf of your client, the Boston Panama Company. You requested that the Department of State take steps against the Government of Panama to invoke all sanctions called for by United States law in the event of an uncompensated expropriation of United States citizen-owned property by a foreign government.

Responsibility for recommending whether United States legislative sanctions should be applied in cases of this kind lies with the Interagency Staff Coordinating Group on Expropriations. This Group, which includes representatives of the Departments of State, Treasury, Commerce, Defense, and other agencies, is charged with examining unresolved investment disputes involving United States citizens and in each case recommending appropriate United States Government action. The Group generally meets once a month.

Accordingly, I have requested that at its next meeting the Group review Boston Panama's dispute and determine either whether invoking legislative sanctions is warranted or what further steps should be taken at this time.

If you have any additional information you believe would assist in the interagency review, please address it to the Group's Staff Director;

Mr. Michael P. Boerner, Director, Office of Investment Affairs, Room 2533A, Department of State, Washington, D.C. 20520.

We would like to continue our efforts to facilitate a mutually acceptable solution to this matter through direct contact between the parties concerned. We have therefore asked our Embassy in Panama to determine the Government's position in this regard. I hope you will agree that this approach might still be productive if the Government of Panama indicates a willingness to continue discussions.

Sincerely,

TERENCE A. TODMAN,
Assistant Secretary for Inter-American Affairs.

HELLER & TEMPLE,
Washington, D.C., March 9, 1978.

Re Boston Panama Company.

Mr. TERENCE A. TODMAN,
Assistant Secretary, Department of State,
Washington, D.C.

DEAR MR. ASSISTANT SECRETARY: I am writing at the request of my client, the Boston-Panama Company to express the dissatisfaction of its officers and shareholders over inexplicable delays in the Department's consideration and disposition of the Company's request that statutory sanctions be applied against the Government of Panama because of that Government's failure to provide compensation for Company assets it has expropriated.

The Department has been aware of this controversy for many years. Our latest request for the application of sanctions was made to the Department on December 12, 1977. We have repeatedly emphasized to Department officials our concern that unless a disposition of this case is made before ratification of the Treaties now

pending in the Senate, that the government of Panama is unlikely ever to meet its obligations under international law to the Company.

Despite these repeated expressions of concern, the Department's lengthy familiarity with the case, and the fact that almost three months have elapsed since we made our request for the application of sanctions, the Department's progress towards achieving the disposition of this case is apparently still in its preliminary phases.

We believe that this desultory performance has materially jeopardized our chances of obtaining compensation due the Company from the Government of Panama.

I look forward to your assurances that this matter will now be vigorously pursued, and further, that once a determination is made that an expropriation has occurred, that the Department will not seek to waive the prompt application of the statutorily prescribed sanctions on either national interest or other grounds.

Sincerely,

JACK I. HELLER.

DEPARTMENT OF STATE,
Washington, D.C., April 11, 1978.

MR. JACK I. HELLER,
Heller and Temple,
Washington, D.C.

DEAR MR. HELLER. I am responding to your March 9 letter concerning Boston Panama's request that the United States invoke sanctions against Panama. I hope that the following information will be useful to you.

In response to your letter of December 12, 1977, which requested that satutory sanctions be applied against Panama, the Inter-Agency Staff Coordination Group on Expropriations considered Boston Panama's claim on January 24. The Group decided it would need a legal analysis of the claim before reaching any conclusion as to whether an expropriation had occurred or whether the sanctions requested by the company should be invoked. Responsibility for preparing such a report resides with the Office of the Legal Adviser. That office has presented its preliminary views to the Group and is continuing to pursue the difficult issues of fact and law upon which your case appears to turn. I understand you have been in contact with that office to provide additional documentation. The Department has also been in touch with the U.S. Embassy in Panama and with officials of the Panamanian Embassy in Washington to collect all relevant available information.

Three major areas of inquiry have been identified which the Inter-Agency Group feels must be fully explored before it can render a decision. In general terms, they are:

Was the uncultivated land tax levied against Boston Panama discriminatory in either its assessment or its enforcement?

To the extent that there may have been procedural irregularities in the manner of executing the tax lien, were they so serious as to have denied Boston Panama justice under applicable standards of international law?

Has Boston Panama exhausted all remedies which can be or could have been pursued in Panama?

Because of the nature of the questions involved, and because of the serious effect such a decision will have on all parties involved, it would not be appropriate to reach any decision before having the opportunity to consider the views of the Legal Adviser's Office on these issues.

Sincerely,

TERENCE A. TODMAN,
Assistant Secretary,
Bureau of Inter-American Affairs.

The PRESIDING OFFICER. The time of the Senator from Nebraska has expired.

Mr. CURTIS. Mr. President, I ask unanimous consent that I may proceed for 1 minute additionally.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. I have no objection, Mr. President.

The PRESIDING OFFICER. Without objection, the Senator may proceed for 1 additional minute.

Mr. CURTIS. Mr. President, the parties have pursued the remedy provided by law. It is not adequate. This reservation must be passed for them to be compensated. The State Department has had ample time to promise that they would not waive the power that they have. They have failed to use that power. Tomorrow, without destroying the treaty, with compelling an election to be held in Panama, the Senate will have to take a position that American citizens should be compensated or take a position that it is not necessary. I thank my distinguished colleague for the extra 1 minute.

The PRESIDING OFFICER. The Senator from Maryland has 5 minutes.

Mr. SARBANES. I yield 1 minute to the Senator from Utah.

Mr. HATCH. I am grateful to the Senator from Maryland. I would like to say that I associate myself with the remarks of the distinguished Senator from Nebraska.

Mr. President, as a primary cosponsor of this reservation, I believe one point that must be made in this debate is that expropriation without payment of compensation is not only unjust and contrary to international law, but also it is, in fact, self-defeating and counterproductive for countries such as Panama.

Panama, like all other developing countries, needs private investment in its economy. Often the point has been made that no matter how much money Panama receives from the canal toll revenues, it is going to need the help of private enterprise to build its economy.

Frankly, I can think of nothing which more discourages foreign investment in a country than the fear that one's property may suddenly be seized, and that compensation will be given, if at all, only after years of haggling. Regrettably, in the expropriation of property which have been referred to, and in other acts, the Government of Panama has shown hostility to private enterprise, and I am certain the economy of Panama has suffered as a result.

Thus if this reservation causes the Government of Panama to be more cautious in its attitude toward foreign investment, and to live up to its obligations under international law regarding expropriated property, then I think, in the end, that it will be the people of Panama who will benefit.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I appreciate the Senator from Nebraska inserting the letters into the Record. It does clarify that the particular case which has brought forth this proposal involves Boston Panama. I therefore am not going to address the Citricos de Chiriqui Co., which, in fact, has been in contact with the Government of Panama and had been invited to a meeting on April 27 to establish the value to be compensated.

I do not want to bring them into this debate. They were referred to earlier. I think I would like to get them back out of the debate. I am sure they probably would like to be back out of the debate.

Boston Panama has a claim it thinks ought to be paid. I do not think they ought to come in here now and seek to have it done through a reservation on the treaty. If there was any seeking of a heavy-handed remedy by Boston Panama, that is it.

In 1956, Dominick F. Antonelli and Kingdon Gould Jr. bought a controlling interest in the Boston Panama Co., which owned some 500,000 acres in Panama, much of which was uncultivated. At the time of purchase, they knew of an outstanding uncultivated land tax assessment of approximately $1.8 million; they bought on the assumption that the tax claim could be settled. Although the tax claim was subsequently reduced through administrative procedures to roughly $260,000, Boston Panama never paid and continued to protest the tax on the grounds that it was discriminatorily assessed and improperly calculated. Despite frequent negotiations, no agreement was ever finalized.

In September 1969, the Ministry of Finance decided to sell the land at public auction. In October 1969, the Government of Panama acquired the property as payment for back taxes, Boston Panama received no compensation whatsoever. Efforts of Boston Panama to protest or set aside the sale were either rejected or not acted upon by the Ministry of Finance or the courts.

Since the 1960's the U.S. Government has actively encouraged the Government of Panama to settle the dispute. It has also played a facilitative role in arranging for negotiations which have taken place several times since 1969. In May 1977 our Embassy assisted the company in arranging a meeting with the Panamanian Government's legal advisers. Negotiations were going well, but the meeting ended without an agreement. Boston Panama's counsel subsequently requested the Department of State to invoke legislative sanctions. However, this request was withdrawn when negotiations with the Panamanian Embassy were resumed. In December 1977, Boston Panama's counsel contacted the State Department and reported that because there has been no progress in negotiations with the Panamanian Embassy, he must again request that the State Department invoke legislative sanctions.

Of course, one of the reasons we have these interagency groups is to review these things and not to have a situation in which investors or their attorneys can, as it were, use the Government of the United States as an additional weight or prod in negotiations which are underway.

The Interagency Expropriation group began a review of the claim in January 1978. We also informally urged the Panamanian Government to resume negotiations with the company's representatives. Negotiations between the parties did resume as of February 11, and followup meetings are expected. I understand the Government of Panama has appointed a Presidential Commission, comprised of several cabinet members, to review the claim and conduct discussions with the company.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SARBANES. Mr. President, we have a procedure. We ought to stick to it. We ought to reject this amendment.

The PRESIDING OFFICER. All time having expired—does the Senator from Arizona seek recognition?

UNPRINTED UNDERSTANDING NO. 31

Mr. DECONCINI. Mr. President, I send to the desk an understanding and ask for its immediate consideration.

The PRESIDING OFFICER. The understanding will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DeConcini) proposes an unprinted understanding numbered 31.

Nothing in paragraphs 3, 4 and 5 of Article IV may be construed to limit either the provisions of paragraph 1 of Article IV providing that each party shall act, in accordance with its Constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of this Treaty.

Mr. DECONCINI. Mr. President, the problem has arisen, to me, that article IV of the Panama Canal Treaty has some ambiguity as to the primary responsibility of the United States to defend the canal. Once again, to avoid any misunderstanding between the United States and Panama, or any other country, I find it necessary to clarify particularly paragraph 2. My understanding that is at the desk now, I shall take the liberty to read:

Nothing in paragraphs 3, 4 and 5 of Article IV may be construed to limit either the provisions of paragraph 1 of Article IV providing that each party shall act, in accordance with its Constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of this Treaty.

What I want is to be sure that the reference to the United States having the primary responsibility to protect and defend the canal is paramount. This understanding makes that very clear.

Mr. President, of all the questions surrounding these treaties, few have troubled me as much as those involving our right to defend the canal. With regard to the period after 2000, the leadership amendments and the reservations attached to the Neutrality Treaty do now, it seems to me, sufficiently protect our right to take all necessary actions in order to protect the canal and keep it open, secure and accessible. With regard to the problem of defense rights under the Panama Canal Treaty, it would, at first glance, appear to be taken care of by the fact that we shall have a military presence in the Canal Zone area for the duration of this century. But, while we are given the "primary responsibility" to protect and defend the canal, it is unclear to me whether we can act independently in carrying out this obligation. Article IV, section 3 of the Panama Canal Treaty provides that:

In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party.

It then goes on in section 3 to define the Board's function as follows:

The Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties.

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

While coordination and cooperation in the preparation of contingency plans and the planning and conduct of combined military exercises are necessary prerequisites for an adequate joint defense

of the canal, the treaty also mandates the combined Board to cooperate in the actual defense of the canal. This is certainly a laudable aim. It is also in agreement with the spirit of these treaties. If both Panama and the United States agree that the canal is endangered, then there is no problem.

But what if Panama concludes that it is not in her best interests to participate in defending against a particular action which we interpret as a direct threat to the canal? This phraseology can be construed as giving Panama the ability to veto our right to initiate any action. This, I find unacceptable.

It should be noted that, unlike the Panama Canal Commission, which has a majority of its members representing the United States, the joint board has an equal number of American and Panamanian senior military representatives. Thus, there is the real possibility of a deadlocked decision over whether or not to act to defend the canal. In times of crisis, this could be most detrimental to American interests.

The understanding which I am proposing is meant to deal with this problem. It guarantees that the United States, in carrying out its primary responsibility to protect and defend the canal, can act independently in fulfilling its obligation, by making clear that the joint board's authority in no way impinges on American defense rights.

The treaty proponents have argued that American rights in this area are protected by the provision which holds that:

> Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama.

I argue, however, that this provision might be construed to apply only after a military action is initiated. It does not, on its face, say that the United States can act independently against a threat to the canal. This understanding is meant to clarify that point.

Mr. President, the question of the exact extent of American rights in this most sensitive and important area has been a continuing source of controversy throughout these debates and, those of us who have proposed clarifications have sometimes been accused of somehow wishing to subvert the spirit of these treaties. Such is certainly not true in my case. I strongly endorse the concept of United States-Panamanian cooperation in this vital area. However, I have insisted all along that the responsibility conferred by the treaty upon our Government must be accompanied by an equivalent grant of authority to take all necessary and appropriate actions. It is with this in mind, that I commended this understanding to my colleagues.

Mr. President, I am prepared to have a voice vote on the understanding.

Mr. SARBANES. Mr. President, the understanding goes to the question which has been raised that the provisions in sections 3, 4, and 5 of article IV, which provide for a combined board between the United States and Panama by which we will consult and seek to develop cooperative protective and defense arrangements, somehow limits the provisions of sections 1 and 2 of article IV. This understanding is meant to clarify the fact that that is not the case, and I think a careful reading of article IV would indicate that that

is not the case, although I can appreciate that the language with respect to the combined board contained in sections 3, 4, and 5 and the notion of coordination and cooperation in various matters may raise the question. What the understanding says is that nothing in paragraphs 3, 4, and 5 or article IV may be construed to limit the provisions of paragraph 1 of article IV or paragraph 2 of article IV. I should like to read those two paragraphs, because I think it does underscore the fact that the coordinating or the combined board does not, and this understanding makes that even clearer, does not impinge upon or limit those provisions.

Section 1 provides that "The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act"—and I underscore "each party"—

> In accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

Section 2 provides:

> For the duration of this treaty, the United States of America shall have primary responsibility to protect and defend the Canal.

As the understanding states, it is designed to insure that nothing in paragraphs 3, 4, and 5 of article IV—those are the paragraphs that deal with the combined board and the efforts of cooperation and coordination—that nothing in those paragraphs may be construed to limit either the provisions of paragraph 1 of article IV, providing that each party shall act in accordance with its constitutional processes to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of article IV, providing that the United States of America shall have primary responsibility to protect and defend the canal for the duration of this treaty. The treaty is clear that the United States has primary responsibility to protect and defend the canal and, in section 1, that each party shall act in accordance with its constitutional processes to meet danger threatening the security of the Panama Canal.

The understanding addresses the question that may be raised, that the subsequent paragraphs 3, 4, and 5, providing for the combined board and for coordination and cooperation somehow limit those two paragraphs. That is not the case, and the understanding is designed to make that clear. I am prepared, therefore, to go to a vote on the understanding.

The PRESIDING OFFICER. The question is on agreeing to the understanding.

The understanding was agreed to.

Mr. SARBANES. I move to reconsider the vote by which the understanding was agreed to.

Mr. DECONCINI. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP RESERVATION NO. 32

(Subsequently numbered reservation No. 20)

Mr. DECONCINI. Mr. President, I send to the desk a reservation and ask for its immediate consideration.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from Arizona (Mr. DeConcini) proposes unprinted reservation numbered 32.

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following reservation, which is to be made a part of the instrument of ratification to the Treaty:

"Notwithstanding any other provisions of this Treaty, no funds may be drawn from the United States Treasury for payments under Article XIII, paragraph 4, without statutory authorization."

Mr. DECONCINI. Mr. President, while the question of American defense rights dominated the debates over the Neutrality Treaty, the questions concerning the economic implications of the Panama Canal treaties have been of primary concern to many of us over the last 4 weeks. I am cosponsoring an amendment which provides that the $10 million annual payment due Panama from surplus canal revenues will not accumulate over the next 22 years. This will prevent our owing Panama a $220 million lump sum payment at the termination of the basic treaty. But other problems still remain.

Of particular concern to me is the question of the U.S. Government's responsibility in meeting those obligatory payments set in article XIII, paragraph 4 of the Panama Canal Treaty. Under these provisions, Panama is expected to receive some $50 to $70 million annually. The administration has continually assured us that the pact does not obligate the United States to pay Panama any of these funds from the Treasury and that toll revenues will be sufficient to meet those financial obligations mandated by the treaty.

Yet the possibility of a deficit in canal operations, particularly after 1985, cannot be overlooked. According to a number of scholars, we are legally obligated to keep the canal open and operating. The general consensus appears to be that with toll increases and sufficient amounts of Alaskan oil, the canal will be solvent through 1984. Most analysts, however, do not want to project beyond that because there are too many unknowns, particularly technological developments in other modes of transportation. Dr. Ely Brandes, the authority who has written most extensively on canal toll matters, argues that his studies show that a toll increase of 25 percent would increase revenues by 19.6 percent; one of 50 percent, by 33 percent; and one of 75 to 100 percent would increase revenues the most—40 percent. Beyond this the concept of diminishing returns comes into play: Revenues will most likely drop because shippers will find alternative routes.

Furthermore, the construction of oil pipelines in the United States, or even in other parts of Latin America, such as the one proposed for Gautemala, could divert Alaskan oil bound for the east coast and thus upset the economic projections upon which many of the studies of the canal's economic viability are based.

If canal transits do fall short of what is currently estimated and there is a shortfall in revenues, then, according to Elmer Staats, the Comptroller General:

> The United States Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the commission to borrow from the United States Treasury.

This is the eventuality which concerns me and many American citizens the most—and it is this possibility which suggests the need for the present reservation. The reservation states:

> Notwithstanding any other provisions of this Treaty, no funds may be drawn from the United States Treasury for payments under Article XIII, Paragraph 4, without statutory authorization.

This provision assures, in a way that I feel the treaty does not, that in the event of a deficit, any payments made by the Panama Canal Commission which do not come from tolls but are necessary to keep the canal open and operating efficiently, will not be made without specific congressional authorization and appropriation. This will allow Congress, particularly through its oversight function, to exercise some discretion in determining where cost savings and operating improvements might be made. Thus, the taxpayers' interest in seeing that funds are used most efficiently will be protected.

Mr. President, one of the dominant images that Americans have with regard to these treaties is that we are paying the Panamanians to take the canal. You and I know that this is not correct, although they are gaining an enormously valuable economic resource. However, the rhetoric which has surrounded the treaties, particularly in the administration's attempt to show that these treaties were the best which could be negotiated, important facts were not always made abundantly clear. Among these was the whole question of costs to the U.S. taxpayer incurred under the treaties. While it is no doubt technically true that toll revenues will be used for paying Panama and for operating the canal, it does not appear to be true, as Secretary Vance told the Senate Foreign relations Committee, that—

> The treaties require no new appropriations nor do they add to the burdens of the American taxpayer.

Leaving out for a moment the $440 million in foregone interest payments, direct appropriations of some $318 million will most likely be paid out for early retirement and Departmnent of Defense programs. This is a substantial sum and does put an extra burden on the taxpayer.

Mr. President, given the controversy then, which has surrounded this whole question, you must understand my being hesitant in accepting the position that this reservation is unnecessary—that congressional authorization is expected under the new arrangement. If any treasury payments are to be made, I want an ironclad guarantee that Congress will make them. My reservation provides that guarantee and I thus commend it to my colleagues.

Mr. President, I ask for the yeas and nays on this reservation.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. SARBANES. Mr. President, I understand that under the unanimous-consent request that the yeas and nays on the Senator's amendment have been scheduled for tomorrow morning, at what time? At 10:55 tomorrow morning?

Mr. DECONCINI. That is agreeable.

Mr. SARBANES. We are going to a vote. There will not be debate then. I simply want to say the Senator is addressing himself here to an important issue.

The PRESIDING OFFICER. The yeas and nays have been ordered to be held, according to the previous order of the Senate, at 10:55.

Mr. SARBANES. I thank the Chair.

Mr. CURTIS. Mr. President, reserving the right to object, may I inquire and direct a question to the distinguished Senator from Arizona, does this matter now offered have anything to do with the——

The PRESIDING OFFICER. The Chair will remind the Senator from Nebraska there is no request for unanimous consent at this time.

Mr. CURTIS. Then, Mr. President, I ask the distinguished Senator to yield to me for a question.

Mr. DECONCINI. I yield to the Senator from Nebraska.

Mr. CURTIS. I would like to inquire, does the matter now offered by the distinguished Senator from Arizona have anything to do with the DeConcini reservation to the first treaty?

Mr. DECONCINI. I would have to ask the Senator from Nebraska to define anything to do with the Deconcini amendment.

This does not apply or make any reference to the Neutrality Treaty.

Mr. CURTIS. Does it modify in any way the DeConcini reservation?

Mr. DECONCINI. No. To my judgment, it does not, and I would not support it if it did, or offer it.

Mr. CURTIS. I thank the Senator.

Mr. SARBANES. Mr. President, the amendment which the Senator from Arizona has offered deals with the question of payments under article XIII, paragraph 4. It is my view that those payments are to come solely from tolls and toll revenues and that that is the only source to which we would look for those payments. But this amendment is to guard against the possibility, as I understand it, that someone would contend that funds had to come from the Treasury to meet those payments. Therefore, it specifically provides that no such funds could be drawn from the Treasury without statutory authorization. It prevents that from happening in any automatic fashion and requires statutory action in order to do that.

In that regard, it seems to me that the amendment is an appropriate safeguard. Therefore, I intend to support the amendment when it comes before the Senate tomorrow morning for a vote.

Mr. CURTIS. Mr. President, Citricos de Chiriqui, S.A. ("Citricos") was established on November 11, 1960, as a Panamanian company located in the Province of Chiriqui, republic of Panama, and was wholly American-owned and controlled. The purpose of establishing Citricos was to develop and operate a citrus plantation in Panama and to process orange juice into concentrate for export to world markets.

Approximately 11,000 acres of land were acquired from private sources on which more than 370,000 citrus trees were planted and a citrus concentrate plant and attendant facilities were constructed having a capability of producing 450,000 gallons of concentrate per year. Over $17,500,000 in private funds was expended in this effort between 1962 and 1974.

Because of adverse agricultural and economic conditions, Citricos reluctantly determined in 1974 that it could not continue operations, and it so informed the Government of Panama by letter dated September 17, 1974, in accordance with the terms of an agreement previously entered into with that Government. Thereupon Citricos and the Government entered into negotiations with respect to the orderly termination of operations by Citricos, severance payments by Citricos to its workers, which was done, and the possible transfer of the assets of Citricos to the Government of Panama for a term of 1 year, without cost to the Government, in order for the Government to determine whether it was feasible for it to purchase the Citricos assets at the end of that time and continue operations.

In early December 1974, the Government unilaterally terminated those negotiations and the President of Panama issued decree No. 119 on December 5, 1974, pursuant to which it physically seized all of the Citricos facilities and assets. Thereafter, from time to time, certain Panamanian Government officials participated in negotiations with Citricos for purposes of arriving at a fair price to be paid for the seized property. On September 11, 1975, the Government offered to pay United States $3,847,968 in full settlement, which offer was refused by Citricos. Two weeks later, on September 25, 1975, the Government, through its vice president, Mr. Gerardo Gonzales, who had been charged by General Torrijos with negotiating a fair price, revised the offer upward to United States $5.9 million. Citricos accepted this offer, subject to working out details of the method of payment. The Government of Panama subsequently reneged on this commitment, and in June 1976, 9 months later, the Government of Panama, acting through its Minister of Planning and Economic Policy, Mr. Nicolas Ardito Barletta, at the direction of General Torrijos, offered to settle for the total sum of United States $1 million. This offer was summarily rejected by Citricos. Since September 1975, the Government of Panama failed to engage in any serious or good faith negotiations with representatives of Citricos until after representations on behalf of Citricos were made to the U.S. Department of State in December 1977.

BOSTON-PANAMA CONTROVERSY

This controversy between the Government of Panama and the Boston-Panama Co. is one among several in which that Govenment has refused to pay compensation for assets which it has exappropriated. Although sporadically entering into settlement negotiations in the past, the Government has been unwilling to sustain these talks, and currently appears to have no serious intention of equitably settling the matter.

General Torrijos, in the populist euphoria of the early days of his rule, announced on national television, radio, and in the press in mid-October 1969, that he had "confiscated" the company's land.

To accomplish this confiscation, the Government illegally, and without notice to the company, first substituted the company's attorney of record (registered on the National Registry) with a Government attorney. Next, without notice to the company, ostensibly acting for the company, this attorney facilitated a tax foreclosure by the Government of the company's properties. Upon learning of these events, the company's actual counsel attempted to stay these unlawful proceedings through petitions to all of the courts and tribunals, including the Supreme Court, with jurisdiction in such cases. Contrary to law, and presumably under political duress, the courts and tribunals refused to accept his petitions. Subsequent petitions, letters, and telegrams to the courts and relevant Government officials requesting that the company be permitted to examine the foreclosure documents (and the assessments which underlay them) were also ignored. The company has never been served, nor seen, these documents.

The underlying controversy was based upon a tax assessed upon the company's land in 1949 pursuant to the "Uncultivated Land Tax." This very old tax, always a dead letter in Panamanian law, has never been enforced except for collections of $216 im 1954, $88 in 1957, $2,700 in 1958, and $100 in 1959. The tax billed against the company's property in 1949 was $2,935,726. This discriminatory levy resulted directly from the tax denunciation of an attorney then representing parties interested in purchasing the company's land.

Apart from being wholly discriminatory, the tax levied was plainly unlawful. The levy ignored the statutory exemptions formula which exempts property according to the amount of land in use, in woodlands, et cetera.

The company long ago exhausted all of its administrative and legal appeals.

Mr. President, I would again point out that the reservation I have offered provides that the claim must be found by the Secretary of State of the United States to be compensable under international law.

UNDERSTANDING NO. 7

Mr. SARBANES. Mr. President, I call up understanding No. 7 proposed by Mr. Sparkman.

The PRESIDING OFFICER. The understanding will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. Sarbanes), for Mr. Sparkman, proposes understanding No. 7:

Before the period at the end of the resolution of ratification insert a comma and the following: "subject to the following understanding:

"Any agreement concluded pursuant to article IX, paragraph 11 with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties".

Mr. SARBANES. Mr. President, I ask unanimous consent to have printed in the Record a statement from the report of the Committee on Foreign Relations dealing with this matter, concerning pris-

oner transfer agreements, and explaining in detail the understanding, which makes clear that any such agreement shall be concluded in accordance with the constitutional processes of both countries.

There being no objection, the statement was ordered to be printed in the Record, as follows:

C. Understanding Regarding the Requirement to Conclude a Prisoner Transfer Agreement (Article IX (11), Panama Canal Treaty)

The Committee recommends that the resolution of ratification to the Panama Canal Treaty be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:

"Any agreement concluded pursuant to article IX, paragraph 11 with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties."

STATEMENT OF INTENT

Article IX (11) of the Panama Canal Treaty provides as follows:

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

The Committee intends, through the above understanding regarding this provision, to make clear (1) that any agreement negotiated on this subject be submitted to the Senate as a treaty for its advice and consent to ratification; and (2) that should the Senate not give its advice and consent to the ratification of such an agreement, the United States will not be in violation of this provision.

As paragraph 11 of article IX is drafted, it can be construed as authority for the President to enter into a prisoner transfer agreement with Panama as an executive agreement. This, in the Committee's judgment, would be undesirable; United States practice with respect to such agreements, limited though it is, has been that they be concluded as treaties. Sound policy reasons underlie this procedure. Prisoner transfer arrangements are significant international agreements; they involve important foreign policy judgments regarding the criminal justice systems and human rights practices of the countries proposed as parties to such arrangements. The Treaty Clause requires that, normally, significant international commitments be made with the concurrence of two-thirds of the Senate. Acting on the basis of this sole constitutional authority, the President would be without the power to enter into such an agreement. By removing any possibility that this provision may be relied upon as a source of authority for the conclusion of such an agreement, and by requiring that the agreement be entered into "in accordance with the constitutional processes" of the United States, this addition to the resolution of ratification will state the understandng of the Senate that any such agreement must be submitted to the Senate as a treaty, which is the mode contemplated by our "constitutional processes".

The understanding will, moreover, clarify the international commitment undertaken by the United States in this provision. As paragraph 11 has been drafted, it could be construed as requiring the United States to enter into a prisoner transfer agreement, and would thereby place the United States in violation of this treaty should the United States elect not to do so. Obviously, the authority of the Senate to advise and consent to a treaty is meaningless if it is required to be given; the authority to disapprove is implied if our "constitutional processes" are to be upheld. The effect of the reference to "constitutional processes" is thus to make clear that a right of choice is maintained. Although this understanding should not be interpreted as suggesting a disinclination to advise and consent to such a treaty, paragraph 11 should not be construed, pursuant to it, as circumscribing the authority of the Senate to exercise the full measure of its constitutional discretion.

Mr. Sarbanes. Mr. President, I am prepared to vote on the understanding.

The Presiding Officer. The question is on agreeing to the understanding.

The understanding was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the understanding was adopted, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNDERSTANDING NO. 10

Mr. SARBANES. Mr. President, I call up understanding No. 10, for Mr. Sparkman.

The PRESIDING OFFICER. The understanding will be stated.

The assistant legislative clerk read as follows:

The Senator from Maryland (Mr. Sarbanes), for Mr. Sparkman, proposes understanding No. 10:

Before the period at the end of the resolution of ratification insert a comma and the following: "subject to the following understanding:

"The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama".

Mr. SARBANES. Mr. President, this understanding, providing that the President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification, in the instrument of ratification exchanged with the Government of the Republic of Panama, was included as an understanding to the prior treaty and was adopted by the Senate without any dissent.

I ask unanimous consent that material from the report on the Committee on Foreign Relations discussing this understanding be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

F. UNDERSTANDING REQUIRING THE INCLUSION OF SENATE ACTIONS IN THE INSTRUMENT OF RATIFICATION OF THE PANAMA CANAL TREATY

The Committee recommends that the resolution of ratification of the Panama Canal Treaty be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:

"The President shall include all amendments, reservations, understandings, declarations and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama."

STATEMENT OF INTEREST

The Committee intends, through the above understandings which it recommends be added to the resolutions of ratification of each treaty, to make clear that any material included by the Senate in its resolution of ratification for each treaty be included in the instrument of ratification for that treaty given to the government of the Republic of Panama.

This understanding has its origins in assertions made by representatives of the Department of State, following Senate approval in 1976 of the resolution of ratification respecting the Treaty of Friendship and Cooperation Between the United States and Spain, that the President possessed the authority to exclude from the instrument of ratification respecting that treaty the five-part declaration attached by the Senate to that resolution of ratification. (Members of this Committee advised that, in their judgment, no such discretion existed the declaration was incorporated by reference in the instrument of ratification, although its text was set forth an annex to the instrument.)

It remains the position of the Committee that the President is without such authority. Although the Treaty Clause of the Constitution does not expressly address this question, neither does it expressly authorize the Senate to condition its

advice and consent to treaties. Traditional United States practice has nevertheless been that the Senate may grant its approval conditionally, just as traditional United States practice has been that, when conditions are attached, those conditions are transmitted as an integral part of the instrument certifying Senate and Presidential approval. That such conditions must be so included is as much a part of customary constitutional law in this country as the right of the Senate to grant conditional consent.

Accordingly, it is not the intent of the Committee to recommend the inclusion of an understanding such as this as a part of the resolutions of ratification respecting future treaties. The Committee was pleased to receive the assurance of the Department of State that the United States instruments of ratification of the Panama Canal Treaties would include all amendments of the treaties and of the resolutions of ratification that the Senate includes in the resolutions of ratification (letter from Douglas J. Bennett, Assistant Secretary for Congressional Relations, to John J. Sparkman, Chairman, Committee on Foreign Relations, January 26, 1978; hearings, part 5). The Committee does not doubt the Administration's good faith; it hopes that future presidents will adhere to this Administration's position, and thus wishes to establish no precedent with the recommended understandings. Nevertheless, the Committee believes that these understandings should be added to the resolutions of ratification respecting both treaties as a firm demonstration that the Senate will not countenance any interference with its constitutional prerogative of advice and consent and will take steps to counteract such interference on the part of any future Administration.

Mr. SARBANES. Mr. President, I am prepared to vote on the understanding.

The PRESIDING OFFICER. The question is on agreeing to the understanding.

The understanding was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the understanding was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

[Mr. SARBANES assumed the chair.]

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that the order for the quorum will be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ANNOUNCING OF POSITION ON LONG AMENDMENT NO. 99

Mr. DOLE. Mr. President, earlier today the Senate considered the so-called Long reservation No. 99 and also the Heinz reservation, and the Senator from Kansas was attending a funeral for a member of his family and was unable to be here.

Had I been present I would have certainly supported the amendment to the Resolution of Ratification offered by the distinguished Senator from Louisiana (Mr. Long).

Mr. President, I want to take a few moments to speak in support of the amendment to the resolution of ratification offered by the distinguished Senator from Louisiana, Mr. Long.

This proposal is similar in purpose to the treaty amendment I offered 1 week ago, in that it would eliminate the restriction that prevents the United States from negotiating with any country other than Panama, for the right to construct a new interoceanic canal in the Western Hemisphere. At the same time, it eliminates the corresponding provision which purports to prevent Panama

from allowing any country other than the United States to build a new canal through her territory.

While I would have preferred to see this important amendment adopted to the treaty itself, rather than to the separate resolution of ratification, the Long amendment should satisfy this Senator's concern so long as both parties agree to abide by resolution modifications as well as treaty amendments.

The Dole amendment, which received 40 Senate votes on April 10, was resisted by the Administration and protreaty floor managers primarily because it was offered as a direct amendment to the language of the treaty. However, because there is such widespread concern about the restrictions placed upon the United States in article XII, I remain hopeful that we may have enough votes to adopt the same principle now as a treaty reservation, or "amendment" to the resolution of ratification.

THREE PROBLEMS

As I indicated on April 10, the Senator from Kansas feels there are at least three major problems involved with paragraph 2 of article XII, which was originally initiated by the Carter administration during treaty negotiations last year.

First, the mutual commitment is not balanced. Under article XII, the United States clearly cannot negotiate with any country other than Panama for a new canal site, unless Panama specifically authorizes us to do so. The Panamanian commitment, on the other hand, is imprecise and open to different interpretations. General Torrijos interprets the Panamanian commitment as giving "priority (not exclusiveness, for the building of a sea-level canal" to the United States. He says we are only given "the first option," and if for any reason we do not take that option at the time it is offered, Panama may let any other nation construct a new canal through her territory.

The second major flaw is this: Even if the United States does decide it wants to build a new canal in Panama during the next 22 years, Panama is under no obligation to permit it. My colleagues shoud note that article XII does not guarantee the United States a unilateral right to decide to build a new canal in Panama. In such a situation, we are stuck with the fact that we cannot build a new interoceanic canal anywhere other than Panama, and yet we cannot build a canal in Panama because Panama objects.

The third major flaw is that no other country in the world is bound, as the United States will be, from constructing a new interoceanic canal anywhere it wants in the Western Hemisphere. If the Soviet Union or the Arabs or any other nation should decide to build a new canal through Nicaragua or Colombia—for either economic or strategic reasons—they would naturally be free to make the appropriate gestures to the country in issue. The United States could not, because of this commitment in article XII. We would not even have the right to propose a competitive offer to Nicaragua or Colombia.

Why, then, should we voluntarily bind ourselves, as no other nation in the world is bound? Most Americans probably agree that it would be ridiculous to even think of building a new canal in Panama after all the trouble we have been given over the present one. But, even if we wanted to build a new canal through Panama for any reason, it would work to our advantage to have freedom to negotiate. It would provide us leverage in bargaining with Panama over construction costs and conditions.

Mr. President, all of the elements of good sense suggest that we should eliminate this restriction from the treaty. There is not likely to be any significant objection from the Panamanian Government over this move, for the Panamanian Government has already indicated that it does not like this "quid pro quo" arrangement either. So I just suggest that the Senate should adopt this modification, and thereby act on behalf of America's own interests in this situation.

Mr. President, I ask unanimous consent that the Record reflect that had I been present the Senator from Kansas would have voted "aye" on the so-called Long amendment and "aye" on the amendment of the distinguished Senator from Pennsylvania, Senator Heinz.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, over the past several months my constituent, Mr. Charles H. Breecher of Rehoboth Beach, has done a great deal of work on the question of the constitutinality of the Panama Canal Treaty. His study has led him to conclude that this treaty, if ratified, would eventually be declared unconstitutional by the Supreme Court and that the draft implementing legislation fails to correct its glaring constitutional defects.

In an address before the School of Law of the Washington and Lee University on March 2, Mr. Breecher outlined his views on three principal constitutional issues: First, the disposition of property issue; second, the "purse strings" issue, that is, the question of the role of Congress in appropriating payments by the Panama Canal Commission to Panama; and third, the "citizenship" issue, regarding the constitutionality of the appointment process of Panamanians to the Panama Canal Commission.

Because the third of three issues had not received much attention in the debate, I asked the Congressional Research Service to prepare an analysis of Mr. Breecher's arguments, and I also asked the Department of State for comments. I regret to say that the Department of State has so far failed to respond to my request.

So that all Senators may have an opportunity to acquaint themselves with the implications of the "citizenship issue" prior to the April 18 vote on this treaty, I ask unanimous consent that there be printed in the Record an excerpt on this question from Mr. Breecher's address at the Washington and Lee University, a copy of the CRS's analysis, and a related study on the constitutionality of limiting the scope of the President's choice in nominating officers, a copy of comments on the CRS anslysis by Mr. Breecher, and a statement by Mr. Breecher summarizing his arguments regarding the constitutionality of this treaty.

There being no objection, the material was ordered to be printed in the Record, as follows:

EXCERPT FROM AN ADDRESS, "ARE THE PANAMA CANAL TREATIES CONSTITUTIONAL?"

(By Charles H. Breecher)

But now let me come to the third cluster of issues which I call the Citizenship issue, and let me say right away that in my view nothing can cure that one except a basic revision of the treaties. Also, if I may be pardoned to whet your appetite, none of the reasonably numerous and prominent lawyers with whom I have discussed that issue in the last few weeks has yet offered me any counterargument.

Let me read to you Art. III Sec. 3 (a) of the Panama Canal Treaty: It provides for a United States Government Agency of nine members called the Panama Canal Commission . . . and now I quote: four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner:. End quote. The U.S. can apparently not reject such Panamanian nominees for appointment and can remove them only, and here I shall quote again "after consultations in advance in order to reach agreement on such removal".

Now if this language in the treaty means anything, it means that the President of the United States can only appoint the nominees of the Panamanian Government that he must appoint them "in a timely manner," that the United States Senate cannot reject or bottle up their appointment, and that the President cannot remove them without the consent of the Panamanian Government. Agreed?

Let us repeat that we are talking here about a United States Government Agency. We are not talking here about some mixed Commission or about some private corporation. To give you an idea about the level of the appointees, on page 430 in the Hearings I cited, Part I, Richard Cooper, our Under Secretary of State says that he and the Under Secretary of the Treasury, Anthony Solomon, would be two of the five U.S. members of that Commission, which is the Governing Board of the Panama Canal Commission, appoints the General Manager, fixes the tolls and exercises other Governmental functions.

This particular provision of the Panama Canal treaty then raises some fascinating questions under the U.S. Constitution:

Article II, Sec. 2, clause 2 of the Constitution provides that the President shall appoint all officers of the United States, with the advice and consent of the Senate. The Panama Canal Treaty restricts this right of appointment and advice and consent to a purely ministerial function. Can the President's right to appoint be so restricted by Treaty? Can the right of the Senate to give advice and consent? Can the recognized right of the President to remove officers of the United States be restricted?

Can an alien, particularly a non-resident alien, be appointed an officer of the United States? The Constitution prescribes various length of citizenship requirements for the President and Vice President, Senators and Representatives, but is silent on civil and military officers. U.S. Government practice is well known to restrict appointments to citizens, until recently various jobs were not even open to naturalized citizens until they held citizenship for a certain number of years, and to my knowledge that's still true of the U.S. Foreign Service. As to the constitutional requirement, though not spelled out, Art. II, Section 4 says: ". . . all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." How can an alien commit treason? How can the U.S. which has no jurisdiction over a non-resident alien, convict him of bribery, high crimes and misdemeanors? It seems to me that the Constitution does not envisage aliens, particularly non-resident, as civil officers of the United States.

Further, the 5th and 14th Amendment protects the privileges and immunities of citizens of the United States and forbids depriving them of property without due process of law. These provisions raise the constitutional question whether United States citizens, you and me, can be excluded from consideration for appointment to the Panama Canal Commission because they are U.S. citizens and not Panamanian nationals. Can it be made a condition for appointmnent to a U.S. Government Agency that the prospective appointee not be a U.S. citizen, but the citizen of a foreign country?

Without wanting to belabor the point too long, similar questions arise under Art. III, Sec. 3 (c) and (d) with regard to the Administrator or Deputy Administrator of the Canal Commission, with appointment restricted to Panamanian nationals. Then

there is Art. X, par. 2 of the Panama Canal Treaty that establishes a system of preference for Panamanian nationals, to be employed by a United States Government Agency. Will this system stand up as due process under the U.S. Constitution, although it discriminates against U.S. citizens because of their citizenship? I respectfully question it.

Now this citizenship issue (so-called) is not just a legalistic point. What's involved in practice, is the de facto control of the Panama Canal Commission. As a practical matter, can you imagine all five U.S. appointees, including the ex officio U.S. Government appointees, standing fast against Panamanian demands? Say for sharply increased tolls? Or for hiring more Panamanians?

Let me conclude by saying what I think would be the worst of all possible worlds as far as the Panama Canal is concerned. Say the U.S. Senate ratifies, the treaties go into effect, and then the first shipowner charged increased tolls sues on the grounds that the Commission imposing the tolls is illegally constituted. I submit he would have a good chance to win, and the Supreme Court would declare the Panama Treaties unconstitutional. Then what? The Treaties still stand in international law under the Vienna Convention on Treaties of 1969, whether or not that one has been finally-ratified by the U.S., but are invalid in U.S. municipal law.

It would seem that before any more consideration is given to the Panama Canal Treaties, the Senate and the Administration should assure themselves that they could with reasonable assurance pass a court test. Constitutional questions have been raised, I hope jurists will agree that they are not frivoulous, and indeed that you will. The next step should be for the Attorney General of the United States to give his opinion if and why the treaties are constitutional with regard to the issues outlined. The Senate and Administration will then be in a better position to judge what to do and what risks are acceptable.

Thank you very much for your attention and interest.

MARCH 27, 1978.

To Honorable William V. Roth; Attention: Charles Morrison.
From American Law Division.
Subject Constitutionality of Proposed Panama Canal Commission.

The following information is submitted in response to your request for an analysis of the constitutional arguments presented by your constituent, Charles Breecher, in opposition to the proposed Panama Canal Commission which would be established under Article III, § 3 of the Panama Canal Treaty.

The language in question provides:

ARTICLE III

Canal operation and management

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

Mr. Breecher has raised several objections to the above provisions. Basically he feels that they violate the "Appointments Clause" of the Constitution (Art. II, Sec. II, cl. II) and also that it would be unconstitutional for a foreign national to serve on a U.S. agency such as that envisioned above.

As a preliminary point it should be noted that the treaty specifically provides that the Commission "shall be constituted by and in conformity with the laws of the

United States of America." Also, if the treaty is adopted, implementing legislation, again in conformance with U.S. law, must be enacted before the Commission can come into existence. But even at this point it does not appear that any serious constitutional challenge can be raised to the quoted language.

The Appointments Clause provides:

The President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Thus this clause specifically provides that the President may by law be authorized to appoint officers without Senate consent (as provided in the treaty, and, presumably, in its implementing legislation). A Congressional Research Service multilithed report, "Statutory Positions Requiring Appointment by the President Showing Term, Compensation, and Any Other Special Provisions" (No. 76-26A, 586/226; January 1976) lists literally hundreds of Presidential appointments where no Senate conformation is required. These include the Chairman and members of the Postal Rate Commission (39 U.S.C. § 3601); and members of the National Transportation Safety Board (49 U.S.C. § 1902). In most instances Congress would be free to require Senate confirmation of such appointees; see, for example, 28 U.S.C. § 532, enacted 82 Stat. 236 (1968), requiring Senate confirmation of F.B.I. Directors following the end of J. Edgar Hoover's term. This option might not be available with regard to members of the Panama Canal Commission without amending the actual treaty.

There is similarly no requirement that "Officers" of the United States be United States citizens. In its discussion of the Appointments Clause, "The Constitution of the United States of America—Analysis and Interpretation" (S. Doc. 92-82) notes that Congress may establish a "great variety" of qualifications for a particular office, including citizenship (see discussion at 523-24). U.S. citizenship is in fact required for holding many positions, such as Federal Aviation Administration Administrator (49 U.S.C. § 1652(e)) or General Trustees of the John F. Kennedy Center for the Performing Arts (72 Stat. 1698, 78 Stat. 4). The citizenship requirement may be added to other offices, as well. But nothing mandates that this be done.

Also, again depending to some extent on the implementing legislation, it is possible that the Panamanian members of the Commission would not be considered to be more of a Joint [i.e., intergovernmental] Commission. (It is stressed that this would have to be set forth in the implementing legislation.) For example 22 U.S.C. § 2281 establishes Joint Commissions on Rural Development. Each such commission is composed of one or more citizens of the United States appointed by the President and one or more citizens of the country in which the Commission is established, but a majority of the members of each such Commission must be citizens of the country in which it is established. No removal procedures are specified, whereas under the Panama treaty the United States and Panama would negotiate over the removal of a Panamanian citizen the United States found objectionable. Members of joint commissions retain their loyalty to their country of citizenship while working together on questions of mutual concern.

The only provision which we would foresee as possibly vulnerable to an attack on constitutional grounds would be that which requires the President to name members of the Commission "proposed by the Republic of Panama". Earlier this year a constitutional objection was made to a provision in S. 1437, 95th Congress, the Criminal Code Reform Act of 1977, which would require the President to appoint three members of the United States Sentencing Commission from a list of seven names to be submitted to him by the National Judicial Conference as violating the Appointments Clause (124 Congressional Record, Daily Edition, pp. S.281-8, 1/27/78). Although this question has never been considered by the judiciary, a Congressional Research Service report, "Constitutionality of search Service report, "Constitutionality of Limiting the Scope of the President's Choice in Nominating Officers," dated January 30, 1978, concludes, "We think that the courts would answer this question [as to the unconstitutionality of the appointment process] in the negative" (p. 1). We are enclosing a copy of this report because of its lengthy Appointments Clause discussion and possible application to the Panama treaty.

Mr. Beecher's comments are herewith returned. We hope this information will prove helpful.

RITA ANN REIMER,
Legislative Attorney.

Constitutionality of Limiting the Scope of the President's Choice in Nominating Officers

Chapter 38 of S. 1437, the Criminal Code Reform Act of 1977, proposes the creation of a United States Sentencing Commission which would have the responsibility of establishing sentencing policies and practices for the entire Federal criminal justice system. As originally reported, three of the seven members of the Commission would have been appointed by the Judicial Conference of the United States. A constitutional objection was raised during Senate floor consideration of this reported provision on the ground that the method of appointment did not comply with the requirements of Article II, section 2, cl. 2 of the Constitution, the Appointments Clause, as interpreted by the Supreme Court in *Buckley* v. *Valeo,* 424 U.S. 1 (1976).[1] In apparent response to this objection, the provision was amended to provide that the President would designate three members of the Commission from a list of seven names to be submitted to him by the Judicial Conference.[2] The question is raised whether this method of selection unconstitutionally interferes with the presidential prerogative of appointment under the Appointments Clause by limiting his choice of potential designees. We think that the courts would answer this question in the negative.

The appointments clause of the Constitution, Article II, section 2, clause 2, designates the manner by which certain government officials shall be nominated and appointed. That clause provides that:

"The President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

Since the adoption of the Constitution there have been relatively few cases involving the import or reach of the language of the clause and none until 1976 which could be said to have rendered a definitive judicial explication of its text. Indeed, during the period from 1920 to 1975, which saw an enormous growth in the Federal bureaucracy and a concomitant extension of the President's power of appointment to thousands of major and minor offices and positions, the most significant rulings relating to the clause involved the question of the limits of the Chief Executive's removal power.[3]

However, in *Buckley* v. *Valeo,* 424 U.S. 1 (1976), the Supreme Court presented its first detailed analysis of the Appointment Clause. In that case the Court ruled that the manner of appointment (designation by congressional officers and approval by both Houses) of the voting members of the Federal Election Commission, in whom primary and substantial responsibility had been vested for administration and enforcement of the Federal Election Campaign Act of 1971,[4] as amended,[5] was unconstitutional. During the course of its decision the Court wholly redefined the constitutional concept of Federal officer and for the first time supplied substantive meaning to the constitutional terminology.

Specifically, the Court in *Buckley* greatly expanded the class of "officers of the United States." It did so by giving that term substantive content, defining it to include all these persons exercising some significant governmental authority. Such authority would include duties and functions relating to the administration and/or enforcement of public laws but would not encompass duties or functions which operate merely in aid of the legislative function such as investigations or information gathering. The Court also took pains to make it clear that such offices could be located elsewhere than under the hierarchical control of the cabinet departments. If it is found that a person is exercising the requisite quantum of "significant authority pursuant to the laws of the United States," he must have been appointed in the manner prescribed by Article II, section 2, clause 2, i.e., appointment by the President with Senate consent, or by the President alone, the courts, or the head of a department except where a selection is governed by a constitutional provisions other than the appointments clause. Under this standard the Court struck down provisions of the Act which allowed for appointment of two members of the Commission by the President pro tempore of the Senate, two by the Speaker of the House,

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[1] Daily Congressional Record, January 20, 1978, pp. S. 198–201.
[2] Daily Congressional Record, January 27, 1978, pp. S. 287–286–283.
[3] See, *Myers* v. *United States,* 272 U.S. 52 (1926); *Humphrey's Executor* v. *United States,* 225 U.S. 602 (1935); *Wiener* v. *United States, 357 U.S. 349 (1958).*
[4] Pub. L. 92–225, 86 Stat. 3.
[5] Pub. L. 93–433, 88 Stat. 1263.

and two by the President, all of whom had to be confirmed by a majority of both Houses of Congress.

The *Buckley* decision, however, did not cast any doubt on the congressional power to establish offices. That the Constitution distinguishes between the *creation* of an office and *appointment* thereto has never been questioned. The former is *by law* and takes place by virtue of Congress' power to pass all laws necessary and proper for carrying into execution the powers which the Constitution confers upon the government of the United States and its departments and offices. As an incident to the establishment of an office Congress also has the power to determine the qualifications of the officer and in so doing necessarily limits the range of choice of the appointing power. Since the earliest days of our nation it has laid down a great variety of qualifications for holding office including citizenship, residence, professional attainments, occupational experience, age, property, and such sound habits as a demonstrated temperance in the use of alcohol, among others. It has required that appointees be representatives of a political party, of an industry, of a geographic region, or of a particular branch of government. It has confined the President's selection to a small number of persons to be named by others[6] and at times has contrived to designate a definite eligibility, thereby virtually usurping the appointing power.[7] Further, Congress has very broad powers in regulating the conduct in office of employees of the United States, especially regarding their political activities. *United Public Workers* v. *Mitchell*, 330 U.S. 75 (1947) (Hatch Act held constitutional; see also, *Arnett* v. *Kennedy*, 416 U.S. 134 (1974) (removal to promote efficiency of service not as unconstitutionally vague standard).

Some specific statutory enactments limiting the choice of the President may be noted. In establishing the original Railway Labor Board in 1920 Congress provided that the President would appoint three members from six nominees named by employees and three from six nominees named by carriers. 41 Stat. 456, 470 (1920). In establishing a commission to sell coal and asphalt deposits in Indian lands, two members of the commission were required to be Indians, 32 Stat. 641, 654 (1902). In establishing a Women's Bureau in the Department of Labor, Congress required that the director of the Bureau be a woman. The Civil Service Act of 1883 left the appointing officer the right to select from "among those graded highest on the result of" the competitive examinations for which the act provides, and executive orders and amendatory legislation have customarily restricted choice to the three highest. See, e.g., 5 U.S.C. 317 (1970). Section 10 of the original Federal Reserve Act established a five member board to be appointed by the President, no more than one of whom could be from any single Federal Reserve district, and at least two of whom had to be experienced in banking and finance. 38 Stat. 251 (1913). In 1922 the Act was amended to provide that one member be appointed who was representative of agricultural interests. 42 Stat. 620 (1922).

There have been no court decisions directly construing these or similar limitations. Dicta may be cited which indicates that presidential choice may be narrowed but not eliminated. Thus, Chief Justice Taney stated that while Congress may create offices, it "could not, by law, designate the persons to fill those offices." *United States* v. *Ferreira*, 54 U.S. (13 How.) 40, 51 (1851). Similarly, Chief Justice Taft noted that congressional prescription of qualifications for office does not conflict with the President's appointment power, "provided, of course, that the qualifications do not so limit selection and so trench upon Executive choice as to be in effect legislative designation", *Myers* v. *United States*, 272 U.S. 52, 128 (1926).

However, the distinction between the appointment authority and congressional power to set qualifications and preconditions for holding office was early and clearly recognized by the Supreme Court. In *United States* v. *Le Baron*, 60 U.S. (19 How.) 78 (1856) the question was raised whether a postmaster was validly appointed so that a surety company would be liable on its bond of the appointee. In the course of its opinion the Court clearly recognizes that establishing preconditions for taking possession and acting in an office by Congress is distinguishable from the constitutional appointment process and that such preconditions do not burden that process (60 U.S. at 78):

When a person has been nominated to an office by the President, confirmed by the Senate and his commission has been signed by the President, and the seal of the United States affixed thereto, his appointment to that office is complete. Congress may provide, as it has done in this case, that certain acts shall be done by the

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[6] See citations collected in *Myers* v. *United States*, 272 U.S. 52, 240, 265–274 (1926) (Brandeis, J., dissenting). See also L. Mayers, The Federal Service, 39, 40–64 (1922); Note, 42 Harv. L.R. 426 (1929).

[7] See data in E. Corwin, The President: Office and Powers 1787–1957 4th ed. (1957), 363–365. See also, Schwartz, The Powers of Government: The Powers of the President, Volume II (1963), pp. 43–45.

appointee before he shall enter on the possession of the office under his appointment. These acts then become conditions precedent to the complete investitue of the office; but they are to be performed by the appointee, not by the Executive; all that the Executive can do to invest the person with his office has been completed when the commission has been signed and sealed; and when the person has performed the required conditions, his title to enter on the possession of the office is also complete.

Le Baron and the above recited historical congressional practice appear to support the constitutional validity of a congressional requirement that the President designate three Sentencing Commission members from a list of seven nominees submitted by the Judicial Conference. In light of the specialized character of the functions of the Commission, the qualification prescribed is not so narrow as to, in effect, leave the President no freedom of selection at all. All that appears to be required by the Appointments Clause is that some choice, however small, must be left to the appointing authority. Congress cannot usurp the appointing function. *Buckley* v. *Valeo,* supra. The appointment provision under consideration would thus appear to be within constitutional limits.

COMMENTS TO CRS LETTER MARCH 27, 1978, SIGNED BY RITA ANN REIMER, LEGISLATIVE ATTORNEY, SUBJECT: CONSTITUTIONALITY OF PROPOSED PANAMA CANAL COMMISSION

1. Limitation of Presidential Appointment Power.

We do not even have to examine whether a treaty (rather than a law) can limit Presidential Appointment power at all.

The Memo by Martin Rosenberg, Legislative Attorney, CRS, 30 Jan. 1978, cited as authority by Reimer, concludes:

"All that appears to be required by the Appointments Clause is that some choice, however small, must be left to the appointing authority. Congress cannot usurp the appointing function".

The Panama Canal Treaty leaves no choice whatever to the President regarding the four Panamanian nominees. He must appoint them in a timely manner. This is contrary to the U.S. Constitution.

Similarly, the right of the Senate to confirm cannot be restricted to a ministerial function.

2. Limitation of President Removal Power for non-judicial appointees serving an indefinite term.

No such limitation appears permissible, least of all through a treaty. The Reimer letter does not mention the subject at all.

According to the Treaty, and the Summary prepared by the U.S. Department of State, Panamanian approval is required for the President to remove any Panamanian on the Commission. That seems contrary to the U.S. Constitution and Court decisions.

3. Excluding the Senate's right to give advice and consent to appointments to the Panama Canal Commission.

(a) Art. 3 of the Panama Canal Treaty purports to do that. The Reimer letter says the implementing legislation can so provide. That's doubtful (see below). However, how can the Treaty force that option of excluding Senate confirmation on the Congress?

It is pertinent to cite here another CRS opinion (on the disposition of property issue), this one signed by Kenneth Merin, Legislative Attorney (123 Cong. Rec. S14932, daily ed. Sept. 15, 1977):

"It is clear that Congress has often asserted an exclusive right to dispose of federal territory and property. It is also apparent that both the Executive Branch and the Senate have recognized that claim in past dispositions of property in the Canal Zone to Panama. Therefore, while it is impossible to make a categorical assertion that Article IV, Section 3, Clause 2 is either exclusive or concurrent, it appears that those powers have been recognized as exclusive for purposes of disposal of property in the Canal Zone to Panama. . . .

It is a very serious matter for the treaty-making power to enter into an engagement calling for action by Congress unless there is every reason to believe that Congress will act accordingly." (Italic supplied)

(b) Reimer says: "This option (i.e. Senate confirmation) might not be available with regard to members of the Panama Canal Commission without amendment of the actual treaty". Agreed. But it then follows that if a treaty purports to abridge a right the Senate has under the U.S. Constitution, the Treaty is unconstitutional until suitably amended. Suitable amendment woud however have to provide for outright Senate confirmation, or else the Treaty would bar the right of a future Congress to impose Senate confirmation. Or else the Treaty would have to recognize that right.

(c) Moreover, it is questionable whether implementing legislation could vest appointing authority in the President alone. The Constitution says this can be done by law for "inferior officers". Are civil officers at the Undersecretary of State level inferior officers?

4. Requirement that four members of the Commission be Panamanians.

(a) Can a treaty require that officers of a United States Agency may not be U.S. citizens? Can Congress, by law, exclude U.S. citizens from appointment to a United States Governmental Agency *because* they are U.S. citizens?

This Treaty Provision appears to violate the due process clause and the Privileges and Immunities clause. The issue is not as much as addressed by Reimer.

(b) Can a Treaty require that Congress make a non-resident alien a civil officer of the United States? Can Congress implement that provision even if it wants to?

All civil officers of the United States are subject to impeachment. How can the U.S. impeach non-resident aliens over whom the U.S. has no jurisdiction and who are not subject to U.S. law?

That issue also is not addressed by Reimer.

(c) Trying to contend that the Panama Canal Commission might (sic) be more (sic) of a Joint Commission (i.e. Intergovernmental) is without merit, considering the unequivocal language of the Treaty the similarly unequivocal language of the draft implementing legislation, and the Supreme Court definition of civil officers in *Buckley* v. *Valeo*. On the latter, the CRS 30 January Memo says:

"Specifically, the Court in Buckley greatly expanded the class of 'officers of the United States.' It did so by giving that term substantive content, defining it to include all those persons exercising some significant governmental authority."

In the light of the above, it seems futile to contend that members of the Panama Canal Commission are not civil officers of the United States.

One subsidiary question: Does the U.S. appoint the non-American members of a Joint Intergovernmental Committee?

Conclusion: On several important constitutional issues, the Reimer memo says nothing. On others, it admits non-constitutionality in the discussion, but fails to do so in the conclusion. On a third group of issues, Reimer admits that implementing legislation is needed to cure obvious defects in the treaty, which is another way of saying that ratification of the treaty absent such prior legislation runs the risk of being unconstitutional in U.S. municipal law.

Statement by Charles H. Breecher on the Constitutionality of the Panama Canal Treaty of 1977

Before the Senate considers the Panama Canal Treaty of 1977, I believe we should examine in some depth whether it is in consonance with the Constitution of the United States. Let me say at the outset that I have arrived at the view that it is not, and that if ratified it would eventually be declared unconstitutional by the Supreme Court of the United States. Far from removing my doubts, the implementing legislation of 3 March 1978 as drafted by the Administration almost makes it appear that the Executive Branch might want to cover up what appear on their face to be grave constitutional defects in the Panama Canal Treaty.

The most glaring constitutional defect in this treaty might be termed the "citizenship issue". Let me read to you Sec. 3(a) Art. III of the Panama Canal Treaty. It provides for a United States Government Agency called the Panama Canal Commission managed by a board of nine members . . . and now I quote: "four of whom shall be Panamanian Nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner." The U.S. can apparently not reject such Panamanian nominees for appointment and can remove them only, and here I shall quote again, "after consultation in advance in order to reach agreement on such removal".

Now if this clear and unequivocal language in the Panama Canal Treaty means what it says, it means that the President of the United States can only appoint the nominees of the Panamanian Government, that he must appoint them "in a timely manner", that the United States Senate cannot reject or bottle up their appoint-

ment, and that the President can remove them only with the consent of the Panamanian Government, but not at his pleasure.

Let me repeat that this Panama Canal Commission is a United States Government Agency. It is not some Mixed Commission, nor an Advisory Commission nor a private corporation. To give an idea about the level of the appointees, on page 430 of the Hearings before the Committee on Foreign Relations, United States Senate, Part I, September 29, 1977, Richard Cooper, U.S. Undersecretary of State, says that he and Anthony Soloman, Undersecretary of the Treasury, would be two of the five U.S. members of that Commission, which is the Governing Board of the Panama Canal Commission, fixes the tolls and exercises other Governmental functions in operating the Canal.

Just so there should be no doubt about the nature of this United States Government Agency, Section 2(c)(3) & (4) of the draft implementing legislation make the Panama Canal Commission the successor to the present Canal Zone Government and the Governor of the Canal Zone, in addition to being the successor to the Panama Canal Company. And Sec. 201 of that legislation establishes the Panama Canal Commission "as a body corporate, and as an agency and instrumentality of the United States".

This provision in par. 3, Art. III of the Panama Canal Treaty raises the following serious questions under the U.S. Constitution:

1. Can the President's right to appoint officers of the U.S. Government be restricted by treaty? Article II, Sec. 2, clause 2 of the U.S. Constitution provides that the President shall appoint all officers of the United States, with the advice and consent of the Senate. The Panama Canal Treaty restricts the President's right of appointment to a purely ministerial function in the case of the nominees of the Republic of Panama.

2. Can the Senate's right to give advice and consent to Presidential appointments be restricted to a ministerial function, to be performed "In a timely manner"?

3. Can an alien, and in particular a nonresident alien as these Panamanian nominees would be, be appointed an officer of the United States? The U.S. constitution prescribes various length of citizenship requirements for the President, Vice President, and members of the Congress, but is silent on civil and military officers. Past U.S. Government practice restricts to my knowledge appointments to citizens. As to any constitutional requirement Art. II, Sec. 4 of the U.S. constitution says: ". . . all officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors." How can an alien commit treason?

How can the United States which has no jurisdiction over a non-resident alien, convict him of bribery, high crimes and misdemeanors? It would seem that the makers of the U.S. Constitution did not envisage that non-resident aliens could become civil officers of the United States.

4. Can U.S. citizens be excluded under the U.S. Constitution from appointment to four of the nine positions on the Panama Canal Commission, a United States Government Agency, because they are U.S. citizens and not Panamanian nationals? The 5th and 14th Amendment protect the privileges and immunities of citizens of the United States and forbids depriving them of property without due process of law. Can it be made a condition for appointment, by treaty, that the prospective appointee be not a U.S. citizen but the national of a foreign country? Is that type of a classification permissible under the U.S. Constituion? I should think this type of a quota is not.

Without wanting to belabor the point too long, similar constitutional questions arise under Sec. 3 (c) and (d), Art. III of the Panama Canal Treaty, with regard to the Administrator or Deputy Administrator of the Panama Canal Commission, because appointment is restricted by the treaty to Panamanian nationals. Then there is par. 2, Art X, of the Treaty that established a system of preference of Panamanian nationals, to be employed by a United States Government Agency. Will this system stand up as due process under the U.S. Constitution, although it discriminates against U.S. citizens because of their citizenship? I respectfully question that it will.

It is interesting that Sec. 307(b) of the implementing legislation does not exactly highlight the discrimination against U.S. citizens in employment by a United States Government Agency. I quote: "(b) The Panama Canal Employment System shall: (1) subject to and as limited by the Panama Canal Treaty of 1977 and related agreements, be based on the merit of the employee or individual and upon his qualifications and fitness to hold the position concerned." That sounds like the merit system of the U.S. Civil Service, whereas in actual fact Panamanians are given preference

over better qualified U.S. citizens. One more case of style over substance in the implementing legislation.

Mr. President, I want to stress that this "citizenship issue" is not just a fancy legalistic point. On the contrary, it is of the greatest significance and goes to the heart of the Panama Canal Treaty. What's involved here is the actual control over the Panama Canal Commission and over the Canal, right after the treaties are ratified, not 22 years from now. To illustrate, can one realistically imagine that all five U.S. appointees, including the ex officio State Department appointee, will stand fast against any Panamanian demands? Say for sharply increased tolls, to make up for past alleged exploitation of Panama's resources by the U.S.? Or for the decline in the purchasing power of the U.S. dollar? Or for hiring more Panamanians even faster?

One further explanation what's really in this Article III. Dictators are not usually renowned for their sense of humor. But if General Torrijos possesses it, once the treaties are ratified, he might name his brother Moises to the Panama Canal Commission, to vindicate the honor of his family in the eyes of the United States public and of the world. And there is not a thing the United States President and the Senate could do except appoint Mr. Moises Torrijos in a timely manner, no matter that he is under criminal U.S. indictment. What's more he could not be removed by the President, whatever more evidence should come to light, unless the Panamanian Government agreed to that removal.

The Administration keeps telling the American people that the U.S. will retain control over the Panama Canal until the year 2000. Legally and from a practical point of view, that is simply untrue. As the sovereign, Panama gains ultimate legal control the minute the treaties come into effect and the sovereign rights of the U.S. are thereby extinguished. And from the practical point of view, even if that Commission with a U.S. majority is allowed to function by Panama, that's like one person holding 45 percent of the stock in a corporation when the other 55 percent are not firmly in one other hand. The fellow with the 45 percent controls the board of directors and the corporation.

How does the implementing legislation read? It reads just fine on this crucial point, as if the U.S. Constitution were fully observed, that is unless one can recall exactly what's in the treaty. Here's Sec. 205(a) of the proposed legislation:

"(a) A board of directors shall manage the affairs of the Panama Canal Commission. The President of the United States shall appoint the members of the board in accordance with paragraph 3 of Article III of the Panama Canal Treaty of 1977, and neither this chapter nor any other law prevents the appointment and service as a director, or as an officer of the Commission, of an officer or employee of the United States, or of a person who is not a national of the United States. Each director so appointed shall, subject to paragraph 3 of Article III of the Panama Canal Treaty, hold office at the pleasure of the President, . . ."

Why, may I ask, did the Administration in the implementing legislation not repeat the short phrases of par. 3, Art III of the Panama Canal Treaty? Who can guess from this artful language, unless he has the Treaty in front of him and refers to it, that the President and the Senate are restricted in appointing and confirming, and that the Panamanian appointees serve at the pleasure of the Panamanian Government, not at the pleasure of the President of the United States? Is this just poor drafting technique so that one has to refer to two documents, or is this an attempt to conceal in particular from the media and the public what this draft legislation really says?

It is my view that this citizenship issue alone is more than sufficient to cast the most serious doubts on the constitutionality of the Panama Canal Treaty. If the Administration or individual Senators disagree with me, I hope they will speak up now and tell me why they think par. 3, Art. III would stand up in U.S. Supreme Court.

But there is another very serious issue under the U.S. Constitution which should be mentioned and which can be called the Purse String Issue.

This Purse String Issue involves the powers of the full Congress, including the House of Representatives. Art. I, section 9, clause 7 of the U.S. Constitution says "no money shall be drawn from the Treasury but in consequence of appropriations made by law". However, par. 5, Art. III and par. 4, Art. XIII of the Panama Canal Treaty provide for certain payments to be made by the Panama Canal Commission, a United States Government Agency, to Panama.

To my knowledge, it is the weight of authority that no valid obligation can be imposed on the United States by a treaty to pay any money unless such obligation is not at least already authorized by the Constitution itself or by statute. Whether in international law such a treaty obligation would be binding, thus giving the Con-

gress the choice to violate international law or to appropriate the money, is not relevant here when we examine the constitutionality of the Treaty in U.S. municipal law. What is relevant is that it appears under the U.S. Constitution that any such obligation in a treaty is not self-executory and that the prior authorization of the Congress must be sought.

Here I would like to quote from Attorney General Griffin Bell's testimony Sept. 29, 1977, Hearings before the Committee on Foreign Relations, United States Senate, pge. 200 ff. Part. I.

"Similarly, the President and the Senate may be powerless to accomplish by treaty what the Congress can accomplish by statue. . . . Some lower courts and many serious students of the law have expressed the view that certain matters are subject to regulation by Congress only; and that a treaty if it purports to deal with such a matter, can be given effects only to the extent that it may be authorized or implemented by statute. The two matters that are frequently mentioned in this regard are the raising of revenue and the appropriation of funds. . . ."

The Panama Canal Treaty attempts to escape this apparent constitutional requirement by providing that the payments under Art. XII shall be made out of "Canal operating revenues." However, even this feeble need of an excuse is not available for the $10 million payment under Art. III which according to testimony by Administration witnesses would have to be made even if the Canal were closed say by an earthquake, and there are no "canal operating revenues."

Section 204 of the implementing legislation seeks to cure this glaring defeat by providing:

"(h) Payments by the Commission to the Republic of Panama for providing public services in accordance with paragraph (5) of Article III of the Panama Canal Treaty of 1977 shall be treated for all purposes as an operating cost of the Commission."

That's a nice try, but does not change the language of the treaty. It also does not appear to change the fact that as long as this implementing legislation has not been passed, par. 5 Art. III is in violation of the U.S. Constitution, by the weight of legal authority cited by the Attorney General of the United States.

It would also appear that all this reference to "canal operating revenues" does might be to give Panama a claim to be paid ahead of other creditors of the Panama Canal Commission. But for the U.S. liability, it appears to be a distinction without a difference to talk about paying with "canal operating revenues" or with a check drawn on the U.S. Treasury. Revenues collected by a United States Government Agency are held to become miscellaneous receipts of the United States, similar e.g. to interest payments received by the Export-Import Bank, or repayments on past loans received by the Agency for International Development.

They could not be drawn on by the Panama Canal Commission (by Treasury check, I presume) except pursuant to authorization and appropriation by the U.S. Congress. If it were otherwise, the Congress would lose its control over the purse strings of the United States.

It is interesting to compare the language in the Panama Canal Treaty which omits in the case of payments to Panama any reference to Congress, with the carefully drafted, legally required language for certain Executive Branch promises thoughtfully called "Economic and Military Cooperation". That language is on page 575, Part I of the Hearings before the Senate Foreign Relations Committee I cited above. It provides for large-scale U.S. aid to Panama outside the Treaties through Federal guarantees of a few $100 Million and military credit sales, and now I quote "within the limits of applicable U.S. legislation, and subject to compliance with applicable legal requirements, and where necessary, to the availability of appropriated funds." This raises the interesting question whether Senate ratification of a treaty can do away with all these requirements imposed by the full Congress under its authority in the U.S. Constitution.

Again, the drafters of the implementing legislation may not have been unmindful of these constitutional questions. In Section 203 of the implementing legislation I find a word of art "directly" which is not in the Treaty, to wit that "the Panama Canal Commission shall pay *directly* from Canal operating revenues to the Republic of Panama. . . ." Perhaps this is designed that the Panama Canal Commission shall not pay by Treasury check so it ostensibly does not draw money from the U.S. Treasury. But how can these devious provisions be squared with the language in the treaty and the U.S. Constitution? There is a great difference, in my view, between the citizenship issue and the Purse String issue. The citizenship issue cannot be cured except by renegotiating the Panama Canal Treaty. The purse string issue could probably be cured retroactively by the full Congress if it passed the implementing legislation. But suppose the House of Representatives, pursuant to its rights under the U.S. Constitution, refuses to have its hand forced in a fashion

which a majority of the members of the House may consider illegal? Then we would be left with ratified treaties that are invalid under U.S. municipal law and can't be executed. This would create the most horrendous international legal and diplomatic problems to which I shall come in a moment.

A third serious constitutional issue is already in our courts. It may be called the "Disposition of Property Issue" and arises under Art. IV, Sec. 3, clause 2 of the United States Constitution which reads: "(Congress) shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . .". A suit has been brought in the District Court for the District of Columbia (Civil Action No. 77-1733) by sixty Congressmen. Briefly, the suit contends that the power of the full Congress (including the House of Representatives) is exclusive, and that prior Congressional approval is required before the Treaties can be ratified. The suit may or may not go down in history as Edwards v. Carter.

The Administration contends that the President's Power to make Treaties is concurrent with that of Congress to dispose of U.S. property, and that the Treaties (only the Panama Canal Treaty is directly involved) are self-executory. It should be stressed that what is at issue is how property, title of which is now in the United States and which the U.S. has acquired by means other than a treaty, can be transferred to Panama. Any rights we obtained in the 1903 Treaty can of course be transferred or extinguished by a new treaty.

In testimony before the Senate Foreign Relations Committee and in Court, Attorney General Griffin Bell has presented a reasoned, respectable case for the President. He relies in the main on certain Indian treaties, much older than the 1903 treaty with Panama. It seems an involved case and I would not hazard to predict the outcome with any assurance. At present, the U.S. District Court has denied the standing of these 60 Congressmen to bring the suit, and an appeal on this procedural issue is going to the Court of Appeals for the District of Columbia.

There are two facts however, which I would like to stress in relation to the merits of this suit:

1. A substantial majority of the members of the House of Representatives seems to share the views of the 60 members that brought the suit. A House Resolution to this effect has reportedly already more than 218 sponsors and seems assured of passage in the near future.

2. There is the respectable authority of 34 United States Senators, under the leadership of the Senior Senator from South Carolina, expressed just three years ago in S. Res. 97, of 4 March 1975 which states explicitly that the U.S. Constitution requires the prior approval by the full Congress including the House of Representatives for the disposition of U.S. Property.

Let me cite from that Resolution which is entitled: Resolution urging retention of undiluted United States sovereignty over the Canal Zone, 94th Congress, 1st Session: "Whereas the United States, in addition to having so acquired title to and ownership of the Canal Zone by constitutional means, purchased all privately owned land and property in the zone making it the most costly United States territorial possession . . . .

"Whereas under Article IV, section 3, clause 2 of the United States Constitution, the power to dispose of territory or other property of the United States is specifically vested in the Congress, which includes the House of Representatives; and . . . "Now, therefore, be it.

Resolved: That it is—the sense of the Senate of the United States of America that—(3) there be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate) as provided in article IV, section 3, clause 2, of the United States Constitution."

The distinguished Majority Leader cosponsored this Resolution. I regret that in his case as in that of some other Senators, I have not been able to ascertain exactly what new legal knowledge they acquired in the last three years which they did not possess in 1975 so that they now hold the precisely opposite view on an important provision of the United States Constitution.

I have dealt with three major constitutional issues which appear to point out clearly that the Panama Canal Treaties could not survive a court test. Now let me now deal in conclusion with a vital legal point which may not be all that widely known.

It might be said by some: So what? Suppose the Treaties are really eventually declared invalid by the U.S. Supreme Court. Then we just have to go back to Square 1, to new negotiations, as with the Federal Election Law. That's no different than if the treaties are not ratified, so that's better than rejecting the treaties.

Oh no! Once the treaties are ratified, the ball game is over in international law. For one, all U.S. rights under the 1903 treaty would be gone forever. The treaties would be perfectly valid in international law, even though declared invalid in U.S. municipal law.

On some reflection, this is not as startling as it may sound. The 1969 Vienna Convention on the Law of Treaties which is declaratory of customary international law, provides that once a treaty is ratified by competent legal authority, it cannot be undone by a decision of a domestic court. The reason for this rule of international law is obvious: there are just too many Governments throughout the world that might find it perfectly feasible to have their Supreme Court declare any treaty unconstitutional and void once the Government itself changed its mind on the continued desirability of that treaty.

So here is what could happen on the Panama Canal Treaties. Say the U.S. Senate ratifies, our rights under the 1903 Treaty are gone, and then the first shipowner charged increased tolls uses on the grounds that the Panama Canal Commission is illegally constituted under the U.S. Constitution. I submit he would stand an excellent change to prevail and that the U.S. Supreme Court would have no choice but to declare the Treaty in violation of the U.S. Constitution and therefore void. Then what? Unless Panama kindly lets the U.S. off the hook by also declaring the treaties null and void ab initio, we would have on our hands what can only be described as a first-class legal and diplomatic mess. Panama would not mind, I think, they'd have the Canal and could charge whatever they wanted, being the sovereign with nothing to constrain them. How could anyone want to run the very real risk of that major calamity?

Most constitutional questions are controversial and the outcome is difficult to predict with any degree of assurance. But I would submit that the legal case against the Panama Canal Treaties is extremely strong, as I have outlined it. For instance, how many Senators would agree that under the U.S. Constitution their right to give advice and consent to Presidential appointments can be abridged by a treaty?

We should also not be surprised that the treaties are drafted so as to be in conflict with the U.S. Constitution. The negotiators were given an impossible task if they were to reach an agreement with the Panamanians. The Panamanians wanted to be absolutely certain that any money promised to them under the Treaties would not be contingent on a vote by the full Congress, it would seem. It would equally seem that the Republic of Panama, perfectly logically from their point of view, insisted on getting actual control over the Canal right now, not in the year 2000, but were willing to go along with some sort of arrangement under which the U.S. would still seem to have legal control in style, though not in substance. The U.S. Constitution, with its elaborate system of checks and balances, just does not seem to lend itself to these propositions, however ingenious the drafters of the treaties might be.

Mr. MATHIAS. Mr. President, since the debate over ratification of the Panama Canal Treaty is rapidly drawing to an end, it is a good time to consider the elucidating comments of one of our country's most distinguished elder statesmen, the Honorable John J. McCloy. Having devoted much of his life to the service of our country, as Assistant Secretary of War during World War II and later, as High Commissioner for Germany, his perceptions are clearly worthy of note. His expertise and erudition in the area of foreign policy is well known, and give his words extra weight.

The Panama Canal issue is one of vital importance, not only in its implications for our diplomatic and strategic posture, but also in its effect on our relations with Latin America and the rest of the world. We have exhaustively considered all sides of the question here on the floor, and so I am certain that my colleagues as they marshall their thoughts and summarize the arguments will profit from a review of the refreshingly lucid comments of the Honorable John J. McCloy.

The statement follows:

A FRESH VIEW ON PANAMA

My name is John J. McCloy and by way of qualification for having a view on the pending Panama Canal treaties before the Senate let me say that during World War

II, I was The Assistant Secretary of War and I had from time to time occasion during that war to give thought to the place the Panama Canal played in our overall strategic and security policy. Moreover, I have been on a number of occasions an advisor to the President and other Government agencies dealing with defense matters relating to the country and the North Atlantic Treaty Organization. Following the war I was the U.S. Military Governor of Germany and acted later as U.S. High Commissioner for Germany in which capacity I was in frequent contact with problems relating to our and our Allies' defense problems. I was an advisor on disarmament policies during the Kennedy, Johnson and some part of the Nixon Administrations in which connection I obtained a rather comprehensive view of our entire defense posture. In World War I, I served as a junior officer overseas in the A.E.F. and later in the then U.S. army of occupation in Germany.

I have read the proposed treaties and a considerable amount of comment on them, but I have not followed in any detail the course of the negotiations leading up to the draft of the proposed treaties.

I do have some rather well defined views, however, regarding the timeliness of the proposed treaties and the advantageous role I think they could play in our overall diplomatic and strategic position at this stage in our history.

In the first place, let me say a word as to my view of the continued strategic importance of the Panama Canal to the United States and its national interests. I do not minimize the present economic and military importance of the Canal. I do not think it particularly significant that the big ships cannot now transit the Canal due to its present size and depth. Nor do I presume to predict that role the Canal will play in the world strategic developments of the future. I assume that with the geographic composition of the Western Hemisphere the Canal is bound to play, or at least we are bound to assume that it could play, an important element in our defense and that of the Free World. I served through two World Wars when it did play an important part and I believe it would be most presumptuous for anyone to take the position that it would not play an important role in the future. The trend, as I see it, is to move from larger to smaller ships in today's naval strategy. The frigates with their nuclear tipped missiles may be a more important surface weapon than a big carrier for all that I can predict. In short, I believe the Canal may well play quite as large a role in the future as it has in the past. I certainly would not assume a significantly lessened strategic value for the Canal in the future and for that reason accept a really less secure arrangement for our relations to it.

Next let me say I repeal any suggestion that we are in any sense under obligation to compensate for, or much less atone for, anything we or Theodore Roosevelt did in the past in the way of creating, building and making the Canal available to world trade. It was one of the great engineering, economic and political feats of all time and it was a boon to North America, Central America, South America and to the world.

In short, because I believe the Canal is, or could be, of great importance to us in the future, and I think we should adopt measures designed to remove any unnecessary irritations in regard to our present control over it. And I believe the time has come when we should commence preparations to remove the foreign enclave character of the present arrangement. It is probably an outdated arrangement under present international trends in the Free World. I believe that there may have been some deliberate and largely undeserved propaganda efforts made to charge American exploitation of Panamanian interests in connection with the Canal. Yet I think the time has come to remove any possible reflection on the dignity, full maturity or independence of Panama. I believe, with a suitable "break-in" period, Panama will, as a nation, be capable of efficient operation of the Canal and will have added interest in its own defense of it.

The military, I believe, have testified as to the difficulties of defending the Canal and its installations against local guerrilla and sabotage attacks. They could be harassing and damaging, but they probably could be dealt with. To have United States forces in place prepared to resist such attacks might be advantageous militarily, but it would be far better if we could rely on the cooperation and good will of the Panamanians and their neighbors to afford the defense against such tactics than to rely solely on any on-site United States capacity to do so.

Moreover, there is another aspect of this matter which appeals to me as being most persuasive. That is the need we have as a country to reestablish the confidence, good will and cooperation of our Latin American neighbors which we have had through such a long part of our history. Not long ago we were able to count on a very solid weight of support from South and Central American states in the United Nations. For one reason or another that support seems somewhat eroded, although our respective political bases have much in common, the Panama Canal or

at least the enclave aspect of it with its uniformed forces and rather preferred types of residences for the foreigner have furnished a symbol of colonial administration that is distasteful and it is a distaste which is shared by a substantial element in neighboring countries. The ratification of these treaties is not going to set in train a sudden reversal of U.N. voting or the elimination of all anti-American feeling in all Latin America, but it could be an eloquent example of non-dominating behavior which could lead to a greater recognition by the Western hemisphere states of our essential unity and common interest.

If the treaties should be rejected, I believe it might be a serious setback to the growing realization that most members of the Free World sense of the need for improved cooperation with the United States in the face of what appears to be growing Communist threats in under developing areas of the world. In a real sense I believe we could be losing an encouraging opportunity to restore in significant part our Western hemisphere sense of unity and common purpose. Therefore, both from a positive and a negative point of view I believe it is to our national advantage to enter into these treaties. First because it is a better way to defend the Canal than to hang on to the enclave concept with armed forces in place very likely provoking guerrilla tactics and sabotage and second because if rejected, we might well lose an opportunity which now seems aborning to revive the united political support of our hemispheric neighbors which has recently been somewhat lacking.

There is one other element in this matter which appeals to me as being of added weight in considering the value of ratification. It arises from my experience with the reopening of the Suez Canal after the first Suez crisis. You will recall the Egyptians seized the Canal and all its installations sinking a substantial number of ships in the Canal as they did so. The Canal was closed to all transit and world trade suffered as a result. In due course it came time to give thought to reopening the Canal and Mr. Hammarskjold of the United Nations asked me to organize the operation. The general feeling was that the Egyptians would not prove capable of operating it. The French installations in Ismailia of a rather elaborate character had given rise to the same sort of irritating enclave atmosphere which seems to be resented at least to some degree in Panama.

At any rate with the help of General Wheeler, an excellent engineer and an old World War I and II colleague of mine who had a one time commanded the Panama Canal Zone, the ships were raised, the canal reopened and the cost of it paid for out of the traffic, with the Egyptians assuming full charge of all operations. The results, as I recall, were somewhat spectacular in terms of lowered cost and increased use. The point I wish to make here is that the Egyptians quickly began to take great pride in their operation of the canal which it turned out was quite as efficient, as far as one could judge, as that of the prior foreign administration. The canal became an increased factor in the Egyptian economy and all local efforts were directed toward its successful operations. I do not see why the Panamanians could not do the job in Panama as well as the Egyptians did it in their country although the lock system may present greater complications. I am sure it does require certain skills, discipline and training but once the local people at Suez got the responsibility they reacted well to it and I believe we would see the same phenomenon take place in Panama. The fact that so many other Latin American states have closely associated themselves with the conclusion of these treaties may also be a stimulating factor in Panama's safe and efficient operation of its canal.

In summary, I would favor ratification of the treaties. I believe the original drafts have been improved by the understandings which I believe are being accepted by both sides and I am satisfied from a military and defense point of view that we would not be jeopardizing our national interest or our good future use of the Canal if the treaties were ratified and concluded in the form which I believe they are now being considered. Indeed, I believe our interests could well be advanced.

Whether we use our right to defend the Canal will depend on our will to act whenever the freedom of the Canal is threatened. I do not think our will to defend it would or should depend on whether the present arrangement were in effect.

Mr. HARRY F. BYRD. The New York Times today published an excellent profile on the splendid Senator from Nevada, Mr. Laxalt, and the important role played by him in the 9 weeks of debate on the proposed new Panama Canal treaties.

Paul Laxalt, in my judgment, is an outstanding Senator.

Top Adversary of Canal Facts

(By Adam Clymer)

Washington, April 16.—Although he was campaign chairman for the Presidential candidate who brought audiences to their feet by reciting "We bought it, we built it, and we're going to keep it!" Senator Paul Laxalt avoids slogans and emotions when he talks about the Panama Canal.

But his work as leader of the Senate opposition to the canal treaties, which as frequently involves the cautioning of overenthusiastic partisans as attempts to persuade the uncommitted, has put him even more in the conservative limelight than he was in Ronald Reagon's 1976 campaign.

However the final vote on the second canal treaty comes out on Tuesday, Mr. Laxalt has won as much respect from the pro-treaty forces as from his own side, not only for his openness in dealing with his fellow senators but also for his recognition, not shared by all the treaty opponents, of the sensitivities of the Panamanians.

For example, he voted against a treaty reservation asserting the United States right to send troops any where in Panama feeling that an open statement of interventionist policy would needlessly anger Panama. His sympathy for Panamanian nationalism sounds sincere, but is overridden by his view that "it's absolutely essential that we retain the canal for security purposes, or else it might become a Russian choke-point."

SWIMMING AGAINST THE TIDE

Paul Dominique Laxalt (the middle name was the first name of his father, a Basque immigrant) comes by his conservatism naturally. . . . He is a Republican because his father, unlike most of the Basque shepherds who emigrated to Nevada, was one. "Pop just loved to swim against the tide," he said in an interview.

Born in Reno on Aug. 2, 1922, he spent summers on the sheep range with his father, who was away from the family's home in Carson City, the state capital, much of the year. Mr. Laxalt recalls an upbringing emphasizing "total respect for institutions and the family," and early fights with "the American kids" who picked on him for not knowing English until he went to school.

Although his mother ran a family-style restaurant that brought all the state's politicians into their home while he was growing up, Mr. Laxalt did not become interest in politics until after he had graduated from Denver University and its law school in 1949. He was elected district attorney for Ormsby County in 1951, then city attorney for Carson City, and in 1962 lieutenant governor.

He was elected Governor of Nevada in 1966, and encouraged Howard Hughes, whom he dealt with by telephone and memorandum, to buy heavily into the state's gambling industry. He praises Mr. Hughes, and said his influence helped get gangsters out of the casinos, as did legislation he pushed successfully to allow corporation to come in—legislation that has brought chain hotels with adequate capitalization into Las Vegas and Reno.

BRIEF FAREWELL TO POLITICS

That and the establishment of a community college system were the major concerns of his term as governor, but he decided not to run again. "I had a gut full of politics," he said. "My kids were nearly strangers to me. My marriage was breaking up." So he quit politics and opened a family-owned hotel venture.

He said that period, 1971 to 1974, had two main values. While his first marriage did end in divorce (in January 1976 he married his secretary, Carol Wilson), he reestablished himself with his six children, three of whom are adopted—Gail Laxalt, 28 years old, Mrs. Sheila Lokan, 27, John Paul Laxalt, 25, Michelle Laxalt, 23, Mrs. Kevin Bernard, 22, and Mrs. Nina Thompson, 21.

It also helped him see that what politicans did was not going to change the world suddenly. He said he could go for weeks in Carson City without a politicial discussion "unless I started it." "That was an amazing insight into how importantly we take ourselves," he said.

But in 1974, despite Watergate and a divorce, he was persuaded to jump back in. He defeated the Democratic Lieutenant Governor, Harry Reid Sawyer, in the Senate race after "we were able to get him into a position where he appeared to endorse repeal of right to work." It was the only Democratic Senate seat Republicans won that year.

Mr. Laxalt walks a lot and plays tennis and, when he gets home to Nevada, he will be off into the Sierras, sleeping on the ground, rising at dawn, reading, hiking, then collecting with others at a central tent for "talking, eating and drinking."

Mr. Laxalt's role in the canal fight has increased the ranks of conservatives who urge him to run for President some day. But while the Nevadan says he is a "fatalist in politics," believing that things just happen to politicians, those close to him believe him when he says "the Presidency just has no appeal to me—not for a moment would I begin to seek it."

[From the Congressional Record—Senate, Apr. 18, 1978]

THE PANAMA CANAL TREATY

Mr. ROBERT C. BYRD. Mr. President, the final hour of debate on the Resolution of Ratification for appoval of the treaties will begin at 5 p.m. today.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that if there is any time prior to 5 o'clock that is available for debate, in other words, if time has been saved prior to that time, prior to the hour of 5, so that a few minutes exist, in addition to the 1 hour, that those minutes be equally divided and placed under the control of Mr. Laxalt and Mr. Sarbanes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, has the final hour of debate today, which will run between 5 and 6 o'clock, been divided, and, if so, how?

The ACTING PRESIDENT pro tempore. The first 15 minutes are allotted to the proponents of the treaty, the next 30 minutes are allotted to the opponents, and the final 15 minutes to the proponents.

Mr. ROBERT C. BYRD. I thank the Chair and I thank the distinguished Senator for yielding to me.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Arizona (Mr. DeConcini) is recognized, as in legislative session, for not to exceed 30 minutes.

Mr. ROBERT C. BYRD. Mr. President, I have taken 2 minutes of the Seantor's time, but I yield him 15 minutes in the beginning.

CLARIFICATION OF AN ASPECT OF SENATE DEBATE ON PANAMA CANAL TREATIES

Mr. DECONCINI. Mr. President, I ask this Chamber's indulgence for a few moments to help clarify an aspect of the Senate debate on the Panama Canal treaties that has become, in my view, extremely distorted.

An amazing amount of controversy has surrounded the language I asked the Senate to add to the resolution of ratification on the Neutrality Treaty. The language, which has become known as the DeConcini amendment, is meant to clarify certain rights that the United States retains under the new arrangement that will govern the Panama Canal.

What puzzles me, Mr. President, is that suddenly the public debate has focused on whether it is appropriate for the United States to retain the right to keep the canal open regardless of the reasons that may lead to its closure. Frankly, I believed that there was no disagreement in principle on this point. I believed that it was accepted by the Panamanians, that it was accepted by the administration, and that it was accepted by the Foreign Relations

Committee and the Senate leadership. It has come as quite a shock to me that this is apparently not the case.

Let me be more specific, Mr. President. On February 3, the Senate Foreign Relations Committee ordered its report on the Panama Canal treaties to be printed and distributed to Members of the Senate to aid them in their consideration of the treaties. Since only Senator Griffin dissented from the report and appended minority views, I must assume—as I believe all of us assumed—that the rest of the Foreign Relations Committee agreed with the report.

As it turns out, Mr. President, a number of Senators who are fairly senior members of that committee have publicly raised serious questions about the principle behind the DeConcini amendment. The reason why this is perplexing, Mr. President, is that the Senate Foreign Relations Committee report on the treaties endorsed that principle.

On page 6 of the "star print," the committee begins its discussion of the so-called leadership amendments to the treaty. After stating that the committee recommended the adoption of the "leadership amendments," it goes into a statement of the intention behind those amendments.

The report states:

> The meaning of these amendments is plain. The first amendment relates to the right of the United States to defend the Canal . . . It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act as it deems proper against *any* threat to the canal, internal or external, domestic or foreign military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

How much plainer could the report of the Foreign Relations Committee be? One thing is certain, however. The Foreign Relations Committee—and, again, I assume that includes all its members save Senator Griffin—asserts broader rights than were asserted in the DeConcini amendment. In other words, the Foreign Relations Committee report goes beyond the rights asserted by my simple clarification.

Perhaps, it could be argued that these rights asserted by the Foreign Relations Committee are partially eliminated by the second paragraph of the "leadership amendment" which reasserts the American intention not to intervene in the internal affairs of Panama. Here again, the Foreign Relations Committee report makes it clear that such is not the case. Referring to the paragraph I just quoted, the report says:

> The above-described rights are not affected by the second paragraph of the amendment, which provides that the United States has no 'right of intervention . . . in the internal affairs of Pamana,' and which prohibits the United States from acting 'against the territorial integrity or political independence of Panama.'

The report goes on to be more specific. It states that:

The prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first.

It then asserts that:

Even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against "any . . . threat directed against the Canal", there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must therefore be construed as controlling.

It is interesting, Mr. President, that the principle endorsed by the Foreign Relations Committee is now being called into question. The impression in some segments of the media is that these American rights are novel inventions of the DeConcini amendment.

Quite frankly, although I am flattered by the attention of the media during the last few days, I believe it is quite unwarranted. What I proposed in the DeConcini amendment was merely a clarification of the principle articulated by the Foreign Relations Committee. It was my feeling—and the feeling of a number of my colleagues—that the "leadership amendment" was not sufficiently clear. Regardless of what the intent of the amendment was, the actual words seemed to be subject to a variety of interpretations. Because it was merely a clarification and not a change in American policy—policy apparently agreed to, according to the Foreign Relations Committee report, by the Panamanians themselves—none of the parties involved, including the administration or the Senate leadership had much difficulty accepting my amendment to the instrument of ratification.

It was only after the amendment was accepted overwhelmingly by the Senate that the controversy arose. Reports from Panama have indicated that the amendment ran counter to the meaning and intent of the treaty, and the Panamanian Government took the unusual step of circulating a note among the members of the United Nations implying that the rights asserted by the DeConcini amendment were possibly outside the scope of the United Nations Charter.

In response to the Panamanian reaction, the administration, the Senate leadership, and individual members of the Foreign Relations Committee have suggested that it is imperative that the DeConcini amendment be somehow moderated or modified, or the treaty would either become unacceptable to the Panamanians or to certain members of the Senate who do not want to be associated with the notion that the United States has the right to act independently to keep the canal open.

It seems to me, Mr. President, that the only truly legitimate area of debate is whether the wording of the DeConcini amendment is or is not necessary to achieve the objectives described by the Foreign Relations Committee and which I have extensively quoted. It seems to me that those objectives are not in question. The American people and the majority of Senators believe that we have those rights and that they are both legitimate and sanctioned by the Panamanian Government. It is unfortunate that so much time has been expended debating an issue which should not be in contention.

Let me, Mr. President, restate my concerns. What led me to introduce—and what I believe led the Senate to accept—my reservation was a sense that the "leadership amendment" was some-

what unclear on a number of points, most especially those relating to American rights to keep the canal open if the threat to it were internal rather than external. Now, it should be noted, once, again, that this right is asserted by the Foreign Relations Committee as inherent in the leadership amendment, and is endorsed by them. Thus, the question is whether the actual treaty and amendment language makes this right sufficiently clear.

At the time that I introduced my amendment, I made the following statement:

I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the canal. It recognizes the very special relationship that the Panama Canal has to American security. I certainly hope, Mr. President, that if this right is attached to the treaty it will never need to be exercised. Yes, it is important that the American people know that should the need arise, the United States has sufficient legal sanction to act.

Those, Mr. President, were my words at the time the amendment was introduced and acted upon. They continue to be my sentiments today. Furthermore, I know there is nothing in my reservation that goes beyond the words of the Foreign Relations Committee, and I believe those words reflect the intent of the Congress. My only quarrel today as well as in the past has been what I perceive as ambiguity in the drafting of the leadership amendment. The Foreign Relations Committee report believes that the leadership amendment accomplishes the stated objectives; I do not. However, I assert no new right, but neither will I accept any changes in those words that derogate from the rights we have clearly established in our action on the Neutrality Treaty.

I thank the Chair, I yield back the remainder of my time, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE PANAMA CANAL TREATY

The ACTING PRESIDENT pro tempore. Under the previous order the Senate will now resume consideration of the resolution of ratification of the Panama Canal Treaty which the clerk will state.

The legislative clerk read as follows:

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Panama Canal Treaty, together with the Annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-Fifth Congress, first session).

The Senate resumed consideration of the resolution of ratification of the Panama Canal Treaty.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized to call up a reservation on which there will be 30 minutes of debate equally divided between the Senator from

Kansas and the manager of the treaty with vote in relation thereto to occur at 10:25 a.m. this morning.

The Senator from Kansas.

UP RESERVATION NO. 33

Mr. DOLE. Mr. President, I send to the desk an unprinted treaty reservation for the resolution of ratification and ask that it be stated.

The ACTING PRESIDENT pro tempore. The reservation will be stated.

The legislative clerk read as follows:

The Senator from Kansas (Mr. Dole) proposes unprinted reservation No. 33.

Mr. DOLE. Mr. President, I ask unanimous consent that reading of the reservation be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The reservation is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof the following: "subject to the following reservation:

"Before the date of exchange of the instruments of ratification of the Treaty, the two Parties shall have agreed that the Panama Canal Commission shall reduce the amount of the annuity payable to the Republic of Panama under paragraph 4(b) of Article XIII of the Treaty by the product of such amount and a fraction, the numerator of which is the number of days during the calendar year the Canal is not navigable and the denominator of which is 365.".

Mr. DOLE. Mr. President, very briefly and very quickly, because the Senator from Kansas knows there is a mountain of work ahead of us today before the final vote on the Panama Canal Treaty, as my colleagues are well aware, article XIII of the Panama Canal Treaty provides, for the Government of Panama, "a fixed annuity of 10 million U.S. dollars to be paid out of canal operating revenues." The reservation I am proposing would simply condition Senate ratification on the following point—that this fixed annual annuity shall cease during any period in which the canal is inoperable. That is, the annuity would be reduced by an amount proportionate to the number of days of the year that the canal is not open for transit.

Mr. President, it would clearly be unfair and irresponsible to guarantee continued payments to Panama during a time in which the canal is closed, since that payment is understood to come from canal toll revenues in the first place. This is a logical reservation on our part, and one that I am sure any rational Panamanian would understand.

There are any number of reasons why the canal could be closed for temporary periods during the next 22 years. It could be a result of a national catastrophe, such as an earthslide or earthquake. It could be due to a functional breakdown involving the intricate machinery of the lock system. Or it could be the result of intentional sabotage by either internal or external sources. Certainly, we hope none of these conditions develops. But if they should it is likely that the canal would be closed to all traffic for several days, during which time there would be no operating revenues derived from the canal. Why, then, should the Panama Canal Commission

be held financially liable by the Government of Panama, just as though the canal was operating as usual?

ECONOMIC BURDEN

In any such instance where the canal should be closed, the United States would almost certainly be expected to bear the major economic burden of reopening the canal. Whether or not this liability would be binding in a legal sense, there is no question that we would feel dutybound to pay the costs of reopening it for our own defense and economic purposes. Panama certainly would not bear the economic burden.

Furthermore, let me remind my colleagues of all the other economic benefits Panama will continue to receive under the terms of this treaty, regardless of whether or not the canal remains open: Panama receives free title to all real property in the Canal Zone, with an estimated replacement value of $9.8 billion. Panama receives $10 million annually for public services in the former Canal Zone, including police and fire protection, street maintenance, and garbage collection. And, of course, the administration has proposed a separate economic and military assistance package totaling $345 million. So, Panama does quite well, financially, beyond the fixed annuity proposed under article XIII.

It simply does not make sense to promise to continue paying Panama for a passage route that is temporarily nonexistent. The present treaty makes no provision for such a contingency, and both the United States and the Panama Canal Commission must be protected on this point. This reservation may even help discourage any intentional sabotage of the canal. Under the provisions of this proposal, if the canal is shut down for 1 month, the $10 million annuity will be reduced by one-twelfth.

This is fair, this is logical, this is rational, and this is justified. It is something the American people can understand, and the Panamanian people can understand. It does not involve rewriting the treaty, but only attaches a "condition" to our ratification of the treaty.

I trust that there will be appropriate support for the reservation.

Mr. President, I reserve the remainder of my time.

Mr. Sarbanes addressed the Chair.

The Acting President pro tempore. The Senator from Maryland.

Mr. Sarbanes. Mr. President, I rise in opposition to the reservation. In explaining that opposition I want to detail the nature of the payments to be made to Panama.

There are two other payments to Panama that would be directly affected in a very negative way by any disruption of canal activity. One is the payment of 30 cents per Panama Canal net ton which is directly related to the amount of tonnage which moves through the canal. So to the extent that the canal is not functioning that payment would be immediately impacted. The other is the contingency payment, which again is related to producing sufficient revenues in excess of expenditures, to have enough money left over in order to make that payment.

So both of those payments are directly related to the amount of tonnage moving through the canal which is, of course, related to the canal operating to the maximum extent possible.

Under the present arrangement we pay Panama a fixed annuity, and there is no provision under the present arrangement for any discounting of that fixed annuity. That annuity is $2.3 million, but is has not been adjusted in over 20 years for inflationary impact. It is a flat payment that is now made.

The $10 million that we are talking about here that is contained in paragraph 4(b) of article XIII of the treaty is comparable to the fixed annuity now paid to the Republic of Panama.

That figure is well within the capacity of the Panama Canal Commission, or will be well within its capacity. You have a fixed annuity partly to make sure that you do not have total shock or extreme up and down fluctuations in the revenues to be received by Panama since it will be relating its own activities to such revenues.

However, the bulk of what they expect to receive from the canal operation will, in fact, be affected by an interruption of service. If there is such a disruption there will be a severe diminution in what they will be receiving as a consequence of the disruption.

To seek to extend that loss even further, to go to the basic $10 million annuity payment, it seems to me, is to overreach in the sense of the balance which this treaty has struck between ourselves and the Republic of Panama.

Furthermore, the amendment as it is worded would result in the discount even if after a closure period you more than made up for what had been lost through intensive operation of the canal for the open period of time. In other words, you could have an earthslide which threw the canal out of operation for a short period of time. You could make that up subsequently. In fact, you might run the canal on such an intensive basis that you had a better year financially even though there has been a closing down for a limited period of time than you might have in a year in which there was no closing down, and yet even though there was such a better year you would have to discount the fixed annuity payment. It would simply be required by the terms of this amendment. If you think about that it is not really a fair arrangement. It, in fact, impedes trying to obtain maximum operation and maximum functioning of the canal.

I want to touch on one other point which was made by the distinguished Senator from Kansas. He said $345 million of separate military and economic assistance would be provided. I emphasize the point that this is simply a proposal on the part of the administration. None of that assistance is provided for by these treaties. In fact, that point has been made very clear by amendments to the articles of ratification, both to the Neutrality Treaty and to the Panama Canal Treaty. Such aid, if it is to be given and in the amounts it is to be given, is subject to congressional review and, if we choose to act, subject to congressional action.

So that simply is a proposal that exists separate and apart from the treaties. It is not a proposal that will be implemented or effectuated by the treaties. In fact, the amendments added to the articles of ratification make is very clear that will not be the case.

That is something we can address separately and make our judgments accordingly at the time that we do so.

So for all of those reasons, Mr. President, I oppose the amendment which the Senator from Kansas has proposed, and I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time? If no one yields time, time runs equally against both sides.

Mr. DOLE. Mr. President, I think the issue has been presented, I hope, thoughtfully and, I think, it has been answered thoughtfully, and I do not know of any reasons to take additional time. It is not a major issue, but it is one I felt should be addressed.

I have been trying to suggest that maybe somebody else might come over and start the next proposal. But, in the absence of that, I think it is significant that if we just try to isolate $10 million, that in itself is no great amount. But there is a long time between now and the year 2000, and you would get up to a pretty good chunk of money, about $220 million, which is a little more than pocket change even in Washington.

But it is possible, whether it be some internal strife or strike or landslide or earthquake or whatever, of course, and it could be closed for a long period of time and we would continue to pay.

There is a great deal of resentment still in America about the treaty, and even some who favor the treaty itself feel we have been less than—maybe responsible is not the right word—but less than cautious as a business proposition in some of the provisions in the treaty itself.

This Senator would assume that the treaty will pass despite all the rumors and all the posturing and other things that may be going on. It seems to me the votes are here to pass the treaties, and I am just suggesting that if that is the case then we should be as certain as we can that we are not going to be asked to make payments when the canal is not in operation.

But having said that and having made the case, the Senator from Kansas is willing to suggest the absence of a quorum out of my time. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE Mr. President, will the Senator from Maryland yield?

Mr. SARBANES. I yield to the Senator.

Mr. DOLE. I assume at some appropriate time the yeas and nays will be ordered on all the amendments; is that correct?

Mr. SARBANES. I think we obtained unanimous consent yesterday that it should be in order at any time to order the yeas and nays, and I think at an opportune time we will do that.

Mr. President, I ask unanimous consent that it be in order to proceed to the Thurmond amendments.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

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UP RESERVATION NO. 34

Mr. DOLE. Mr. President, on behalf of the distinguished Senator from South Carolina (Mr. Thurmond) I send an unprinted amendment to the desk and ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk proceeded to read the amendment.

Mr. DOLE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following reservation:

"The President shall not exchange the instrument of ratification of the Treaty if, after the date of adoption of this resolution of ratification, the Republic of Panama includes in its instrument of ratification of the Treaty or of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal a reservation which must be accepted by the United States of America to become binding on the United States of America or any amendment to either Treaty, unless the Senate of the United States of America has given its advice and consent to such amendment or such reservation."

Mr. DOLE. I only say as a matter of preliminary explanation that the amendment is being called up for the distinguished Senator from South Carolina in order to expedite the business before the Senate. It is my understanding that the distinguished Senator from Maryland will speak in opposition to the reservation, and by the time that is concluded the distinguished Senator from South Carolina will be present to speak in favor of it.

The ACTING PRESIDENT pro tempore. The Senator from Maryland.

Mr. SARBANES. Mr. President, I understand that the able and distinguished Senator from South Carolina will be here shortly and will speak to his amendment.

In anticipation of some of his arguments—although I must confess I am sufficiently respectful of his powers of argument and persuasion to recognize I cannot fully anticipate his arguments—I would like to point out that under American law and practice there is no way that another country could, in effect, make amendments or reservations of any substance to the instruments of ratification and, therefore, in effect, change the treaty which the Senate has advised and consented to it without those changes having to be returned to the Senate for its further advice and consent.

That requirement of Senate advice and consent, which is necessary with respect to all treaties, would in fact be missing under a procedure whereby the other party, the other country, attached substantive changes to the instruments of ratification. The only way the United States then could enter into a changed arrangement from what had received the advice and consent of the Senate would be for the Senate to again have the matter under consideration, and to advise and consent to it including such changes.

For that reason, it seems to me that this amendment is clearly not necessary.

There are a number of examples throughout our history of cases in which treaties were returned to the Senate for its advice and consent in the light of substantive changes which the other party

sought to make in the instruments of ratification through substantive reservations, amendments, or understandings. Of course, that is the standard practice and fully protects the position of the Senate with respect to the treatymaking power, and therefore enables the Senate to fully protect the interests of the Nation.

For that reason, I would oppose the amendment to the articles of ratification which has been called up by the distinguished Senator from Kansas on behalf of the distinguished Senator from South Carolina.

Mr. President, since the distinguished Senator from South Carolina is now here, I will reserve the remainder of my time on this amendment, and yield the floor so that the Senator may have an opportunity to speak directly to his proposed amendment.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. THURMOND. I thank the able Senator from Kansas (Mr. Dole) for calling up my amendment.

Mr. President, this reservation would make clear to the President of the United States that this treaty must be resubmitted to the Senate under certain conditions.

The condition referred to in the reservation would include the addition to the treaty by Panama of any amendment or reservation binding on the United States.

Mr. President, it is my understanding that the addition of an amendment by Panama would require the resubmission of the treaty to the Senate. But whether or not a reservation added by Panama would require its resubmission is apparently at the discretion of the President.

In looking back over the debate during the close of action on the Neutrality Treaty a number of the membership gave great weight to several reservations passed by the Senate. In view of the weight given reservations by this body, it seemed the wisest step to have the Senate simply affix to the treaty a condition that it be resubmitted if Panama adds a reservation.

Of course, Panama is free to act as it chooses on any reservations, amendments, or understandings this body might add to the treaties.

However, as matters stand now the President and others with whom he may choose to consult could decide whether or not to resubmit the treaties if Panama adds a reservation binding on the United States.

They may feel the reservation is not of sufficient importance for resubmission, whereas there may be many in the Senate who would disagree.

Therefore, to avoid any such conflict, I propose to add a reservation requiring the President to resubmit the treaties if a reservation or reservations are added by Panama and are binding on the United States.

In this manner the Senate can evaluate the reservation and decide if it has changed the treaty in a meaningful way, and if so, whether that change is sufficient to require further Senate action.

This approach will remove from the President the burden of having to decide what to do and possibly making a decision which would not serve the cause of good relations with Panama.

Mr. President, there should be not objection to this reservation, as it is binding only on the United States and does not require any action by Panama.

I urge my colleagues to evaluate it carefully, and once having done so, I believe it can be fully supported by all.

I would be surprised, Mr. President, if those proposing these treaties would not accept this reservation. It is a reasonable reservation, it should be accepted, and I hope that it will be.

The PRESIDING OFFICER (Mr. Morgan). Who yields time?

Mr. CHURCH. Mr. President, this reservation, proposed by the Senator from South Carolina (Mr. Thurmond), is utterly unnecessary. Should Panama, by any action it takes, attempt to effect any substantive change in the treaty, the question of whether or not that substantive change is acceptable must necessarily be considered by the President and by the U.S. Senate. So the reservation is superflouous. It constitutes nothing more than a reiteration of the existing state of the law with respect to the ratification treaties.

The Senate, in connection with its ratification of the Neutrality Treaty a month ago and while considering the pending treaty, adopted certain amendments to the articles of ratification. Some of these amendments have the effect of conditioning the Senate's consent, if that consent is granted by this afternoon's final vote upon the acceptance of those amendments by the Government of Panama. That acceptance would take the form of the instrument of ratification that is exchanged with the United States.

Just as Panama must decide whether or not they will accept the conditions that the Senate has attached to the resolution of ratification, so the United States, through its constitutional process, would have to accept or reject any substantive change made by the Government of Panama. Since our Constitution requires the Senate to consent to any treaty before it takes full force and effect, it necessarily follows that any substantive change that might be proposed by the Government of Panama would come back to the Senate for its advice and consent.

I have received from the administration not only a confirmation of that statement of the law, but also a commitment on the part of the administration to submit any such reservation to the Senate in accordance with the law. The letter comes from the Office of the Legal Adviser of the Department of State. It is addressed to the Honorable John J. Sparkman, the chairman of the Senate Committee on Foreign Relations. It is signed by Herbert J. Hansell, the Legal Adviser, Department of State, and is dated April 18, 1978. It confirms what I said with reference to the law and the procedures that will be followed in the event that Panama were to adopt a reservation to this treaty.

I ask unanimous consent, Mr. President, that the full text of this letter be printed at this point in the record.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXHIBIT 1

THE LEGAL ADVISER,
DEPARTMENT OF STATE,
Washington, April 18, 1978.

Hon. JOHN J. SPARKMAN,
Chairman, Senate Foreign Relations Committee, U.S. Senate.

DEAR MR. CHAIRMAN: This will confirm our prior advice to you that under United States law, substantive amendments and reservations to the Panama Canal Treaties put forth by Panama that would affect United States rights or obligations under the Treaties cannot be accepted by the United States unless approved by the President and the Senate.

The American Law Institute, in the Restatement of the Law (Second) of the United States Foreign Relations Law, at page 423, states:

"If the other state has made a reservation at signature or at ratification prior to the President's transmittal of the treaty to the Senate, in all likelihood the Senate will have official notice of the reservation in the message of transmittal and take it fully into account in acting on the treaty. The situation may arise, however, in which the Senate has given its consent to the treaty before the other state makes its reservation. In such a case Senate consent to the acceptance of the reservation is required."

I trust the foregoing provides the information you desire.

Very truly yours,

HERBERT J. HANSELL.

Mr. CHURCH. For that reason the reservation proposed is objectionable. I see no purpose to be served in arguing the matter, since, on its face, it is clear that what the Senator proposes to do would happen automatically of the Government of Panama made any substantive change in the treaty.

Mr. President, it is pointless for the Senate to adopt this reservation, and I would hope that the Senate will reject it.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, how much time remains on this reservation, and then how much time is there on the next reservation? The next item is an understanding.

The PRESIDING OFFICER. There is a total of 1 hour on both.

Mr. THURMOND. Mr. President, I would just like to make the point that the Senate has adopted two amendments and four or five reservations, but Mr. Torrijos will not hold a plebiscite so his people can address those changes which the leadership says change the treaty.

We feel in this matter the President having the discretion of whether to submit it back here is going too far. We think if there is any change, it should be submitted back to the Senate.

The distinguished Senator from Alabama had something to say. Was it on this reservation or on the understanding to be taken up next?

Mr. ALLEN. I would like to address my remarks to the amendment having to do with the requirement that the Senate pass on any reservation.

Mr. THURMOND. Mr. President, I yield 5 minutes to the distinguished Senator.

Mr. ALLEN. Will the Senator yield 10 minutes?

Mr. THURMOND. I do not believe I have that much time.

Mr. ALLEN. Very well, 5 minutes.

Mr. President, I support the reservation of the distinguished Senator from South Carolina (Mr. Thurmond).

The procedure after the Senate approves the treaty, if it does—and that is by no means a certainty at this time as I feel there is an excellent chance that the treaty will be defeated by the vote this evening—in the event the Senate does approve the treaty, the reservation of the distinguished Senator from South Carolina (Mr. Thurmond) would require that if Panama in the exchange between the heads of state of the two countries should put reservations in their note of ratification qualifying their acceptance of the Senate's reservations, then the reservations of Panama would have to be submitted to the Senate for approval.

This is only logical, it is only fair, it is only in accord with regular procedure and other. The Senate of the United States has the right to advise and consent with respect to treaties, and then if Panama should seek to nullify the reservations which the Senate of the United States has placed in the resolution of ratification, the Senate would be deprived of its right and duty to advise with respect to the treaty. It could nullify the action of the Senate.

If Torrijos does not submit the treaty to another plebiscite—and clearly, he should, because it has been changed greatly—if he accepts the resolution of ratification with its possibly 10 or more reservations but he qualifies his acceptance by adding reservations of his own, the President should not be allowed to accept those reservations without the consent of the Senate. Otherwise, the Senate would be circumvented in the discharge of its duty and its obligation. So this is a reasonable reservation. It would require submission to the Senate for its approval of any reservations that Panama might add to their note of ratification.

Mr. President, speaking generally on the treaties, we were assured that these treaties were necessary for the conduct of a good neighbor policy with Panama; that if we did not approve these treaties there would be demonstrations and riots in Panama. But we find that just the opposite is the case. We find that they are rioting and demonstrating in Panama in prospect of these treaties being approved by the Senate. So it is an anomalous situation. What was supposed to create an era of good feeling between the United States and Panama is turning into just the opposite. It is quite clear, Mr. President that these treaties are opposed by the majority of the people of the United States and they are opposed by a majority of the people of Panama. Yet we are being called upon to approve these treaties.

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. ALLEN. I thank the Chair and I thank the distinguished Senator from South Carolina for yielding.

The PRESIDING OFFICER. Who yields time?

UNDERSTANDING NO. 16

Mr. THURMOND. Mr. President, I just have 19 minutes remaining now. I wish to call up the understanding I have offered and I ask for its immediate consideration. It is understanding No. 16.

The PRESIDING OFFICER. The clerk will state the understanding. The assistant legislative clerk read as follows:

The Senator from South Carolina (Mr. Thurmond) proposes and understanding numbered 16.

Mr. THURMOND. Mr. President, I ask unanimous consent that further reading be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The understanding is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following understanding, which is to be made a part of the instrument of ratification of the Treaty:

"The United States of America, in exercising its right under paragraph 2(d) of Article III to establish and modify tolls for the use of the Panama Canal—

"(1) shall examine the economic effects of any proposed toll increase on each of the ports of the United States of America, and on each type of commodity transported to or from such port; and

"(2) shall prescribe systems and levels of such tolls which will minimize any disproportionate effect on the commerce of any port of the United States of America, on any regional group of ports or on a particular type of commodity.".

Mr. THURMOND. Mr. President, this understanding relates to the need for the commission to evaluate the effects of tolls on U.S. ports and commodities.

This understanding, which requires no action by Panama and in fact should be highly acceptable to them, reads as follows:

The United States of America, in exercising its right under paragraph 2(d) of Article III to establish and modify tolls for the use of the Panama Canal—

"(1) shall examine the economic effects of any proposed toll increase on each of the ports of the United States of America, and on each type of commodity transported to or from such port; and

(2) shall prescribe systems and levels of such tolls which will minimize any disporportionate effect on the commerce of any port of the United States of America, on any regional group of ports, or on a particular type of commodity.

Mr. President, what is the economic situation relating to the canal today? Although the canal opened 63 years ago, canal toll rates did not increase until 1974. During those 60 years toll rates actually declined, as no adjustment was made even for inflation. The higher canal costs were met because traffic through the canal was rising faster than expenses. That is no longer the case.

Canal traffic has declined 6 percent annually for the past 3 years, as tolls were increased 40 percent since 1974. Further, the canal has experienced deficits for the first time in its history.

If canal costs continue to inflate at current rates, the American Management System study states the canal will soon become insolvent despite attempts to cut costs and despite one or two toll hikes of 25 to 50 percent.

Mr. President, much has been said as to how much tolls will have to be raised to pay Panama plus meet rising operating costs. Last week I offered an amendment to the treaty to require operating costs be paid prior to payments to Panama, but only 39 Senators opposed tabling my amendment.

The Senate must recognize, regardless of one's position on the treaties, that likely toll increases may cause severe economic dislocations in this country.

BENEFITS ALL

This understanding should benefit all parties concerned about the effect of the treaties, that is, the ports, the shippers, those who export and import goods using the canal, and Panama herself. It is not a proposal which Panama would find troublesome because it merely urges that the United States and the Canal Commission consider a tolls approach which will not destroy the traffic upon which the economic life of the canal depends.

Some commodities are toll sensitive, others are not. Some ports, especially the gulf coast and Atlantic coast ports, could be more adversely affected by the treaties than, say, west coast ports.

DOES NOT SET TOLLS

The understanding does not attempt to set toll rates or place upon the United States or the Commission an arbitrary guideline. It merely advises that in setting toll increases the United States should carefully examine the economic effects on U.S. ports and commodities moving to and from those ports. It provides that the United States prescribe systems and levels of such tolls which will minimize any disproportionate effect on the commerce of any port, group of ports or particular commodity.

The essence of the understanding is that it would insure that any toll increase would be studied carefully as to its effect on the ports and commodities it might impact upon.

Gov. H. R. Parfitt, head of the Canal Zone Government, testified before the Senate Armed Services Committee, laying out the fact that the treaty would force tolls higher. He testified that a Canal Company-State Department study indicates that—

> Canal traffic is sensitive to toll increases beginning at 15% up through the maximum increase possible of between 75% and 100%, the point where diminishing returns set in. Sensitivity also increases over time with the full impact of the increase occurring about seven years following its implementation.

Governor Parfitt continued:

> Increases of more than 50% would result in little additional revenue. In fact, it is estimated that the very maximum amount of additional revenue obtainable is about 40%, and this would require a toll increase of between 75% and 100%.

TOLL HIKES INEVITABLE

Mr. President, in the face of the inevitable toll increases, vast amounts of trade between east and gulf coasts and the Pacific Basin countries, could shift to rail and truck movement from west coast ports across the United States. Declining business in these ports could seriously impact on the economies of the ports and States involved.

OIL REVENUES QUESTION MARK

The hope of holding toll increases to a modest level until 1984 is dependent upon movement of oil from the Alaska fields by tankers

through the canal. However, the approximately $40 million annually these ships will be bringing the canal is likely to decline in 1984 when a mid U.S. pipeline is expected to become operational for transit of the Alaska oil.

A number of question marks impact on the quantity of oil moving through the canal after 1984. It could continue at a high level if the pipeline is not built, or it could decline if it is built. Of even greater adverse consequence would be a change in the law which now prohibits the sale of Alaska oil to Japan.

BRANDIS STUDY

The Ely Brandis study by International Research Associates, so often quoted by proponents of this treaty, focuses on how much tolls can be increased without losing too much business. It is no study of costs and income. The 1974 study by Brandis deals with the impact of tolls on South America as a region and individual countries in South America.

This study points out that a toll hike of 50 percent by 1985 would cost South American countries an additional $5 million for imports and $8 million for exports, most of the latter cost to be borne by the recipient countries.

At least three types of commodities involved in South American exports and imports are sensitive to toll changes.

PETROLEUM

Petroleum is sensitive to increases and the IRA study predicts that, in case of a 50 percent increase, the reduction in traffic would be substantial. The study estimates such an increase would reduce shipments from the west coast to the east coast via the canal by as much as 2.6 million tons.

IRON ORE

Iron ore, mainly from Chile and Peru, would also be sensitive to toll increases. Mr. Brandis estimates a 50 percent toll increase would reduce iron ore exports in 1985 via the canal from 2.3 to 1.7 million tons. Even lesser toll increases will result in some traffic losses.

BANANAS

Exports of bananas are quite sensitive to toll increases. Shipments are expected to more than double by 1985, assuming no toll hikes. These shipments are from Ecuador to the U.S. east coast and Europe.

However, a 50 percent toll increase by 1985 is expected to cut exports 400,000 tons. Due to competition, all the increases could not be passed on to the customers, as tolls already represent a significant portion of the value of bananas.

Mr. President, of course, the Senate recognizes that when toll increases are fixed, the additional cost must be paid by either the buyer or the seller of the tonnage moved through the canal. With respect to South American exports and imports, the study esti-

mates most of the tolls are likely to be paid by the buyers or importers.

TOBACCO

Tobacco, one of many commodities exported from my State out of the Port of Charleston, could be placed in a competitive situation by these higher tolls. Some 33 percent of the South Carolina tobacco crop is exported and agricultural exports overall from South Carolina amount to 29 percent of production.

TOLL IMPACT ON U.S. PRODUCTS

Mr. President, the U.S. Department of Agriculture has reported that $8.5 billion of total agricultural exports of $23 billion go to Asian markets. Of these exports, 70 percent pass through the Panama Canal. The price of these products in markets in the Orient depends upon both reliable service through the canal and low tolls, so that shippers down the Mississippi River can compete with Canadian exports out of their Pacific coast port of Vancouver and Australian foodstuffs sent north over open seas.

HIGHER FREIGHT RATES

In a study produced by the Economic Research Service of the Agricultural Department, Floyd D. Gaibler states quite bluntly that—

Provisions is the new proposed Panama Canal Treaty have caused concern over probable impacts they will have on agricultural commodities transported from U.S. Atlantic and Gulfports through the Canal to Asian markets.

Dr. Gaibler believes the new payments to Panama will immediately "add approximately 2 percent to the freight rate for transporting heavy grains from the U.S. Atlantic and gulfports to Japan." Of course the higher cost in transporting goods reduce their competitive position and lower still further the very narrow profit margin in foodstuffs. Dr. Gaibler further notes that with the inflationary escalator clauses in the treaties, tolls could rise up to eight additional times in the next 22 years and after 1999 Panama will have complete discretion over what they desire to charge customers.

Mr. President, these same concerns have resulted in opposition to the treaties by a number of groups such as the Gulf Ports Association, the Mid-Gulf Seaports Marine Terminal Conference, and the Port of New Orleans.

Representing these groups in House testimony, Herbert R. Haar, Jr., associate port director, told the Panama Canal Subcommittee:

It is strongly recommended that the Senate not ratify the new proposed Panama Canal treaty unless it is amended so that there will not be an adverse economic impact on American shipping and the American consumer.

More specifically, Mr. Haar stated—

The major commodities to and from our area that would be impacted by an increase in tolls are petroleum coal, grain, steel and bauxite.

He also pointed out that the Government had directed industries to convert to coal and he anticipates importation of large quantities from Australia to both New Orleans and Texan ports. On the

other hand, the Port of Mobile is concerned because higher costs of exporting coal through the canal may affect the competitiveness of this coal with Australian and Canadian coal going to Japan.

GROWING BURDEN

Mr. President, there is no end to the concerns expressed by U.S. leaders as to the economic impacts of the treaties. James J. Reynolds, president of the American Institute of Merchant Shipping, expresses similar concerns. He predicts "a greater and greater burden on those operators and cargoes for which there is no alternative to using the canal."

Melvin Shore, representing the Amercian Association of Port Authorities, favored payment of the diplomatic costs of the treaties be placed on the Government and not shippers and others. He said this should be done in recognition of the adverse impact that drastic toll increases will have upon our ocean commerce and consequently the ports of the United States."

DISASTER FOR EAST COAST

W.J. Amoss, Jr., chairman of the Liner Council of the American Institute of Merchant Shipping, warned the proposed toll increases spell "sheer economic disaster for operators east of the canal."

Mr. President, I wonder if the Members of the Senate realize there is no cost and income study on the effects of this treaty for the period beyond—I repeat, beyond—1983? The State Department and the administration are the proponents of this treaty, it is their responsibility to show it will break even and deficits will not have to be paid from the pockets of the American taxpayer.

NO STUDY PAST 1983

Figures provided by the adminstration have not shown that the proposed Panama Canal Commission will be able to break even after 1983.

The most important study commissioned by the administration, that made by the International Research Associates, is a study of revenues only during the 1978—2000 period. It does not attempt to project Commission costs and does not estimate profits or deficits at all.

The Authur Anderson study for the State Department covered only Commission costs and income for the period after 1979 to 1983. It does not provide any basis for the conclusions concerning the period after 1983.

STUDIES LIMITED TO 1979-83

Likewise, the memorandum signed by Secretary of State Cyrus Vance, Defense Secretary Harold Brown, and Army Secretary Clifford Alexander of February 10, 1978, and the later reply form the State Department deal only with the Commission's ability to break even in the years 1979 to 1983.

Mr. President, I am convinced if these treaties pass, there will either be significant toll increases before and after 1985 or the

United States will have to absorb a sizable operating deficit for the canal.

My understanding merely lets the Canal Commission know the Senate desires that the effects of tolls on U.S. ports and commodites of all nations be evaluated carefully.

The Panama Canal will need ships to keep it open and viable. We cannot afford to let it die an economic death. To do so would injure our own economy and deny us a vital defense waterway essential to our strategic policy.

An economically dead canal is no better than a closed canal. I urge the Senate to accept this understanding. It will benefit the Panamanian people as well as U.S. citizens.

The PRESIDING OFFICER. Who yields time?

If neither side yields time, the time is charged equally to each side.

Mr. Sarbanes addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, I think the concern which the Senator has expressed regarding the possible impact of toll changes is one that I share and which is shared widely in the Senate. But it is a concern that has already been addressed by the distinguished Senator from Louisiana (Mr. Long) by the understanding which he offered to the Neutrality Treaty and which was accepted to the Neutrality Treaty.

That proposal dealt with this matter of the regional impact of toll changes. It, in fact, would require the United States and Panama to consider other economic factors, such as the maintenance of the domestic fleets of the two countries, the competitive position of the canal in relation to alternative means of transportation, the interests of both nations in maximizing their international commerce, and the impact of any adjustment in tools on the various geographical areas of each of the two parties.

That understanding was added to the Neutrality Treaty and, as a consequence of being added to the neutrality Treaty, it has the advantage that it is permanent in its application since the Neutrality Treaty is permanent.

Second, the Neutrality Treaty takes effect simultaneously with this treaty and, therefore, the provision which was offered by the able Senator from Louisana on this issue would come into play right away, at the time that the treaties first came into play, and would continue indefinitely into the future.

In that sense, it is far more protective of our interests than the proposal which is before us, and I think it is extremely important to underscore that.

Finally, during the life of the Panama Canal Treaty, which is from now, from the time it takes effect until the end of the century, the setting of tolls will be done by the Panama Canal Commission. That Commission will be controlled by the United States.

Its board will consist of nine members—five Americans and four Panamanians—all appointed by the United States. It will have the power to set tolls. Congress, through legislation, will have the power to impact on the work of the Commission and the board. So

that is an additional protection available to us during the remainder of this century.

Our protection is first of all, in terms of the composition of the board and the Commission and the authority it has; second, a protection which flows from the power of Congress to deal with certain of these matters through legislation; third, and most important, the protection which already has been provided to us by the understanding, the very carefully worked-out understanding, offered by the able Senator from Louisiana, which was incorporated into the articles of reservation of the Neutrality Treaty and which therefore applies from the moment these treaties take effect, indefinitely into the future.

For all those reasons, Mr. President—the greater protections that are afforded to us under that approach—I oppose the understanding which has been offered by the Senator from South Carolina.

I again stress that the concerns to which this understanding is addressed is one which I and many others share, but we feel that this concern has been fully and adequately responded to by the understanding of the Senator from Louisiana, by the arrangements for the Panama Canal Commission, in the sense that it will be controlled by the United States of America and by the fact that Congress, through its legislative power, retains the authority to impact on this question through statutory enactment.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, the distinguished Senator from Maryland has said that they already have accepted the amendment of the distinguished Senator from Louisiana, which is similar to this. I point out that, generally, that amendment and this understanding have a similar purpose. That is true. However, the Long understanding speaks to the adjustment of tolls in a general sense, while my understanding is more specific. My understanding is more specific in that it speaks directly to the point of evaluating the economic effects of toll increases on, first, each port of the United States; second, regional or groups of ports; and, third, commodities transiting the canal.

The Thurmond understanding also suggests that other methods rather than the current method for setting tolls be considered. My understanding suggests that rather than merely raising tolls based solely on tonnage, new systems and levels may be used to avoid harm to U.S. ports and commodities.

So there is a difference. This understanding is specific. It certainly can do no harm, and it might do a lot of good. I hope the distinguished Senator from Maryland will see fit to accept it.

Mr. SARBANES. Mr. President, I will respond very briefly to the Senator from South Carolina.

The breadth of the Long understanding is an advantage, not a disadvantage, because it encompasses the matters which the distinguished Senator from South Carolina has put forward, as well as other matters. Therefore, it is to our advantage not to seek to limit or restrict it or cut it down. It serves our purposes, very frankly, to have a broad, general criterion of matters to be considered.

As I pointed out, the Long understanding applies not only in the period from now to the end of the century but beyond that as well; therefore, it provides protection for these matters indefinitely into the future. That is of extreme importance, because during the period ahead of us, from now to the end of the century, which is the period to which the understanding of the Senator from South Carolina is addressed, we in fact control the Panama Canal Commission and the setting of tolls and, therefore, the factors which they will consider. Congress, through legislation, can impact upon the decisionmaking process of the Commission.

Therefore, while I am sensitive to and share the concerns which the Senator has outlined, I think this approach may needlessly limit or restrict our control to act in this matter. It is for that reason, as I indicated earlier, that I oppose the Senator's understanding.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from South Carolina has 1 minute remaining.

(Remarks by Mr. Dole at this point are printed later in today's Record.)

The PRESIDING OFFICER. The Senator from Maryland has 7 minutes remaining.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. Is there objection?

Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION NO. 15

Mr. STONE. Mr. President, I call up my reservation and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection?

Without objection, the reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from Florida (Mr. Stone) proposed on behalf of himself, Mr. Paul G. Hatfield, Mr. DeConcini, and Mr. Brooke, a reservation numbered 15.

Strike out the period at the end of the resolution of ratification and insert in lieu thereof a comma and the following: "subject to the following reservation:

"The Panama Canal Commission may not incur any debt arising out of the operation or maintenance of the Panama Canal or encumber the Panama Canal with any lien, unless the United States of America by legislation authorizes the Commission to incur such a debt or encumber the Canal with such a lien.".

Mr. STONE. Mr. President, this amendment will require that before the new canal agency can encumber the canal property, the agency property, with liens or with debts that both Houses of Congress would be required to act. In other words, the agency would have to obtain the concurrence of Congress. I am not certain that either the present law or the current draft of the proposed implementing legislation is sufficiently explicit to insure that Congress will have that authority to control the borrowing powers of the to-be-established Panama Canal Commission.

This is of particular concern to me because under article XIII of the Panama Canal Treaty the United States would turn over the canal property to Panama free of all debts and liens.

Mr. CHURCH. Mr. President, I thank the able Senator from Florida for raising the proposed amendment.

First of all, let me say that the Panama Canal Commission would be an agency of the U.S. Government subject to the laws of the United States and immune from the jurisdiction of the Republic of Panama.

The proposed amendment, therefore, deals solely with the internal law of the United States, and I respectfully suggest would be better addressed in the legislation implementing the treaty.

Now, the draft implementing legislation prepared by the administration does, in fact, provide for the continuing application to the Commission of current law under which expenditures and obligations of the Panama Canal Company as a wholly owned U.S. Government corporation are subject to the control and approval of Congress.

Nonetheless, I understand the Senator's concern, and it can be accommodated.

I have spoken to the responsible officials in the administration, and they are agreeable to including language similar to the Senator's amendment in the legislation which will be submitted and considered by Congress for purposes of implementing these treaties.

I can say on the part of the floor managers that we also will do everything in our power to endeavor to guarantee that this step will be taken.

Mr. President, I do hope this will vitiate the need for the amendment offered by the able Senator from Florida. I sincerely believe that the best way to take care of his concern is through the enactment of appropriate provisions in the implementing legislation.

Mr. STONE. I thank the distinguished floor manager, the Senator from Idaho.

I am gratified, as are the cosponsors of this amendment, to receive the assurances not only of the floor managers but of the administration that this prior consent of both houses of Congress, before allowing the new agency to create liens or debts, would be accomplished in the implementing legislation.

I would say further that the reason for the need for this is that just as the people of Panama have asked for assurances that prior to any transfer there are no unwarranted encumbrances put on there just in order to encumber the property otherwise turned over, so the taxpayers of the United States need that same protection.

If it is in the implementing legislation they can get that protection, and with the assurances, therefore, of the floor managers and the administration, I will ask that the amendment be withdrawn.

Mr. CHURCH. I thank the Senator very much, and I commend him for the responsible course he has taken in this matter.

Mr. STONE. I thank the distinguished Senator.

The PRESIDING OFFICER. The amendment is withdrawn.

UP RESERVATION NO. 35

The PRESIDING OFFICER. The Senator from Nevada (Mr. Cannon).

Mr. CANNON. Mr. President, I call up my unprinted reservation No. 35 and ask that it be stated.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

Mr. CANNON. Mr. President, I ask unanimous consent that the reading of the reservation be dispensed with, and I will explain very briefly what it does.

The PRESIDING OFFICER. Without objection, it is so ordered.

The reservation is as follows:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof the following: "subject to the following reservation:

"After the date of entry into force of the Treaty, the Panama Canal Commission shall be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase 'funds or other assets directly invested' shall have the same meaning as the phrase 'net direct investment' has under section 62 of title 2 of the Canal Zone Code."

Mr. CANNON. Mr. President, the subject of my reservation is interest payments and recovery of the U.S. investment. I was privileged to chair hearings in the Senate Armed Services Committee on the financial impact of the proposed Panama Canal Treaty. One of our witnessess was Elmer B. Staats, Comptroller General of the United States, who discussed the financial issues. He made the assumption that the forthcoming implementing legislative package will relieve the Panama Canal Commission of the obligation to pay interest to the Treasury on the interest-bearing portion of the U.S. investment. This assumption is in line with the administration's statements that the Commission will be relieved of this obligation. The U.S. investment in the canal is sizable and amounts to about $318 million. When figured at the rate of long-term treasury bonds the interest amounts to around $20 million a year. The Panama Canal Company has the statutory obligation to pay. At $20 million per year over 22 years this would amount to a $440 million loss to the Treasury over the life of the treaty. I might note that Comptroller General Staats, stated that this $20 million estimated annual interest payment "could be substantially more" per year over the next 22 years. Since the interest rate is based on the U.S. Treasury average rate for long-term issues and "as that portfolio turns over, these rates are bound to go up, and I do not believe that this has been fully taken into account in these projections." According to an Armed Services Committee staff study, Mr. Staats estimated the total loss to the Treasury over the next 22 years at $505 million.

I have quite a problem accepting the forgiveness of this obligation. As a matter of fact, I cannot accept it. On February 1, 1978, President Carter in a nationally televised address to the American people stated:

Are we paying Panama to take the canal? We are not. Under the new treaties payments to Panama will come from tolls paid by ships which use the canal.

On December 28, 1977, the President said:

We wanted a treaty that did not put a financial burden on the American taxpayer, and we got it.

On September 26, 1977, Secretary of State Vance in testimony before the Senate Foreign Relations Committee stated concerning the cost of the treaties:

The treaties require no new appropriations nor do they add to the burdens of the American taxpayer.

Well in line with this spirit of not imposing upon the taxpayer, I submit my reservation to not relieve the Panama Canal Commission of this statutory interest obligation because if the Commission is relieved of that obligation obviously it would impose a burden on the American taxpayer by the loss of those revenues of at least $20 million a year for the next 22 years.

So, Mr. President, I submit my reservation.

[Mr. Zorinsky assumed the chair.]

Mr. SARBANES. Mr. President, I assume we will address this reservation later in the day when we can pick up additional time. I simply want to make this one additional comment: We have reserved full control over this matter in this legislation in the Congress, and we can do as we choose about it.

RESERVATION NO. 18

The PRESIDING OFFICER. The hour of 10 o'clock having arrived, under the previous order, the Senate will proceed to vote on the question of agreeing to the reservation (No. 18) of the Senator from North Carolina.

Mr. CHURCH. Mr. President, I move that the reservation be laid on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table. The yeas and nays have been orderd, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Hawaii (Mr. Matsunaga), the Senator from Rhode Island (Mr. Pell), the Senator from Georgia (Mr. Talmadge), the Senator from New Jersey (Mr. Williams) are necessarily absent.

The result was announced—yeas 56, nays 39, as follows:

[Rollcall Vote No. 104 Ex.]

YEAS—56

Anderson	Bumpers	Clark
Baker	Byrd, Robert C.	Cranston
Bayh	Case	Culver
Bellmon	Chafee	Danforth
Bentsen	Chiles	Durkin
Biden	Church	Eagleton

Glenn	Jackson	Pearson
Gravel	Javits	Percy
Hart	Kennedy	Proxmire
Haskell	Leahy	Ribicoff
Hatfield, Mark O.	Long	Riegle
Hathaway	Magnuson	Sarbanes
Hayakawa	Mathias	Sasser
Heinz	McGovern	Sparkman
Hodges	McIntyre	Stafford
Hollings	Metzenbaum	Stevenson
Huddleston	Moynihan	Stone
Humphrey	Muskie	Weicker
Inouye	Nelson	

NAYS—39

Allen	Goldwater	Packwood
Bartlett	Griffin	Randolph
Brooke	Hansen	Roth
Burdick	Hatch	Schmitt
Byrd, Harry F., Jr.	Hatfield, Paul G.	Schweiker
Cannon	Helms	Scott
Curtis	Johnston	Stennis
DeConcini	Laxalt	Stevens
Dole	Lugar	Thurmond
Domenici	McClure	Tower
Eastland	Melcher	Wallop
Ford	Morgan	Young
Garn	Nunn	Zorinsky

NOT VOTING—5

Abourezk	Pell	Williams
Matsunaga	Talmadge	

So the motion to lay on the table reservation No. 18 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. HOLLINGS. Mr. President. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I ask unanimous consent that Miss Maureen Norton of the staff of Senator Humphrey may have the privileges of the floor during the remainder of today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I ask unanimous consent that Joy Shub of my staff be accorded the privileges of the floor throughout the proceedings on the Panama Canal Treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION NO. 19

The question is on agreeing to the Curtis Reservation No. 19. The yeas and nays have not been ordered.

Mr. CURTIS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the reservation of the Senator from Nebraska (Mr. Curtis). The yeas and nays have been ordered and the clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), and the Senator from Rhode Island (Mr. Pell) are necessarily absent.

The result was announced—yeas 33, nays 65, as follows:

[Rollcall Vote No. 105 Ex.]

YEAS—33

Allen	Glenn	Roth
Bartlett	Goldwater	Schmitt
Burdick	Hansen	Schweiker
Byrd, Harry F., Jr.	Hatch	Scott
Cannon	Helms	Stennis
Curtis	Johnston	Stevens
DeConcini	Laxalt	Talmadge
Dole	Lugar	Thurmond
Eastland	McClure	Tower
Ford	Morgan	Young
Garn	Randolph	Zorinsky

NAYS—65

Anderson	Hart	Melcher
Baker	Haskell	Metzenbaum
Bayh	Hatfield, Mark O.	Moynihan
Bellmon	Hatifield, Paul G.	Muskie
Bentsen	Hathaway	Nelson
Biden	Hayakawa	Nunn
Brooke	Heinz	Packwood
Bumpers	Hodges	Pearson
Byrd, Robert C.	Hollings	Percy
Case	Huddleston	Proxmire
Chafee	Humphrey	Ribicoff
Chiles	Inouye	Riegle
Church	Jackson	Sarbanes
Clark	Javits	Sasser
Cranston	Kennedy	Sparkman
Culver	Leahy	Stafford
Danforth	Long	Stevenson
Domenici	Magnuson	Stone
Durkin	Mathias	Wallop
Eagleton	Matsunaga	Weicker
Gravel	McGovern	Williams
Griffin	McIntyre	

NOT VOTING—2

Abourezk	Pell

So the reservation (No. 19) was rejected.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the reservation was rejected.

Mr. ROBERT C. BYRD. I moved to lay that motion on the table.

The motion to lay on the table was agreed to.

UP RESERVATION NO. 33

The PRESIDING OFFICER. Under the previous order, the question now is on the unprinted reservation of the Senator from Kansas (Mr. Dole), unprinted Reservation No. 33.

The yeas and nays have not been ordered.

Mr. Church addressed the Chair.

Mr. DOLE. Mr. President, I ask for the yeas and nays.

Mr. CHURCH. I move to lay the unprinted reservation on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the unprinted Reservation No. 33 of the Senator from Kansas (Mr. Dole). The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Rhode Island (Mr. Pell) are necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 106 Ex.]

YEAS—56

Baker	Hart	Matsunaga
Bayh	Haskell	McGovern
Bellmon	Hatfield, Mark O.	McIntyre
Bentsen	Hatfield, Paul G.	Metzenbaum
Biden	Hathaway	Moynihan
Bumpers	Hayakawa	Muskie
Byrd, Robert C.	Heinz	Nelson
Case	Hodges	Nunn
Chafee	Hollings	Pearson
Chiles	Huddleston	Percy
Church	Humphrey	Ribicoff
Clark	Inouye	Riegle
Cranston	Jackson	Sarbanes
Culver	Javits	Sparkman
Danforth	Kennedy	Stafford
Durkin	Leahy	Stevenson
Eagleton	Long	Weicker
Glenn	Magnuson	Williams
Gravel	Mathias	

NAYS—42

Allen	Goldwater	Roth
Anderson	Griffin	Sasser
Bartlett	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Helms	Scott
Byrd, Harry F., Jr.	Johnston	Stennis
Cannon	Laxalt	Stevens
Curtis	Lugar	Stone
DeConcini	McClure	Talmadge
Dole	Melcher	Thurmond
Domenici	Morgan	Tower
Eastland	Packwood	Wallop
Ford	Proxmire	Young
Garn	Randolph	Zorinsky

NOT VOTING—2

Abourezk Pell

So the motion to lay on the table UP reservation No. 33 was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP RESERVATION NO. 34

The PRESIDING OFFICER. Under the previous order, the Senate will now vote on unprinted reservation No. 34, offered by the Senator from South Carolina. The yeas and nays have not been ordered.

Mr. CHURCH. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Rhode Island (Mr. Pell), are necessarily absent.

The result was announced—yeas 58, nays 40, as follows:

[Rollcall Vote No. 107 Ex.]

YEAS—58

Anderson	Hart	Metzenbaum
Baker	Haskell	Moynihan
Bayh	Hatfield, Mark O.	Muskie
Bellmon	Hathaway	Nelson
Bentsen	Hayakawa	Packwood
Biden	Hodges	Pearson
Bumpers	Hollings	Percy
Byrd, Robert C.	Huddleston	Proxmire
Case	Humphrey	Ribicoff
Chafee	Inouye	Riegle
Chiles	Jackson	Sarbanes
Church	Javits	Sasser
Clark	Kennedy	Sparkman
Cranston	Leahy	Stafford
Culver	Long	Stevenson
Danforth	Magnuson	Stone
Durkin	Mathias	Weicker
Eagleton	Matsunaga	Williams
Glenn	McGovern	
Gravel	McIntyre	

NAYS—40

Allen	Griffin	Roth
Bartlett	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Hatfield, Paul G.	Scott
Byrd, Harry F., Jr.	Heinz	Stennis
Cannon	Helms	Stevens
Curtis	Johnston	Talmadge
DeConcini	Laxalt	Thurmond
Dole	Lugar	Tower
Domenici	McClure	Wallop
Eastland	Melcher	Young
Ford	Morgan	Zorinsky
Garn	Nunn	
Goldwater	Randolph	

NOT VOTING—2

Abourezk	Pell

So the motion to lay on the table UP reservation No. 34 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UNDERSTANDING NO. 16

The PRESIDING OFFICER. Under the previous order the Senate will now proceed to a vote on understanding No. 16 of the Senator from South Carolina (Mr. Thurmond). The yeas and nays have not been ordered.

Mr. CHURCH. Mr. President, I move to lay that amendment on the table, and call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table understanding No. 16 of the Senator from South Carolina (Mr. Thurmond).

On the question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Rhode Island (Mr. Pell) are necessarily absent.

The result was announced—yeas 56, nays 42, as follows:

[Rollcall Vote No. 108 Ex.]

YEAS—56

Anderson	Biden	Case
Baker	Bumpers	Chafee
Bayh	Burdick	Chiles
Bellmon	Byrd, Robert C.	Church

Clark	Hollings	Muskie
Cranston	Huddleston	Nelson
Culver	Humphrey	Packwood
Danforth	Inouye	Pearson
Durkin	Jackson	Percy
Eagleton	Javits	Proxmire
Glenn	Kennedy	Ribicoff
Gravel	Leahy	Riegle
Hart	Mathias	Sarbanes
Haskell	Matsunaga	Sparkman
Hatfield, Mark O.	McGovern	Stafford
Hathaway	McIntyre	Stevenson
Hayakawa	Melcher	Weicker
Heinz	Metzenbaum	Williams
Hodges	Moynihan	

NAYS—42

Allen	Griffin	Roth
Bartlett	Hansen	Sasser
Bentsen	Hatch	Schmitt
Brooke	Hatfield, Paul G.	Schweiker
Byrd, Harry F., Jr.	Helms	Scott
Cannon	Johnston	Stennis
Curtis	Laxalt	Stevens
DeConcini	Long	Stone
Dole	Lugar	Talmadge
Domenici	Magnuson	Thurmond
Eastland	McClure	Tower
Ford	Morgan	Wallop
Garn	Nunn	Young
Goldwater	Randolph	Zorinsky

NOT VOTING—2

Abourezk	Pell

So the motion to lay on the table understanding No. 16 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. LEAHY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Florida is recognized by the Chair for a unanimous-consent request.

Mr. STONE. Mr. President, I ask unanimous consent that a member of my staff, Mr. Barry Schochet, may have floor privileges during the consideration of this treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION NO. 20

The PRESIDING OFFICER. Under the previous order, the question is on agreeing to the DeConcini reservation No. 20. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. CHURCH. Mr. President, the managers do support this reservation.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Rhode Island (Mr. Pell) are necessarily absent.

The result was announced—yeas 92, nays 6, as follows:

[Rollcall Vote No. 109 Ex.]

YEAS—92

Allen	Goldwater	Moynihan
Anderson	Gravel	Muskie
Baker	Griffin	Nelson
Bartlett	Hansen	Nunn
Bayh	Hatch	Packwood
Bellmon	Hatfield, Mark O.	Pearson
Bentsen	Hatfield, Paul G.	Percy
Biden	Hathaway	Proxmire
Brooke	Hayakawa	Randolph
Bumpers	Heinz	Ribicoff
Burdick	Helms	Riegle
Byrd, Harry F., Jr.	Hodges	Roth
Byrd, Robert C.	Hollins	Sarbanes
Cannon	Huddleston	Sasser
Case	Humphrey	Schmitt
Chafee	Inouye	Schweiker
Chiles	Jackson	Scott
Church	Javits	Sparkman
Clark	Johnston	Stafford
Cranston	Laxalt	Stennis
Culver	Leahy	Stevens
Curtis	Long	Stevenson
Danforth	Lugar	Stone
DeConcini	Magnuson	Talmadge
Dole	Mathias	Thurmond
Domenici	Matsunaga	Tower
Eagleton	McClure	Weicker
Eastland	McGovern	Williams
Ford	McIntyre	Young
Garn	Melcher	Zorinsky
Glenn	Morgan	

NAYS—6

Durkin	Haskell	Metzenbaum
Hart	Kennedy	Wallop

NOT VOTING—2

Abourezk	Pell

So Mr. DeConcini's reservation No. 20 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LAXALT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Chiles). Under the previous order, the Senator from Oklahoma (Mr. Bartlett) is recognized to call up an amendment, with the time until the hour of 11:45 a.m. to be equally divided thereon.

RESERVATION NO. 3

Mr. BARTLETT. Mr. President, my reservation to the resolution of ratification of the Panama Canal Treaty withholds consent of the Senate to ratification until the President of the United States has determined that the people of Panama have approved by a plebiscite all of the changes, reservations, and limitations which have been attached to the Panama Canal Treaty. This reservation is similar to the reservation which I proposed earlier to the treaty of neutrality. As I shall point out, the wisdom of that earlier reservation, designed to reduce tensions between Panama and the United States, is made clearer each day as Panama expresses its dissatisfaction with changes made by the United States to that earlier treaty.

Let me remind my colleagues of the issue. For many years, there has been dissatisfaction in Panama over the 1903 Panama Canal Treaty which gave the United States the right to operate and protect a transoceanic canal in the Canal Zone across the Isthmus of Panama. Since 1903, the Governments of Panama and the United States have negotiated several treaties designed to meet some of the demands of the Panamanians while also insuring that the Panama Canal would be maintained efficiently and securely for the use of the world.

The PRESIDING OFFICER. Will the Senator send his amendment to the desk?

Mr. BARTLETT. I have not called up my amendment yet. I thought I would call it up later.

In recent years, Panama has mounted a major diplomatic effort to secure a treaty with the United States which would grant sovereign rights and operational control of the canal to Panama. Anticipating such a treaty, and remembering the dissatisfaction with the manner in which the 1903 treaty was negotiated, the new Panamanian Constitution of 1972 provided that treaties relating to the Panama Canal must be approved by a plebiscite of the people of Panama. On the 23d of October last year, the people of Panama gave their approval in a plebiscite to the versions of the two Panama Canal treaties originally negotiated. At the time of that plebiscite, the people of Panama were not voting on future amendments, reservations or other changes which might be made by the U.S. Senate.

I would like to remind my colleagues also that the White House, the State Department, and the leadership of this body have consistently made a major effort to avoid most perfecting amendments, some, in part on the ground that they would require a second plebiscite in Panama. Fear of a second plebiscite in Panama grows out of apprehension that the people of Panama might reject the changes made to the treaties or that they might even reject their own government for having inadequately represented their interests.

Nevertheless, there are many of us who feel that good relations with Panama will be possible only when there is agreement and satisfaction as to the terms of the new treaties. We are also concerned that a treaty improperly ratified will be found wanting under international law or under the law of Panama. Furthermore,

we feel that changes in the Panama Canal Treaties should be dealt with in a straightforward and honest manner, by both nations.

Let us take a closer look at the provisions of the Panamanian Constitution to which I refer. Article 274 of the 1972 Constitution of Panama reads as follows:

> Treaties which may be signed by the Executive organ with respect to the Panama Canal, its adjacent zone, and the protection of the said Canal, and for the construction of a new Canal at sea level or of a third set of locks, shall be submitted to a national plebiscite.

This requirement for a plebiscite applies only to treaties dealing with the old Panama Canal or a new canal, but not to other types of treaties. It reflects the simple fact that the Panama Canal is as important to the people of Panama as it is to the people of the United States. The detail with which this article of the Panamanian Constitution sets out the kind of treaties which are covered shows that the highest national interest of Panama centers around the geographical importance of Panama's location on the narrow isthmus separating two great oceans.

The 1946 Constitution of Panama, which preceded the 1972 constitution, contained no such detailed instructions as to treaties dealing with the Panama Canal. That earlier constitution was written just 1 year after the conclusion of the Second World War. During that war, all Panama could see that great naval powers were involved around them and that the Western democracies found the canal vital to carrying on a two-front war. Those times were very different from the circumstances preceding the 1972 constitution.

The 1972 constitution was written to provide a legal basis for the strongman rule of Gen. Omar Torrijos. Four years before, Torrijos had seized power with the help of the Panamanian National Guard and had established a so-called revolutionary government. Much of Torrijos' strength grew from his promises to wrestle control of the Panama Canal from the United States. In the previous 10 years, there had been several instances of violence as a result of the red hot canal issue, and Panama had even rejected a treaty negotiated with the United States during the Johnson administration. Thus, when the 1972 Constitution of Panama was being drafted, the possibility of a revolutionary, new treaty governing the Panama Canal was foremost in the minds of everyone in Panama.

The provision requiring a plebiscite for ratification of any new Panama Canal treaties clearly reflects the concerns of many Panamanians that a treaty might be negotiated which was unacceptable. Certainly, many Panamanians have expressed the view that the 1903 Treaty was negotiated in an irregular manner. Their fears that a new treaty might also be presented in a less-than-straightforward manner can only have been increased by efforts on the part of the governments of Panama and the United States to prevent a second plebiscite on changes in the proposed Panama Canal treaties.

Failure to present changes in the proposed treaties to a plebiscite of the Panamanian people raises the possibility that the Supreme Court of Panama might void the treaties on the ground that they were not ratified in accordance with the constitution. Under the 1972 constitution, there have thus far been no legal cases dealing

with the treaty ratification process. However, much of the 1972 constitution is modeled after the 1946 constitution, and there, precedent does exist. As recently as the 1960's, there were three court cases which dealt with the constitutionality of the ratification process. In fact, the "Geneva Convention of August 12, 1949" was declared unconstitutional on the grounds that the text considered during ratification debate in the National Assembly was "truncated and therefore incomplete."

In the case of the present treaties, we have seen changes made which were not a part of the documents and understandings being considered at the time of the October plebiscite. Much has been made of the fact that the joint statement by General Torrijos and President Carter was made public in Panama prior to the plebiscite. That is true. But the joint statement was not included in the document considered. In fact, it was excluded because only documents concluded on September 7, 1977 were considered. Certainly, if the Supreme Court of Panama could declare the entire Geneva Convention of August 12, 1949, void on the grounds that the summary of it presented in the official Gazette was not complete, that court could easily find that agreements not considered during the plebiscite would also not be constitutional.

That view has been expressed by several professors of law in Panama, notably Drs. Julio Linares and Cesar Quintero. Both made it clear that the two so-called leadership amendments to the first Panama treaty, the Treaty of Neutrality, were not a part of the original treaty and could not be considered binding under Panama's constitution. They have repeated that view most emphatically with respect to the now famous DeConcini reservation. Dr. Quintero's interpretation, widely publicized in Panama, holds that the Government of Panama may reject the treaties, but only a second plebiscite can approve the added reservations and amendments. Quintero, who is dean of the Law and Political Science School of Panama University, is not alone in this opinion. On March 28, one Panamanian editorial expressed the situation this way:

> We want to be totally clear regarding the reservations, understandings, and amendments to the treaty which have passed the great test before the U.S. Senate. In light of the constitutional provisions which authorized the plebiscite for approving or disapproving the Torrijos-Carter treaties we consider that any addenda to those treaties made by the U.S. Senate will have to be submitted to a plebiscite in Panama. (FBIS, 29 Mar. 78, N1).

Logic points inescapably toward the view that changes to the proposed Panama Canal treaties, whether technically in the form of amendments, reservations, or understandings, should, in accordance with Article 274 of the Panamanian Constitution, be submitted to a plebiscite of the people. Not to do so would leave the treaties open to challenges in the Panamanian courts and to widespread popular dissatisfaction in Panama. I believe there is also some question as to whether they would be binding under international law.

Some members of this body have said that the question of a second plebiscite is strictly an internal matter of interest only to Panama. That view is clearly incorrect. My reservation directs the President to determine whether the treaties as altered are ratified

in Panama in accordance with their proper procedures for ratification because the failure to ratify these treaties properly could prevent them from being binding under international law. We have reviewed this issue during discussion of the Neutrality Treaty, but let me briefly highlight the problem again.

International law recognizes that treaties are usually made by heads of state and that the source of power to negotiate may come from a constitution or from some force of arms, as in some dictatorships. Thus, international law tends to avoid consideration of the internal affairs of states. But, with respect to certain issues such as the ratification of treaties, international law does not divorce itself completely from the consideration of domestic law. In his classic "International Law", Professor Oppenheim summarizes the situation:

> Sec. 497. Although the Heads of States are regularly, according to International Law, the organs that excercise the treatymaking power of the State, such treaties concluded by Heads of States or other organs purporting to act on behalf of the State, as violate constitutional restrictions do not bind the State concerned. This is so for the reason that the representatives have exceeded their powers in concluding the treaties.

Some members of this body have cited article 46 of the 1970 Vienna Convention on the Law of Treaties as supporting the notion that we should not be concerned about the ratification procedures of the Panamanians, but again I believe they have been misled. Article 46 reads as follows:

> 1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

First, I should comment that the United States has not yet ratified the 1970 Vienna Convention and that , under the terms of that convention, it does not apply to any treaties concluded by parties prior to ratification by those parties of the Vienna Convention. Nevertheless, article 46, I believe, actually supports my case.

According to article 46, a treaty could be invalid if a violation of internal law were "manifest and concerned a rule of its internal law of fundamental importance". Article 46 defines manifest as follows: "A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with mormal practice and in good faith."

The requirement for a plebiscite is stated very clearly in the "fundamental law" of Panama, namely, in article 274 of the Panamanian Constitution. Panama's chief negotiator, Romula Escobar has even called the requirement for a plebiscite with respect to the treaties "an essential requirement" and "a basic condition". That a failure to have a second plebiscite to consider changes involving the treaties would be a manifest violation is made clear by the testimony of Panamanian jurists and at least one Panamanian negotiator.

Mr. President, international law is a complex field, but its basic principles are similar to the contract law that citizens in both Panama and the United States understand. In business transactions, each side puts forth offers which are either accepted or

rejected by the other side. An agreement or deal is consummated when both parties agree to the same terms and express that agreement in language acceptable to both. Basically, the same applies to treaties.

In altering the treaty language as orginally negotiated and as originally approved in Panama by plebiscite, the Senate is, in effect, rejecting an offer from Panama while at the same time countering with an offer of its own. As I see it, Panama may either reject the offer, or submit it to the people of Panama for ratification by plebescite. This view is supported by one of Panama's negotiators, Carlos Alfredo Lopez Guevara, in his discussion with Panamanian media representatives of the significance of the reservations which the Senate has attached to the proposed treaties. Let me quote one Panamanian television account.

Lopez Guevara explained the meaning of the word reservation, as it is used in international law. He said that it means a counterproposal made by one party to the other. This counterproposal can be accepted, rejected or negotiated upon by the other party. If one of the parties rejects the counterproposal or reservation and at the same time presents another, this must be done before the exchange of notes because one cannot participate in the exchange ceremony with reservations.

This was reported on the 30th of March, and the account continues:

In giving his opinion as a lawyer, he stressed that if the amendments and reservations introduced by the Senate and included in the ratification resolution involve substantial changes to the treaties approved by the Panamanian people, then another plebiscite would have to be held.

The PRESIDING OFFICER. All the time of the Senator from Oklahoma has expired.

Mr. BARTLETT. Mr. President, according to the clock, I have used 15 minutes. It is my understanding that there are 40 minutes equally divided.

The PRESIDING OFFICER. The time was until 11:45, the time to be equally divided.

Mr. SARBANES. Mr. President, I yield to the Senator 5 minutes. Would 5 additional minutes acccommodate the Senator from Oklahoma?

Mr. BARTLETT. Yes, that will do it.

Mr. SARBANES. I yield the Senator 5 additional minutes.

Mr. BARTLETT. I thank the Senator.

Mr. CHURCH. Mr. President, will the Senator yield to me for a question?

Mr. BARTLETT. Yes.

Mr. CHURCH. For 30 minutes now, I have been trying to oblige the Senator from Texas, who wanted to use 2 minutes of our time. I wonder if the Senator from Oklahoma would object if he might use those 2 minutes, with the understanding that anything he says will appear at another place in the Record, then the Senator might proceed. It is just an accommodation to the Senator from Texas.

Mr. BARTLETT. I shall be happy to accommodate the Senator from Texas just as soon as I finish in 1 minute.

Mr. CHURCH. I thank the Senator.

Mr. BARTLETT. Lopez Guevara is supported by the best legal scholarship. For example, Prof. J. L. Brierly's "The Law of Nations" expresses it this way:

In accepting a treaty a state sometimes attaches a "reservation", that is to say, it makes the acceptance conditional on some new term which limits or varies the application of the treaty to itself. Such a qualified acceptance is really a proposal for a treaty different from that agreed on, and if the reservation is persisted in and is not accepted by the other states concerned it amounts to a rejection.

Or, in the words of Professor Oppenheim:

That occasionally a State tries to modify a treaty while ratifying it cannot be denied; but conditional ratification is not ratification at all, but is equivalent to refusal of ratification coupled with a fresh offer which may or may not be accepted.

Clearly, to give the proposed Panama Canal treaties their maximum legitimacy, they must be submitted along with all changes to the people of Panama in accordance with article 274 of the Panamanian Constitution of 1972. Failure to take this step would leave the treaties vulnerable to refutation by subsequent Governments of Panama, or for that matter the United States, and might reduce the binding effects of the treaties under international law. In my opinion, such a loophole could work to the advantage of Panama in the future.

Although the government of Panama is undoubtedly a dictatorship, the rule of law has not completely ceased in Panama. Article 274 of the constitution clearly requires a plebiscite prior to ratification of any treaty dealing with the Panama Canal, and the present government of Panama has already acted once in accordance with that provision. Certainly, when confronted with a changed document, the right of the present government to rule would be seriously called into question if the new language were not submitted to a plebiscite.

But above all, it is important that we not commit ourselves to an irreversible treaty, parts of which some Panamanian Government, present or future, might repudiate. Differences between the 1946 and 1972 Panamanian Constitutions underscore the importance of getting the treaties off on the correct legal footing. Article 4 of title I of the 1946 Constitution read quite simply:

The Republic of Panama respects the rules of international law.

Article 4 of title I of the 1972 Constitution reads quite ominously:

The Republic of Panama respects the universally recognized rules of international law which are not prejudicial to the national interest.

In this language is contained great danger for Panamanian-American relations in the future. Clearly, we must insure that any new treaties are made legitimate under Panamanian law. I believe that this means a second plebiscite on the Panama Canal treaties.

The seriousness of this issue can be illustrated by two questions: Do you believe that Panama would accept a treaty that had not been ratified by the U.S. Senate in accordance with our Constitution, when such ratification is required by the language of the treaty itself? And would you, as an elected representative of the American people, give your consent to ratification of a treaty whose language has been changed subsequent to first consideration of the document? I think that the answer to both of those questions is no.

It would be an injustice to the people of the United States if the Senate were to ignore its treaty responsibilities, and it would be an injustice to the people of Panama, about whose human rights and democracy we have been greatly concerned, not to expect that the treaties as amended would be resubmitted to a plebiscite of the other people of Panama.

The reservation I propose makes consent to ratification "subject to the reservation that before the date of the exchange of the instruments of ratification the President shall have determined that the Republic of Panama has ratified the treaty, as amended, in accordance with its constitutional processes, including the process required by the provisions of article 274 of the Constitution of the Republic of Panama."

In effect, the reservation I propose makes clear to the President that the Senate does not consent to ratification of a potentially invalid treaty. It instructs the President to determine that the Republic of Panama has properly considered our amendments as required by the Constitution of Panama.

In short, the reservation I propose makes explicit the recognition that a new plebiscite is required in Panama to deal with changes already made or pending to the Panama Canal Treaty. A new plebiscite in Panama is necessary to:

First. Conclude a new agreement between the United States and Panama in the manner of a contract, which we all understand;

Second. Guarantee United States and Panamanian rights under the treaty;

Third. Comply with international law;

Fourth. Reduce the likelihood of misunderstandings with the Panamanians;

Fifth. Reduce the chances that subsequent Panamanian regimes will refute the treaty;

Sixth. Comply with the Panamanian Constitution and insure that the Supreme Court of Panama does not void the agreement;

Seventh. Support our policy of standing up for political and human rights around the world; and

Eighth. Show the American people that the "reservations" passed by the Senate are not a political maneuver designed to camouflage real flaws in the treaties so that General Torrijos and the administration will not suffer political embarrassment and defeat.

Panamanian-American diplomatic relations are unlikely to be smooth in the years ahead. Our interests and policies are simply too diverse on too many issues. For example, in 1976, on 36 issues before the United Nations in which the Soviet Union and the United States were on opposite sides, Panama voted with the Soviet Union 31 times and with the United States only 5 times. I understand that the record last year was even worse. Ambiguities in the Panama Canal Treaty and uncertainty over the impact of the implementing legislation are likely to lead to additional problems. For these reasons, I believe that the United States should protect itself by insuring that it does not commit itself to an irreversible treaty which may fall apart before it has run its course. My reservation on a second plebiscite in Panama will help prevent some of those problems that can be avoided.

Mr. President, I reserve the remainder of my time.

Mr. BENTSEN. Mr. President, even in a Senate clearly and deeply divided over the Panama Canal treaties, I think we could establish a broad consensus on at least one important point: our overriding national interest in Panama is to keep the Panama Canal open,

neutral, operating efficiently, and accessible to U.S. vessels at all times.

The basic question we have been debating for the past 2 months is whether this objective is best served by a new order in the Canal Zone or by clinging desperately to the status quo.

Mr. President, no treaty, past or present, can guarantee the future of the Panama Canal. In the final analysis the future of the canal, and our ability to use it freely, will be determined by the degree to which Panama and the United States of America are prepared to work together to achieve mutually acceptable objectives.

The treaties before the Senate give us a framework, an acceptable framework in my opinion, for future cooperation with the Government and people of Panama. The treaties are not an indication of the decline and fall of the United States. They are, instead, an important symbol of our willingness, as the most powerful and compassionate nation in the world, to deal with lesser powers from a position of fairness and mutual respect.

The Panama Canal treaties, as originally negotiated and sent to the Senate, were vague on the important questions of canal neutrality and priority passage for U.S. vessels in time of need. The Senate amended the treaties to provide appropriate assurances on these important points. The significance of these amendments has been fully appreciated by the American people.

Poll after poll, in Texas and across the country, has demonstrated that when the people understand the assurances contained in the leadership amendments to the treaty, the majority of them support treaty ratification. Without the leadership amendments such support would be clearly lacking.

I have heard about the Opinion Research Organization being quoted time and time again here on the floor and it is a fine research organization. But they did not quote the figures for Texas, I notice. Those figures for Texas show that 79 percent of Texans in February were opposed to that treaty; only 11 percent for it, until something very important happened. When the two amendments were attached to it, as approved by the leadership and by the Senate, a dramatic shift in public opinion in Texas occurred. After that, 49 percent approved the treaty with those two amendments attached. Thirty-three percent were then opposed and the rest were undecided.

Like many Members of the Senate, I traveled to Panama and Latin America earlier this year to learn firsthand about the treaties and their ramifications. I came away from my meetings with American and Panamanian officials, with Archbishop McGrath of Panama City, with the Presidents of Costs Rica, Venezuela, and Colombia, firmly convinced that those would rejoice most at Senate rejection of the Panama Canal treaties would be Communist and leftist elements in Latin America opposed to our interests and our friends in the area. That they would use the charge of colonialism to advance the cause of Castro and other Communist elements throughout Latin America and the Caribbean.

I came away with the conviction that one of the best ways to keep the Panama Canal open is to give the people of Panama an economic self-interest in its continuing operation and to relieve

nationalist strains in Panama with a new treaty that is consistent both with our national interests and Panamanian national pride.

There are risks inherent in Senate approval of the Panama Canal treaties, Mr. President. Let me acknowledge this fact honestly and openly. But there are also risks—in my opinion greater risks—in Senate refusal to approve the Treaties. Our choice today is not between the new treaties and the status quo in the Canal Zone. Rather, it is between the treaties as negotiated and amended by the Senate and the potential Panamanian reaction if the treaties are rejected.

Mr. President, I support Senate approval of the Panama Canal treaties because I believe ratification is in the best interest of the United States of America, because I am sincerely convinced that the treaties, as amended by the Senate, provide adequate assurances for our vital national security and economic interests; because I believe the treaties will serve to keep the canal open and accessible to U.S. vessels; and finally, because I feel this Nation is strong enough, confident enough, and decent enough to conclude such an agreement.

Mr. CHURCH. Mr. President, I do not believe that the distinguished Senator from Oklahoma has called up his amendment. I ask him at this time if it is his purpose to call up the amendment so that the Senate may proceed to a vote at 11:45.

Mr. BARTLETT. Yes, my purpose is to call it up and have a vote.

Mr. CHURCH. I have not seen the amendment in its final version. I wonder if the Senate would send it to the desk so I can read the amendment before commenting on it.

RESERVATION NO. 3

Mr. BARTLETT. Mr. President, I call up my amendment, reservation No. 3.

The PRESIDING OFFICER. The reservation will be stated.

The assistant legislative clerk read as follows:

The Senator from Oklahoma (Mr. Bartlett) proposes a reservation numbered 3: Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that before the date of the exchange of the instruments of ratification the President shall have determined that the Republic of Panama has ratified the Treaty, as amended, in accordance with its constitutional processes, including the process required by the provisions of Article 274 of the Constitution of the Republic of Panama".

Mr. CHURCH. Mr. President, this reservation would require that the President of the United States certify to the U.S. Senate that the Government of Panama has complied with the laws of Panama.

I have little doubt how we would react if a similar reservation was adopted by Panama and directed toward the United States. We would regard it as the height of presumption.

Furthermore, there is no way that the President of the United States can positively certify that Panama has complied with Panamanian laws.

This is a matter that can be authoritatively determined only by the Government of Panama, and, furthermore, it is the business of Panama.

Now, article II of the treaty provides as follows:

29-400 (pt. 3) O - 79 - 97

This treaty shall be subject to ratification in accordance with the constitutional procedures of the two parties.

I submit, Mr. President, that this language is all the guarantee we need. In the normal course of comity between nations, Panama would certify that its own constitutional processes, its own laws, had been complied with, and we in turn would certify that our laws had been complied with.

I do not think that it is within the competence of the Presidency or of the Senate to construe or to interpret Panamanian law for the Panamanians.

It has been argued that since the Senate has adopted certain reservations to these treaties it is necessary to hold a second plebiscite under Panamanian law. Mr. President, that is for the Panamanians to determine.

The PRESIDING OFFICER. The time of the Senator from Idaho has expired. The Senator from Oklahoma has 1 minute.

Mr. CHURCH. Therefore, the time having expired, I hope that the Senate rejects this amendment. It is my plan to make a motion to table the amendment as soon as the time of the Senator from Oklahoma has expired.

Mr. BARTLETT. Mr. President, my reservation simply says that before it gives consent to this treaty, the Senate advises the President that he take precautions to insure that it is a valid treaty.

We want to know legally what the Panamanians do believe the understanding to be. We do not want a pig in a poke. We want to know what they believe in a legal manner according to international law.

As it stands now, we know that there are those in Panama who believe there should be a plebiscite. There are those in Panama who believe that provisions, reservations, amendments, understandings added to the treaty have not been done so with the support of Panamanians, that the Panamanians do not support those provisions that have been added in the Senate.

So I think it is important that we be assured legally that we and the Panamanians have the same understandings so that there will not be a confrontation down through the years as we approach the end of the year 1999.

The PRESIDING OFFICER. All time on the amendment has expired.

Mr. BARTLETT. Mr. President, I ask for the yeas and nays.

Mr. Church addressed the Chair.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. CHURCH. Mr. President, I move to lay the amendment on the table and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table reservation No. 3 of the Senator from Oklahoma (Mr. Bartlett). The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk) is necessarily absent.

Mr. STEVENS. I announce that the Senator from Wyoming (Mr. Wallop) is necessarily absent.

The result was announced—yeas 63, nays 35, as follows:

[Rollcall Vote No. 110 Ex.]

YEAS—63

Anderson	Hart	Metzenbaum
Baker	Haskell	Moynihan
Bayh	Hatfield, Mark O.	Muskie
Bellmon	Hathaway	Nelson
Bensten	Heinz	Packwood
Biden	Hodges	Pearson
Bumpers	Hollings	Pell
Byrd, Robert C.	Huddleston	Percy
Case	Humphrey	Proxmire
Chafee	Inouye	Ribicoff
Chiles	Jackson	Riegle
Church	Javits	Sarbanes
Clark	Johnston	Sasser
Cranston	Kennedy	Sparkman
Culver	Leahy	Stafford
Danforth	Long	Stevenson
DeConcini	Magnuson	Stone
Durkin	Mathias	Talmadge
Eagleton	Matsunaga	Weicker
Glenn	McGovern	Williams
Gravel	McIntyre	Zorinsky

NAYS—35

Allen	Goldwater	Nunn
Bartlett	Griffin	Randolph
Brooke	Hansen	Roth
Burdick	Hatch	Schmitt
Byrd, Harry F., Jr.	Hatfield, Paul G.	Schweiker
Cannon	Hayakawa	Scott
Curtis	Helms	Stennis
Dole	Laxalt	Stevens
Domenici	Lugar	Thurmond
Eastland	McClure	Tower
Ford	Melcher	Young
Garn	Morgan	

NOT VOTING—2

Abourezk	Wallop

So the motion to lay on the table reservation No. 3 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. BUMPERS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. (Mr. Harry F. Byrd, Jr.). The Senator from Maryland has the floor.

Mr. SARBANES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The following occurred earlier in today's proceedings and are printed at this point by unanimous consent:)

Mr. DOLE. Mr. President, I wonder whether the Senator from Kansas can have some time. I have a noncontroversial matter, just to make some nonlegislative history, which will take about 3 or 4 minutes.

Mr. THURMOND. I yield the 1 minute I have remaining to the distinguished Senator from Kansas, if that will help.

Mr. DOLE. I thank the distinguished Senator from South Carolina.

Mr. President, I ask unanimous consent that the statement I am about to make appear following the six votes at 10 o'clock.

The PRESIDING OFFICER. Without objection, it is so ordered.

Does the Senator ask that this time not be charged against the amendment?

Mr. DOLE. That it be charged against the amendment, but that the comments made by the Senator from Kansas appear following the votes.

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired, and the Senator from Maryland would have to yield time.

Mr. DOLE. Will the Senator from Maryland yield 3 minutes, so that I may make some legislative history? It is not on the amendment.

Mr. SARBANES. I yield 3 minutes to the Senator.

PROTECTION OF LAND HELD BY MASONIC LODGE IN CANAL ZONE

Mr. DOLE. Mr. President, I call the attention on my colleagues to a small, but not insignificant aspect of the current Panama Canal Treaty debate, which should not go unnoticed before we complete our work on this matter. It involves the unique situation of the only privately owned real property lying within the present Panama Canal Zone—land purchased and held continuously by Sojourners Lodge of the Ancient Free and Accepted Masons for 57 years.

Sojourners lodge, located in Cristobal, Canal Zone, and under the jurisdiction of the Grand Lodge of Massachusetts, holds clear title to a tract of land and a building which sits upon it, at the southwest corner of the intersection of Bolivar Avenue and Eleventh Street. Its purchase of the property from the Panama Railroad Company in 1921 was authorized by an act of Congress the previous year (41 Stat. 948). In fact, all other real property in the Canal Zone is owned by the Government of the United States, and will be transferred to the Government of Panama under the provisions of the treaty now under consideration.

Assumption that the United States need not amortize its investment, choosing merely to write off its investment in the year 2000.

When projections are recomputed in the absence of these assumptions, the financial picture changes dramatically. Instead of breaking even by raising tolls 19.5 percent, as officially proposed, the Canal could not break even in FY 79 without an increase in revenues of 49.8 percent. By FY 84, the necessary increase would be 63.3 percent over current revenues. The magnitude of the financial problem is evident when one understands that the maximum increase possible in Canal revenues is 40 percent, no matter how high the tolls are raised. Once toll rates increases reach the level of 50 percent to 75 percent, the curve of gain flattens out; the high rates begin to force traffic to be diverted to other routes, and tonnage drops. No matter how high the rates are raised, according to the sensitivity studies by International Research Associates, the net gain can never rise appreciably above 40 percent.

The result is, as the color chart demonstrates, that not even the 19.5 percent increase can make the Canal break even. It will take a 28.5 percent increae to pay the three major payments to Panama ($10 mil. for services, $10 mil. fixed payment, $46 mil. from the 30-cent a ton formula). For the U.S. Treasury to recover an additional $20 million for interest payments, tolls would have to be raised nearly 75 percent (for a 40 percent net). The $22 million in annual amortization payments would be virtually not recoverable.

The two columns on the color chart FY 79 figures reworked to reflect costs ignored in the official projections. The first column shows FY 79 operating costs, with blocks of components showing expenses, payments, and costs. The blue blocks are expenses of the company, the green blocks are payments to Panama, and the red blocks are costs assumed by the U.S. Treasury. The first black line from the bottom is the level of revenue with tolls at the present rates; the second black line is the proposed level at a 19.5 percent increase. The yellow band is the level at which excessive toll increases of up to 715 percent would be necessary. The red band is the level at which costs are not recoverable.

The second column shows FY 79 revised, so that the risks and benefits are equitably balanced between the United States and Panama in proportion to the contribution of each to the enterprise.

The priority of payments would be to pay Panama $20 million first, and then to reverse the order of payments to the U.S. Treasury and payments to Panama. This would allow the U.S. Treasury to be reimbursed for interest on the U.S. direct net investment and amortization, both to be paid out of tolls. Any surplus could then be paid to Panama under the 30 cents a net ton formula. The amount of surplus would depend upon the level of toll rates, and would be the subject of consultation between the two countries.

The tables which follow give the precise estimates of deficits under a true accounting, and the amount of toll increase necessary over present rates for each of the six fiscal years for which offical base data is available. All revenues and expenses, except as otherwise stated, are from Panama Canal Company projections.

Table I demonstrates that if proper rates of inflation and proper accounting of capital expenditures are included, PCC deficits will range from $55 million in FY 79 to $89.9 million in FY 84. Just to pay Panama alone would require toll increases ranging from 28.2 percent to 43.2 percent in FY 84. In just six years, the costs of running the Canal and paying Panama would have bumped against the threshold of the Canal's maximum earning capacity.

However, when the costs to the American taxpayers are added in, that is, the payments to the U.S. Treasury for interest and amortization, the viability of the Canal is destrpyed. Deficits at the present rate of tolls would range from $97 million the first year to $131 million by FY 84. To break even would require revenue increases ranging from 49.8 percent in FY 79 to 63.3 percent in FY 84. Such increases substantially surpass the revenues that can be generated. The U.S. Treasury, of course, would have to sustain the loss.

Table II demonstrates what would happen if the U.S. Treasury were paid first, before any payments were made to Panama under the 30 cents a ton formula. It assumes, however, that Panama would receive the fixed $20 million payments before say such payments are made to the U.S. Treasury.

Thus if Panama receives $20 million per year in fixed payments and the U.S. Treasury receives $42 million per year for interest and amortization, all such costs can be paid comfortably out of tolls. The deficit at present toll rates would range from $50.2 million per year in FY 79 to $74.7 million per year in FY 84; the deficit would require toll increases ranging from 25.8 percent to 35.9 percent, all within the mathematical range of possibility.

DEPARTMENT OF STATE,
Washington, D.C., February 21, 1978.

Mr. WHITFIELD W. JOHNSON,
Tremont Street,
Boston, Mass.

DEAR MR. JOHNSON: The Secretary has asked me to respond to your letter of Janurary 27, concerning the effect which approval of the Panama Canal Treaty of 1977 would have on title held by the Sojourners Lodge A.F. and A.M. to a tract of land in Cristobal.

Your letter correctly notes that the 1977 Treaty does not specifically confirm the Lodge's ownership of the tract in question. Contrary to your assumption, however, the Treaty does not divest the Lodge of its title or convey title to the Republic of Panama.

Article XIII(2) conveys to Panama (with certain exceptions) all right title and interest of the United States in real property located in the Canal Zone. This provision does not purport, nor was it intended to disturb in any way the present title of the Sojourners Lodge.

Nor is the Lodge's title affected by the termination of the 1903 Treaty. Prior to entry into force of the 1903 Treaty, title to the tract deeded to the Masons was held by the Panama Railroad Company; accordingly, the rights it held (and ultimately conveyed to the Masons) did not arise under the provisions of that agreement, and would not be affected by its termination.

The provisions of the Panama Canal Treaty of 1977 concerning applicable law and law enforcement insures that the present title of the Lodge will not be subject to question under Panamanian law. Under paragraph 1 of Article XI of the 1977 Treaty, Panama agrees that its law "shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements." It seems clear, therefore, that the validity of the 1921 conveyance would not be subject to question under Panamanian law, since it concerns a matter or event occurring prior to entry into force of the 1977 Treaty, the regulation of which is not specifically provided to Panama under earliest treaties. Accordingly, it does not appear that there should be any serious difficulty in obtaining recognition by Panama of the Masons' deed to their land in Cristobal. Upon entry into force of the Treaty, the Lodge should register its deed with the Panamanian authorities in order to formalize their ownership under Panamanian law.

If you require any further information or assistance in connection with this matter, feel free to contact me.

Sincerely,

MICHAEL KOZAK,
Acting Assistant Legal Adviser
for Inter-American Affairs.

OFFICE OF THE GOVERNOR.

CERTIFICATE

I, Joseph J. Wood, Chief, Administrative Services Division (Agency Records Officer) and legal keeper of the records of the Panama Canal Company and Canal Zone Government, do hereby certify that the attached document, described herein, as a true and correct copy of the official record of such document contained in the files of the Panama Canal Company and Canal Zone Government:

Signed and notarized copy, dated April 19, 1921, of the indenture made between the Panama Railroad Company and officers of Sojourners Lodge of the Ancient Free and Accepted Masons of Cristobal, Canal Zone, for the building known as the Masonic Temple and the land upon which the building rests.

I further certify that the office of the Agency Records Officer possesses no official seal.

In witness, here I have hereunto set my hand at Balboa Heights, Canal Zone, on this 17th day of February, A.D. 1978.

JOSEPH J. WOOD,
Chief, Administrative Services Division,
Agency Records Officer, Panama Canal Company,
Canal Zone Government.

OFFICE OF THE GOVERNOR,
September 23, 1977.

Mr. JAMES E. BREDENKAMP,
Chairman, Building Committee, Sojourners Lodge, A.F. & A.M., Cristobal, Canal Zone

DEAR MR. BREDENKAMP: This is in response to your letter of September 19 concerning omission in the proposed Panama Canal Treaty of 1977 and related agreements of specific treatment of lots 641, 643, 645 and 647 in Cristobal, Canal Zone which were conveyed to Sojourners Lodge, A.F. & A.M. by the Panama Railroad Company pursuant to Congressional authorization (41 Stat. 948). As requested, this will confirm that the singular status of title to the lots was brought to the attention of the United States negotiations team. With regard to our conversation, this will also confirm that specific treatment was accorded this property in the 1967 draft treaty.

Sincerely yours,

J. PATRICK CONLEY,
Executive Secretary.

[Conclusion of proceedings which occurred earlier.]

UP AMENDMENT NO. 36

Mr. ROBERT C. BYRD. Mr. President, on behalf of myself, the distinguished minority leader, Mr. DeConcini, Mr. Church, and Mr. Sarbanes, I send to the desk an amendment to the resolution of ratification and ask that it be stated by the clerk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from West Virginia (Mr. Robert C. Byrd), for himself and Mr. Baker, Mr. DeConcini, Mr. Church, Mr. Sarbanes, Mr. Sparkman, Mr. Javits, Mr. Leahy, and Mr. Gravel, proposes an unprinted amendment numbered 36.

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that: Pursuant to its adherence to the principle of non-intervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

Mr. ROBERT C. BYRD. Mr. President, this amendment reaffirms the principle of nonintervention, a principle which is and should remain a cardinal principle of U.S. foreign policy.

The amendment would make absolutely clear that the United States does not claim and does not seek any right of intervention in the internal affairs of Panama. The United States respects the sovereign integrity and the political independence of Panama.

Our interest is an open, secure, neutral, and accessible canal. We have no interest in the internal affairs of the Republic of Panama.

Mr. President, the language contained in this amendment is the result of many, many hours of discussion, involving many Senators on both sides of the aisle. These discussions have involved Senators who have adverse viewpoints, diverse viewpoints, and differing viewpoints.

The final text of the amendment represents a consensus which developed out of those discussions with the many Senators on both sides of the aisle.

On this Sunday, the past Sunday, together with the distinguished floor managers of the treaties, Mr. Sarbanes and Mr. Church, met

with the Panamanian Ambassador, Mr. Gabriel Lewis, in the company of Warren Christopher, the Deputy Secretary of State, and showed to the Panamanian Ambassador the proposed text of the amendment.

Following our discussion, Ambassador Lewis relayed the contents of the proposed amendment to his government. Later in the day, Mr. Sarbanes and Mr. Church, and I were informed through the State Department that the Panamanian Government considered the amendment to be a "dignified solution to a difficult problem."

Mr. President, as I have said throughout the course of this debate, these treaties are consistent with the best and most worthy of American values and principles. They serve and promote our national interests.

This amendment is totally in accord with those goals and principles, and it demonstrates our respect for and our concern for the pride and sensitivities of the people of Panama.

This amendment is the concrete expression of policy based upon respect for the sovereignty of our treaty partner.

This amendment and treaties represent a fair and honorable course for our country and for Panama. I strongly urge the adoption of the amendment.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. JAVITS. I think it more appropriate for the Senator to yield to Senator Baker.

Mr. ROBERT C. BYRD. Yes, I yield.

Mr. BAKER. Mr. President, I thank the Senator from New York. I will not take very long, and I thank the majority leader for yielding.

Mr. President, I support this proposal. I would point out, as my colleagues know, that it is a product for much effort, as the majority leader indicated, following in the wake, as it did, of expressed discontent by the Panamanian Government and many people of the Republic of Panama, of the text and tone of the so-called DeConcini reservation.

Early on I conferred with the distinguished majority leader and I indicated to him at that time it was my view that the so-called leadership amendment to the Neutrality Treaty had in many respects the same equivalent effect in that it provided that the United States has the right to protect the regime of neutrality and the free, open access of this canal to American traffic on a priority basis, and the traffic of all nations permanently, but that I would have no objection to some effort to devise language, which would be consistent with the leadership amendment, which did not significantly diminish the rights of the United States to protect that regime of neutrality, and that I would await the negotiations that might be conducted on the majority side of the aisle and, indeed, with the Government of the Republic of Panama.

The majority leader very kindly kept me advised of the progress of those negotiations, and following the course of those negotations, as described by the majority leader, I indicated to him that I found this language acceptable, and I would be pleased to cosponsor it.

I do not believe this language diminishes in any respect the rights of the United States, nor does it impugn the authority of the

Republic of Panama. I think it materially improves the potential for a good relationship between the countries, and I think it is a constructive measure that I hope will be adopted by the Senate.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader both for his support of the amendment, his cosponsorship of it, and his supporting statement.

Mr. President, before I yield to the distinguished Senator from New York, I ask unanimous consent that the distinguished chairman of the Committee on Foreign Relations (Mr. Sparkman) be added as a cosponsor.

The PRESIDING OFFICER. (Mr. Harry F. Byrd, Jr.). Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I would like to make the same request, that I be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I have always believed very deeply that this was a test of the American policy, certainly the Americans, for the foreseeable future. I hope it lasts for a century or more.

It involves very deeply our relations with the other countries in the Americas, and the formula which you have used in this amendment "open, neutral, secure, and accessible" is the proper formula to be used, and the formula respecting intervention is taken almost verbatim from the words of the Carter-Torrijos agreement, an understanding upon which we based our ratification of the first treaty.

Mr. President, I think a very creditable job has been done for our country in dealing with what I believe were the very legitimate objections to the original DeConcini amendment which, in my judgment, gave a hunting license to any American President, and had to be unacceptable to the people of Panama.

I voted against it; a number of others voted against it, who have been constant and indefatigable supporters of the treaty, because I believe it nullified—not the words, not the agreement, but nullified—the purpose the intent, and the motive for the United States entering into this treaty.

Nobody pretends this is an advantageous treaty to the United States over and above 1903. But, Mr. President, it is a necessary agreement, an engagement by the United States that we live in 1978, not in 1903, and that in this time even the rights of small nations have to be respected and regarded as soverign and equal in significance and solemnity with the respect with which we expect to be accorded to the sovereignty of big nations, including superpowers like the United States.

So I believe this reservation has now dealt in the most practical and direct way with the two problems: First, the real purpose of the United States to have a canal which is open, neutral, secure, and accessible, and I hope these words will ring in history—they are exactly the right test; and, second, that under no circumstances are we going to allow any American President or any American Congress to dream up some incident which will enable us to determine how Panama should be run or who should govern it.

For those reasons, Mr. President, I very strongly support this reservation.

Mr. President, I ask unanimous consent that article II of the Panama Canal Treaty and article VIII of the Neutrality Treaty be printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

PANAMA CANAL TREATY

ARTICLE II

RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

ARTICLE VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

The PRESIDING OFFICER. Who yields time?

Mr. LAXALT. Mr. President, will the Senator yield for a question or two?

Mr. JAVITS. Certainly.

Mr. LAXALT. If I understand the Senator from New York's observations, the so-called DeConcini reservation was objectionable to the Senator on the basis that it granted the United States a so-called hunting license.

Mr. JAVITS. Right.

Mr. LAXALT. I gather that whatever is being expressed in the new reservation propounded by the leadership changes that results; is that correct?

Mr. JAVITS. That is correct.

Mr. LAXALT. Is the Senator saying to all of us then that the effect of this reservation is to diminish the effect of the DeConcini reservation?

Mr. JAVITS. Not at all. In the contrary, it is to lay down the ground rules by which it should be used, and which are the only ground rules that are practicable for a nation like our own.

What concerned me about the original DeConcini reservation is that it was susceptible to abuse, and this, the ground rules here laid down, it seems to me, removes that danger.

Mr. LAXALT. To the extent then this is a limiting factor, a moderating factor, certainly at least to that extent then it has to dimin-

ish the thrust of the DeConcini amendment or do I misunderstand the observations of the Senator from New York?

Mr. JAVITS. I think the Senator does misunderstand my observations. It diminished nothing. It increases our stature, but it diminishes absolutely nothing about what the purpose of the agreement between Carter and Torrijos, which was incorporated in the previous treaty, was intended to attain, and that is under any circumstances, even if it means stepping upon the territory of Panama, under any circumstances, even if it means guerrillas or organized troops who are operating out of Panama, we have the obligation to keep that canal open, neutral, accessible and secure.

Mr. LAXALT. But——

Mr. JAVITS. If I may just finish, the Senator asked me a question.

Mr. LAXALT. Yes, sure.

Mr. JAVITS. What it does prevent is the abuse of that particular provision for some national purpose which is unworthy of us and which is not within the purpose or intent of this agreement or the reason why I am hopeful the Senate will ratify it today. It simply is a protection against abuse.

May I give the Senator an example——

Mr. LAXALT. Surely.

Mr. JAVITS. [Continuing]. Because I know we would like to be very precise about this.

I go out of town, I have a lawyer, I give my lawyer a power of attorney. I tell him, "Look, I am giving you this power because I want you to pay my bills; when the dog has to go to the vet I want you to take the dog and pay the vet," and so forth. I do not give him any power of attorney to empty out my safe deposit box but, nonetheless, he does.

Now, Mr. President, is that a limitation on his power if I write in the power of attorney, "I am sorry but I do not want you to empty out my safety deposit box," or is it simply to prevent abuse? That is what I am saying.

I am saying that we are adopting now a reservation which will prevent the abuse of a reservation we previously adopted, which was susceptible of abuse.

Mr. LAXALT. The Senator used the power of attorney example. If I may say so, knowing the Senator's reputation for careful and precise language, I was intrigued by his choice of words, particularly of the term "hunting license."

To me, that indicated, if we are going to talk about the analogy of a power of attorney, something akin to a general power of attorney.

What we have here, if I understand the thrust of this amendment, is a limited and special power of attorney, so that you have begun with a general power of attorney, but have now come in with a reservation seeking to limit that to a special power of attorney; is that not correct?

Mr. JAVITS. I do not agree with that at all, and I think it is a complete misreading of the intent of this particular reservation.

Mr. PRESIDING OFFICER. The Chair would inquire as to who is yielding time at this point.

Mr. LAXALT. The Senator from Nevada is yielding time at this moment. May I ask a further question?

Mr. JAVITS. On your time, yes.

Mr. LAXALT. This treaty expires, does it not, on December 31, 1999?

Mr. JAVITS. That is correct.

Mr. LAXALT. The DeConcini reservation to the Neutrality Treaty takes effect, under its terms, on January 1, 2000, does it not?

Mr. JAVITS. Correct.

Mr. LAXALT. I fail to understand, since this discussion has arisen, how in the world a provision of this kind can be operative on the first treaty, when, by the terms of the pending treaty, it expires on December 31, 1999.

Mr. JAVITS. The reservation expresses a policy of the United States, and a policy which we believe now, from what the majority leader has said, is acceptable as the policy which will guide United States actions under these treaties toward the Republic of Panama.

It seems to me, therefore, that the purpose and intent of the reservation being clear to both parties, if acceptable to both parties, it may be incorporated in this document without vitiating its effectiveness, because really it is binding on us.

In other words, what it is is a guideline as to the actions of the President of the United States, the Commander in Chief of our Armed Forces——

Mr. LAXALT. Well, Senator——

Mr. JAVITS. If I may just finish, I think, notwithstanding the fact that this treaty runs out, as it were, under its terms, in respect of this activity it is a totality. Both treaties are a totality and a link. One treaty does not become effective until the other treaty becomes effective, and the terms of each treaty say that. Therefore that link, it seems to me, fully justifies the wording of this reservation.

Mr. LAXALT. Without being elementary or fundamental here, as a matter of simple contract law, is it not true that the treaties are tantamount to contracts?

Mr. JAVITS. I can agree to that.

Mr. LAXALT. All right. Is it not also true that under the terms of the treaty now under consideration, it expires on December 31, 1999? How in the world can this reservation be operative in a treaty that takes effect after this treaty expires?

Mr. JAVITS. I just explained that, Senator. Both treaties are linked as a unit by the provision in each treaty that neither treaty shall be effective unless the other is. It is because of that link, in my judgment, that we have a right to adopt this reservation and this reservation is, in my judgment, binding.

If the two treaties were absolutely insulated one from the other, the Senator's queston might have some pertinence; but even then, I doubt that the argument would be effective because this represents a guideline to the President of the United States and to future Congresses.

It seems to me that that question is completely resolved, even on the texts of the treaties, by the relation between the two contracts.

Mr. MCCLURE. Mr. President, will The Senator yield?

Mr. LAXALT. Surely.

Mr. MCCLURE. Certainly the Senator from New York has again demonstrated the vailidity of the comment I made to him yester-

day, that if I have a very weak case in court I want him as my lawyer, because he is capable of making a very good argument where there is no possibility of a valid argument. I commend him for that, but certainly the Senator from New York knows the difference between a general power of attorney and a limited or special power of attorney. I think the Senator from Nevada is precisely correct, that this is a limitation and a reduction in the scope of the original DeConcini amendment.

I think it is also worthy of noting that the Senator is exactly correct with regard to the expiration of the terms of this treaty at the end of this treaty. The Senator from New York is now arguing that the two are linked, when the managers of the treaties refused to allow a linkage between the two treaties when that was discussed, and when amendments were offered earlier to do precisely that. So there is not the linkage now being argued; there is a separation, and and ending of the first treaty. I commend the Senator from Nevada for having made those points.

Mr. SCOTT. Mr. President, will the Senator yield briefly?

Mr. LAXALT. I am pleased to yield to the Senator from Virginia.

Mr. SCOTT. I appreciate the Senator's yielding.

I voted against the original DeConcini reservation because I had doubt that it would have any valid or binding effect upon the treaty; and to me this amendment to the reservation merely expresses a concern for the people of Panama.

I would think that we, as U.S. Senators, should be concrned about the people of the United States far more than we should be concerned about the people of Panama. They demonstrate a little bit in the street and we fly to pieces about it; but the American people are opposed to this treaty, and I believe the important thing here is to do what is best for the United States. The distinguished Senator from New York spoke of enhancing the American image by adopting something of this nature. The American image and the American leadership in the free world will be shown by strength; and we are not becoming stronger by giving away this vital artery of commerce.

I am retiring from the Senate, as Senators know, at the end of this term. In my judgement, other Senators will retire involuntarily come the general election in November.

Mr. HELMS. Mr. President, I yield to the able Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from North Carolina for yielding to me.

Mr. President, I do not know why the amendment before the Senate now has been shrouded in such secrecy. I was able to obtain a copy of this amendment at 12 minutes after 12, to have an opportunity to study it. Why the need for all this secrecy? What has become of the old principle of "open covenants openly arrived at"?

What this amendment seeks to do is to get this treaty and the other treaty off the horns of a dilemma caused by the administration and the leadership themselves. They accepted the DeConcini reservation. They embraced it, they endorsed it, and in fact it became a leadership-administration amendment.

Now they seek to water down, in this treaty which expires on January 1 of the year 2000, a reservation to the other treaty, which is in perpetuity.

The distinguished Senator from New York spoke of the words here being the words of the memorandum between the President and the dictator, which later became the leadership amendment. That is true. The Neutrality Treaty did have the leadership amendment. This amendment now is a pseudo-leadership amendment. It seeks to graft onto this treaty, which expires at the end of this century, the provisions of the leadership amendment.

That being true, let us see what the DeConcini reservation says: notwithstanding the provisions of article V or any other provision of the treaty, if the canal is closed, or its operations are interfered with, the United States has a right unilaterally to take whatever action is necessary to keep the canal open and operating even to the point of using military force.

The Neutrality Treaty had the leadership amendment in it. Yet the DeConcini amendment says irrespective of the leadership amendment, irrespective of that limitation, this unilateral right to use military force to keep the canal open will be a right that the United States reserves under the treaty.

So, Mr. President, how could you, by inserting a provision in this treaty, affect the provisions of the DeConcini amendment which is not effective, even by the terms of the leadership amendment which forms part of the Neutrality Treaty?

How can you put something in another treaty that is not effective to diminish the DeConcini rights reserved to the United States which are contained in the very treaty as to which the DeConcini reservation was made?

Obviously, with the treaty before us, the Panama Canal Treaty, giving the canal away, with that expiring on the dawn of the 21st century, anything contained in this treaty falls. It is dead. It has become functus officio. It has performed it function. It has no further standing.

What we are doing here, Mr. President—and I hope all will understand, all on both sides of this treaty—is we are seeking to placate the Panamanians without angering those of us who want to see that we do have a right to keep the canal open. It is something in the nature of a sop, a sop to the Panamanians. It is a mighty weak effort, it seems to me, to try to tie, in effect, the leadership amendment to the Neutrality Treaty also on the Panama Canal Treaty. If those words are not effective in the Neutrality Treaty, how in the world can they be effective in the Panama Canal Treaty, which is an entirely different document?

The difficulty that the administration and the leadership are having in diminishing the DeConcini amendment is that the Neutrality Treaty has been acted upon by the Senate. The leadership and the administration had absolute control of every single word that went into that treaty, and this treaty as well. They had absolute control. They controlled every single word that went into both of these treaties here on the floor of the Senate. Now they are seeking to tear down the force and effect of the DeConcini amendment.

But the DeConcini amendment cannot be touched. That Neutrality Treaty has been acted upon by the Senate. The time for reconsideration of the action by the Senate has expired. It has become part of history, Mr. President.

I am reminded of the verse from the Rubaiyat of Omar Khayyam as to the Neutrality Treaty.

> The Moving Finger writes; and having writ moves on; Nor all your Piety nor Wit Shall lure it back to cancel half a Line Nor all your Tears wash out a Word of it.

So, Mr. President, that is the effect of the Neutrality Treaty and the DeConcini amendment. It is there. It is part of history. It is a fait accompli.

The moving finger of history has written, and having written moves on. "Nor all your Piety"—and I think that is an apt word to use under the state of affairs with respect to this effort—"nor all your Piety nor Wit Shall lure it back to cancel half a Line Nor all your Tears wash out a Word of it."

So, Mr. President, it would seem to the Senator from Alabama if the Panamanians took offense at the DeConcini reservation, and they obviously did because they are demonstrating down in Panama right now against it, the matter has not been rectified by this language.

I know the leadership will pass the amendment. there is no doubt about that. I have a couple of amendments to offer to it later on in the day.

It can be passed. As I say, they have control of every word going into the treaty. But not a line of the DeConcini amendment can be changed by any action on this treaty which expires on January 1, in the year 2000.

So this is a sop and a mighty poor sop to the Panamanians. The administration got itself into this difficulty and they are now saying that this will solve things. Well, it will not solve a thing. The Panamanians are expecting the United States to back off the DeConcini amendment when it cannot be done.

This is, as I say, a mighty poor sop for the Panamanians.

Do Senators wonder where the word "sop" comes from? It is something that puts you in mind after the roast is gone, after the meat served at a meal is gone. Then when you sop up the gravy on a biscuit and hand that to the Panamanians, that is what is being given here to the Panamanians. It is not the real thing which is being given to them; it is just a sop to Panama.

I am reminded of something Jesus said in the sermon on the mount:

> What man of you if his son asks for a loaf will give him a stone? Or if he asks for a fish, will give him a serpent?

So, Mr. President, even though the leadership has the power to put this reservation in, it is giving a might poor sop to the Panamanians, because the moving finger has written and it has moved on.

The DeConcini reservation, accepted by the leadership, endorsed by the leadership and the administration, has become a part of history. These little assaults on the DeConcini reservation are going to fall—not by vote of the Senate, because the Senate is going to approve this or anything else that is recommended by the

leadership. But what will it accomplish? It will accomplish nothing, because the rights reserved to the United States in the DeConcini amendment will continue to be reserved.

I have two amendments that I shall offer later. I hope that Members of the Senate will register their protest to this reservation, which was negotiated, certainly, in secrecy from the rank and file Members of the Senate, its contents carefully guarded, Members unable to get copies of the reservation.

What did they fear? Was it the bright light of logic? Did they fear that? I rather believe so.

Did they fear the bright light of scrutiny? I believe so.

But the DeConcini reservation, impervious as it is to the leadership amendment in the Neutrality Treaty, will be impervious to efforts in this treaty to water down or to diminish it. It is going to be part of the treaty between the United States and Panama, no matter what we do in this treaty.

I hope that those on both sides will understand that that is the case. I hope the Panamanians, looking for a way out and expecting more than this little sop from the administration and from the leadership, in order to give the Panamanians some reassurance, will vote this amendment down, will vote the treaty down, which would cause the defeat of the Neutrality Treaty and will allow these treaties to go back to the negotiating table so that treaties acceptable to Panama and the United States can be agreed upon. Because, as I see it, neither the people of the United States nor the people of Panama approve of this treaty. I hope the so-called leadership amendment, which was pointed out as being so defective when it was added to the Neutrality Treaty and which is just as defective now, will be voted down by the Senate.

I yield the floor.

Mr. LAXALT. I thank the Senator from Alabama. I yield to the Senator from Utah.

Mr. HATCH. I thank the distinguished Senator from Nevada. I should like to ask some questions in order to establish some legislative history concerning this particular reservation. Maybe I can ask them of the floor manager of the treaty, the distinguished senior Senator from Idaho.

Does this reservation mean that the United States may not use military force to defend the canal?

Mr. CHURCH. No.

Mr. HATCH. Does the United States have the unilateral right, pursuant to this reservation, to send troops to keep the canal open under this reservation, or must the Panamanians agree to such sending of troops?

Mr. CHURCH. Each country, under the treaty, has the obligation to keep the canal open and, in accordance with the terms of the leadership amendments as well as the terms of the pending reservation, that choice can be made by each government.

Mr. HATCH. Can it be made unilaterally is my question; and can we, without Panama's permission, send in troops?

Mr. CHURCH. I think I answered the question.

Mr. HATCH. Specifically, I think I interpret your answer to be that we can.

Mr. CHURCH. The Senator is correct.

Mr. HATCH. If the canal were to be closed and the Panamanians were to be opposed to an effort to send in troops, would this amendment prevent us from sending such troops?

Mr. CHURCH. This reservation does not undo the previous action of the Senate. It clarifies the purpose for which the United States would act. I do not envision a circumstance where the canal was actually threatened, and where the Government of Panama was unable to cope with the character or the magnitude of the threat and did not ask for the assistance of the United States so that both governments could fulfill their mutual obligation under these treaties.

Mr. HATCH. However, in order to establish legislative history here, if Panama were opposed—and that may be hypothetical and probably is, in nature, and I hope so; I hope that they will not be. But if they were opposed to an American effort to send troops to Panama to open the canal, would this reservation prevent us from sending troops into Panama to keep the canal open?

Mr. CHURCH. The answer is no, but the purpose for which the United States would act, and therefore, the character of its action, would be limited strictly to the obligation that it assumes under the treaty; namely, to keep the canal open, neutral, secure, and accessible. This is the same obligation that the Government of Panama undertakes. I think it is only reasonable to assume that both governments would act in concert to adhere to their mutual obligation under the treaty.

In fact, if either government refused to keep the canal open, neutral, secure, and accessible, that, in itself, would constitute breach of treaty.

Mr. HATCH. I am glad to have that information. With regard to that precise issue, if American troops land on Panamanian soil solely for the purpose of keeping the canal open, neutral, secure, and accessible pursuant to this reservation, and the Panamanians oppose the landing of our troops, would such a landing constitute an intervention into the internal affairs of Panama?

Mr. CHURCH. I think the answer to that question is expressly written into the terms of this reservation.

Mr. HATCH. What would the answer be, yes or no?

Mr. CHURCH. I quote from the terms of the reservation as follows:

> Any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as it purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

Mr. HATCH. That is fine, except that I have added a little element to it, which is that if the Panamanians oppose our entry and we assert that the entry is in the exercise of our rights to assure that the canal shall remain open, neutral, secure and accessible, the language of the reservation in question, would such a landing under those circumstances constitute in intervention into the internal affairs of Panama?

Mr. CHURCH. The answer is "No."

Mr. HATCH. I appreciate the Senator's candor.

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If the Government of Panama were to fall under the control of an anti-American ditactorship or other type of political leadership and the quality of service for the transit of the canal declined to the point that,. although the canal remained open in theory but closed in essence, would the United States be free under this reservation to open the canal with military force and contrary to the expressed wishes of the Panamanian Government?

Mr. CHURCH. I say to the Senator that it is difficult to speculate on all of the hypothetical situations that may be conjured up. I can only say that whatever may develop will be judged at that time by the Governments of the United States and Panama in relation to the obligations each has assumed under these treaties.

Now, I cannot foretell the future and neither can the Senator from Utah. Therefore, it is impossible for me to answer every hypothetical question.

When the time comes, if it ever comes, and that I doubt very much——

Mr. HATCH. Let us assume the time does come—excuse me.

Mr. CHURCH [continuing]. That the United States is called upon to keep the canal open, neutral, secure, and accessible, our Government then will decide whether the facts of the case warrant an action by the United States pursuant to the terms of this treaty.

I cannot speak for the future or for any future President. I can only say that he will make his assessment of the situation in the light of the provisions of this treaty and, in compliance with the terms of the treaty, do what he feels is in the best interests of the United States.

Mr. HATCH. I am not asking the distinguished Senator from Idaho to speak for the future, but I am asking him to speak for the present, as the distinguished floor manager of this treaty, and that is, assuming that there is an anti-American government—to make it easier to understand, an anti-American subversive government in Panama, and that because of it considerable service to the canal may not be shut down to the point——

Mr. CHURCH. I will say to the Senator that he now has the floor. I will speak for this reservation on my time, but I am not going to start interpreting what constitutes a shutdown of the canal when he himself cannot define it in a credible manner.

Mr. HATCH. I will be glad to define it.

Mr. CHURCH. The words to which both countries will adhere are controlling. And the words specify that the canal shall remain open, neutral, secure, and accessible.

Those are the test words against which future Presidents will measure any decision or action they might take in accordance with our rights under the treaty.

I will be happy to take the floor in my own right in a few minutes and explain my understanding of this reservation. But I can go no further than the guidelines actually set forth in the treaty, or use words different from the words in the treaty. Certainly, the Senator would not ask me to do so.

Mr. HATCH. I an not asking the Senator to do that, but I am asking the Senator to assist me in formulating the legislative history with regard to this.

But let me move on to the next question.

If the Panamanians are unable to operate the canal, for any reason, would the United States have the right under this reservation to come into the canal and operate it even if the Panamanians oppose our entry?

Would the distinguished Senator from Idaho answer that question for me?

Mr. CHURCH. In the first place, Mr. President, we shall control the Commission that operates the canal from now until the end of the century.

It shall be our responsiblity to see to it that Panamanian personnel are adequately equipped and trained to maintain and operate the canal in order to effect an orderly transition at the end of the century.

So I do not envision any circumstance which would leave the Panamanians unable to operate the canal. I think it is an unreasonable and unrealistic presumption.

Furthermore, if the Senator believes that we can operate the canal by moving in the Marines under some fanciful circumstance in the future, then I invite his attention to a recent article in the Washington Post in which our own military authorities point out that neither our own Marine Corps nor our own Army have the competence to do so.

Mr. HATCH. I am willing to accept that.

Mr. CHURCH. Therefore, I feel that the question the Senator poses can be answered in no other way.

Mr. Hollings addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Will the Senator yield to me?

Mr. CHURCH. I am happy to yield to the distinguished Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I learned long ago that when the judge rules with you, do not question the ruling. It is in that spirit that I accept this amendment drawn by the leadership.

I commend the leadership working out the language which would satisfy those who had misgivings about the DeConcini amendment down in Panama, and some of us who have been supportive of the DeConcini amendment up here.

It has been a very tenuous task to get the parties together. I think Senator Church, Senator Sarbanes, Senator Robert C. Byrd, and Senator Cranston have done an outstanding job.

So I intend to support this language. But I think it behooves us at this particular moment in the record to clear the record with respect to the DeConcini amendment. This was really an emphasis of the leadership amendment, and the leadership amendment in turn was only an emphasis of those amendments submitted by the Foreign Relations Committee. They were withheld by the committee at the request of the leadership, although the committee was ready to adopt them.

The genesis of the Foreign Relations Committee amendments dated back to October 14 when President Carter and Gen. Omar Torrijos met at the White House to clarify the misunderstandings. I should remind everyone of the record at that particular time. The chief Panamanian negotiator was stating publicly, and some of his colleagues down there, in the press and the media, that we have no

such rights under article IV of the Neutrality Treaty to go in our own initiative. The question of invitation was what was in issue at the particular time. It was so obscured and confused that it was then that President Carter asked General Torrijos to come by the White House on his return from London.

We set in the Foreign Relations Committee room that afternoon with Ambassador Sol Linowitz and he submitted then the language of clarification.

At that particular time, it was thought that the language of clarification stating the intent of article IV, would put to rest all concern. But on that very evening at 8 o'clock General Torrijos on his arrival back in Panama said publicly:

Look, I signed nothing. I didn't even give them an autograph.

It was then that I reduced down to black and white the particular understanding between the President and the general. I did so in the form of an amendment.

Mr. President, I ask unanimous consent to have my amendment No. 9 printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

At the end of article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, add the following: "Panama and the United States assume the responsibility to assure that the Panama Canal will remain open and secure for ships of all nations. The United States and Panama shall, each in accordance with its respective constitutional processes, defend the Canal against any threat to the regime of neutrality and each shall have the right unilaterally or collectivey to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal. This shall not be interpreted as a right of intervention in the internal affairs of Panama but as a right of the United States to take such action, military or otherwise, for the sole purpose of insuring that the Canal will remain open, secure and accessible. Such right shall never be exercised against or directed against the territorial integrity or political independence of Panama".

At the end of article VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, add the following new section 2: "The vessels of war and auxiliary vessels of the United States and of Panama will be entitled to transit the Canal expeditiously. This is intended and it shall be so interpreted to assure the transit of such vessels through the Canal as quickly as possible without any impediment, with expedited treatment, and in case of need or emergency as determined by either party to go to the head of the line of vessels in order to transit the Canal rapidly. ".

Add the following article VIII to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and renumber accordingly: "The rights and responsibilities under this neutrality treaty shall supercede any obligation or prohibition that the parties may have under the Rio Pact, the Hay-Pauncefote Treaty of 1901, the charter of the Organization of American States and the charter of the United Nation.".

Mr. HOLLINGS. That amendment was joined in over the fall period by the Senator from Minnesota (Mr. Anderson), the Senator from Arizona (Mr. Goldwater), the Senator from Missouri (Mr. Eagleton), the Senator from Georgia (Mr. Nunn), and others. We submitted to the Foreign Relations Committee the need for this being understood without any confusion.

The Foreign Relations Committee, in its report, recommended that these amendments be adopted, in their 14-to-1 vote, and then explained in the Foreign Relations Committee report, on page 6, the statement of intent of these amendments, which now, in essence, is a statement of intent of the leadership amendments.

I ask unanimous consent to have printed in the Record page 6, page 7, and the top part of page 8, that section of the Panama Canal treaties report of the Committee on Foreign Relations to the U.S. Senate, dated February 3, 1978.

There being no objection, the material was ordered to be printed in the Record, as follows:

STATEMENT OF INTENT

The Committee's intent in recommending the adoption of these two amendments to the Neutrality Treaty is that the Carter-Torrijos Joint Statements of October 14, 1977, be made an integral part of the treaty with the same force and effect as those treaty provisions submitted to the Senate initially for its advice and consent.

The Committee had orignally voted to include the Joint Statement in a single amendment which would have added as a new article IX to the treaty. Upon being advised by the State Department—contrary to previous advice—that this placement could require a new Panamanian plebiscite, the Committee voted to reconsider the propose article IX and voted instead to recommend the addition of that same material, in two parts, to article IV and VI. This did not represent a "flip-flop"; in each instance the substantive wording was identical to that of the Joint Statement, and each provision—whether placed in one article or in two—would have had precisely the same legal effect, being equally binding internationally. The difference is purely one of cosmetics. If a negligible change in form, with no change whatsoever in substance, could obviate the need for a new plebiscite—an eventually which could complicate vastly the ratiification process—then the Committee concluded that it would happily obilge.

The meaning of these amendments, which together constitute the entire Joint Statement, is plain. The first amendment relates to the right of the United States to defend the Canal. (It creates no automatic obligation to do so. See p. 74 of this report.) It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

The above-described rights are not affected by the second paragraph of the amendment, which provides that the United States has no "right of intervention . . . in the internal affairs of Panama", and which prohibits the United States from acting "against the territorial integrity or political independence of Panama." The Committee notes, first, that these provisions prohibit the United States from doing nothing that it is not already prohibited from doing under the United Nations Charter, which proscribes "the threat or use of force against the territorial integrity or political indenpendence of any state" (article 2(4)). The Committee never supposed that the United States, in entering into the Neutrality Treaty, intended to obtain powers that it had previously renounced. The Committee thus does not believe that the provision in question substantively alters existing United States commitments to Panama.

Second, the prohibitions set forth in the second paragraph do no derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal—it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end in itself; and it would not be carried out for the purpose of taking Panamanian territory. The concepts of the territorial integrity and political independence of Panama are, in short, an integral part of the treaty, so that action directed at preserving the regime of neutrality set forth in the treaty would never be directed against Panama's territorial integrity or political independence.

For these reasons, use of Panamanian territory to defend the Canal would clearly be permissible under the portion of the Joint Statement incorporated in Article IV. This is made clear in an opinion presented to the Committee by the Department of Justice (hearings, part 1, p. 332):

"A legitimate exercise of rights under the Neutrality Treaty by the United States would not, either in intent or in fact, be directed against the territorial integrity or political independence of Panama. No question of detaching territory from the sovereignty or jurisdiction of Panama would arise. Nor would the political independence of Panama be violated by measures calculated to uphold a commitment to the maintenance of the Canal's neutrality which Panama has freely assumed. A use of force in these circumstances would not be directed against the form or character or composition of the Government of Panama or any other aspect of its political independence; it would be solely directed and proportionately crafted to maintain the neutrality of the Canal."

Finally, even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against "any . . . threat directed against the Canal", there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must therefore be construed as controlling.

The meaning of the recommended amendment to article VI is equally clear. This provision—extracted verbatim from the Joint Statement—confers upon United States warships and auxiliary vessels the right to go "to the head of the line" in an "emergency". What constitutes an emergency, and when one exists, is for the United States and the United States alone to determine. The provision could hardly be more explicit.

Like the recommend amendment to article IV, this amendment, if adopted by the Senate, will become an integral part of the treaty, of the same force and effect as all other provisions. The Committeed is informed by the Department of State that the Government of the Republic of Panama has concluded that no new plebiscite will be required for the approval of the two amendments. Together, they comprise the verbatim text of the Joint Statement, which was read by General Torrijos to the people of Panama live on national televison three days before the October 23 plebiscite. (See p. 478 of part 1 of the hearings for a list of Panamanian newspapers in which the Joint Statement appeared prior to the holding of the plebiscite.) It thus is clear that the Panamanian people were fully apprised of the Joint Statement prior to the plebiscite, and were accorded a full opportunity to consider its provisions before approving the treaties.

Mr. HOLLINGS. Mr. President, I think that statement of intent was what persuaded the Senator from South Carolina and others to join the Foreign Relations Committee and the leadership in the leadership amendments. So I did not have any of the feel of understanding that the distinguished Senator from New York (Mr. Moynihan) had about the DeConcini amendment.

I want to make clear my esteem for the Senator from New York. Incidentally, he was one of the first on board. I think in August he received, as we all did, a telegram from the President of the United States urging support for these treaties. If not the first, he was one of the first who wired back that he did support the treaties. His experience in the field of foreign affairs is unrivaled in this body. I know we all have enjoyed his eloquent statements with respect to raising our debate to a higher level, and explaining that the true test of greatness of the United States was not how we treated our strong and mighty adversaries of friends but how, in foreign policy, we treated the weaker of the parties involved. I have followed, with great admiration, Senator Daniel Moynihan in the statements he has made.

However, over the weekend, I saw in the Washington Post of Sunday, April 16, a squib from the DeConcini remarks on the right to protect the canal, and a section from the remarks by Senator Daniel Moynihan in the Senate on April 13.

Senator Moynihan begins by saying:

We cannot get anywhere by imposing symbolic subjection upon the Panamanians.

I want to try to explain the difference that the Senator from South Carolina has with the Senator from New York on this particular score. I quote from Senator Moynihan:

I suggest that the world will think we have acted from fear. The world will see our effort to impose complex and meaningless and unnecessary conditions on our relations with Panama as the reverse of the Angola coin; because the Senate, when it faced the prospect that some serious opposition might be encountered, would have none of it. The Senate stood up and said one thing after another which at that time visibly was not so—that Angola was just having a tribal civil war. . . . That is what one distinguished Senator described the Soviet invasion of Angola as—a tribal civil war. Nobody in Central Africa thought it was a tribal civil war. They thought it was a Russian invasion. We would not help the people who would face it.

Then he said:

Having shown our fear there, are we not also expressing our fear here? Should we not say we are a confident and decent people?

Farther down, he said:

Why make Panama the object for expressions of fears which should be confronted on their own?

If there are people in this body—and I hope there are—who are fearful of the U.S. position in the world, fearful of the positions of the free nations in the world, concerned for freedom, let us confront that. Let us not sublimate it by imposing upon Panama—friendly, proven, trustworthy Panama—conditions which are inappropriate to a republic.

Let me indicate what I do agree with. I agree that the Panamanians are friendly, that they are proven, and that they are trustworthy. With respect to that, I agree with the Senator from New York. I think, in a way, some of the debate on the floor of the U.S. Senate has been demeaning to the people of Panama.

Yesterday, I was about to join the Senator from North Carolina in elaborating somewhat in the Record the historical record. The Senator from North Carolina brought it from 1856 to 1903. I wanted to show that it was we who were doing the reneging, not carrying through from 1903 until 1977, when these treaties were submitted; that we had misgivings about the United States' record, not the record of the Panamanians. So I do consider them friendly, proven, trustworthy, and I hope they continue to be. These treaties will make the basis for mutual trust.

I return now to my historian friend, Senator Moynihan. I was in the Senate at the time of the Angola debate. It was a tribal civil war in Angola. In fact, we had dealt with the People's Republic of China, and we had been in there for a year and a half, trying to help a side in the tribal civil war, but we were not winning. The question, after spending hundreds of millions of dollars, was whether we were bogging down into another Vietnam, whether or not we could back a side that could prevail.

But then the Senator goes on with a misstatement of history—because I was in the Senate at the time—by saying, "having shown our fear here."

Our fear is not of Panama. Our fear is not our greatness. Our fear, I believe, is the same as that of the Senator from Nevada (Mr. Laxalt), the Senator from North Carolina (Mr. Helms), my colleague from South Carolina (Senator Thurmond), and others. It is a fear of the U.S. Congress.

Somebody should tell the Washington Post what is going on in this world. It is the U.S. Congress that the people are fearful of.

I happen to believe that under the present 1903 treaty, repudiated by two Republican Presidents and two Democratic Presidents, we had no chance to protect ourselves.

I favor the new treaties, and I favor the DeConcini amendments, because I have the same fear of this Congress, which the senior Senator from New York (Mr. Javits) a moment ago said would dream up some incident to abuse the DeConcini reservation or abuse Panama. I am fearful that there are those in Congress who would dream up some language that would say it was a domestic incident down there and we had no right.

I am realistic enough to know that no language is going to force us in and no language is going to force us out. We cannot jockey here for the exact wording each Senator would want. We all have to agree that no language will force us in or force us out. It depends on the measured judgment at the particular time—the intent, the steel, the determination, and the will of a national Congress.

The lack of confidence in the Presidency has been due to his vacillation, to the frequent change of signals. The lack of confidence in the U.S. Congress is because of its marching up and down the Hill: Do social security, now take it back; do the neutron bomb, take it back; do the B–1 bomber, take it back. People cannot get a focus on the people's representative body.

So, yes, they say now, on this important matter, let there be no understanding, let there be no shenanigans; let them not try to obscure an intransigence down there, such as a failure to operate with a strike, and call it a domestic thing, so that we do not intervene. We will never intervene. I do not worry about intervening down there. We have a tough time getting an honor guard to go to the Unknown Soldier's grave. We do not vote any money to go anywhere militarily. That is my misgiving; that is what I worry about.

But we do not want either an unfriendly government to change the signals or to use a sitdown strike, or something of that kind, to say that we do not have the right.

All Senator DeConcini has been saying is let us be honest, clear, open, and aboveboard and state it like it is, and like our defense chiefs say they understand it, like the Commander-in-Chief, the President, says he understands it—and not how the Washington Post understands it in its editorial that same day, or how Senator Moynihan understands it, because we are not worried about Panama. We do not say in the DeConcini amendment we are unfriendly to you, or you are not proven, or you are not trustworthy. We say we do not trust ourselves. That is what we are saying.

We would like to see a little bit more steel, more will, more determination and stability within this wishy-washy Congress—a Congress going off in all directions when it comes to our national defense.

I have supported the treaties from the very word "go." I would be glad to debate it. But I thought that the Washington Post and other media representatives running around loose wondering what kind of man is DeConcini, and he is a freshman, and is he trying to get headlines, and all—I find that totally unjustified and unwarranted, and frankly on the verge of insulting. Somebody should

stand up who understands the truth and understands this Congress and who has been here a little while and say, "Mr. Washington Post, and anybody else of a similar mind, we have no fear of Panama. We have no fear of our true greatness. But we are a little worried about the U.S. Congress."

Like Pogo, we have met the enemy and it is us.

And I think that is what Dennis was trying to tell us all, and I think he told us just as clearly as anybody possibly could, and that does not detract in any way from anyone else.

I support Senator Church and the particular language submitted, and I will be glad to debate it, but I wanted to make a true record.

It was Omar with his own shenanigans, it was Bethancourt, his chief negotiator, and all that other crowd that is listening on public radio who got us into this. We are not playing games. We respect the Republic of Panama as a nation. We respect the people of Panama as a people. But it was some of their own statements that got us into this particular leadership amendment. The DeConcini amendment, and the clarifications thereof.

And I think in accepting that somewhere, sometime, they should read the record, read nothing less than the statement of intent, 14-to-1, by the Senate Foreign Relations Committee, and they will see what the Senator from South Carolina has in mind in supporting both this particular clarification and the DeConcini amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Idaho.

Mr. CHURCH. Mr. President, a few minutes ago when I returned to the Chamber I heard the distinguished Senator from Alabama quoting from the Rubaiyat. I heard him say:

> The Moving Finger writes;
> And having writ moves on;
> Nor all your Piety nor Wit
> Shall lure it back to cancel half a line
> Nor all your tears wash out a Word of it.

He was telling us that we could not undo the DeConcini reservation since the Senate had already enacted it and attached to it the articles of ratification of the Neutrality Treaty.

With all respect to the Senator from Alabama, it makes no sense whatever to claim that the Senate cannot enact a reservation to this treaty, which would be controlling on both treaties. We do that all the time. Congress never can take an action on one day that cannot be undone the next.

But that is not the purpose of the leadership amendment. We have not introduced it today either to erase a word that has been writ or to shed any tears over those words.

For more than a week now the DeConcini reservation has been rolling around like a loose cannon on a heaving deck. Everybody has interpreted it in their own self-serving way. Some have even gone so far as to suggest that the DeConcini reservation repudiated our long-standing commitment to a policy of nonintervention in the internal affairs of other countries.

The DeConcini reservation did not do that. The sponsor of the reservation made it clear that was not his purpose. Yet the confusion that emerged was so serious it become necessary for us to

clarify the purpose of that reservation as it was intended by its sponsor and by those of us who voted for it.

In other words, Mr. President, it became a matter of cardinal importance to get hold of that loose cannon and fasten it down in its intended place, which is what this leadership amendment is designed to do.

Let it be clear, both from the language of this leadership reservation and from the legislative record being made in this debate, that neither the United States of America nor the Senate has any desire whatever to set aside the policy of nonintervention which we have upheld for more than 40 years. Neither the United States nor this Senate has any intention of calling into question the pledge that Franklin Roosevelt made when he inaugurated a new era in the relations between this republic and our neighbors to the south which became known as the Good Neighbor Policy.

We pledged nonintervention in the internal affairs of any other country in the United Nations Charter, in the Rio Pact, and in the principal treaties involving the members of the Organization of American States.

And we stand by the policy of nonintervention in the internal affairs of any other country. That most certainly applies to the Republic of Panama.

Mr. President, the people of Panama have a reason to be sensitive about this matter. There was a time in the years before Franklin Roosevelt's Good Neighbor Policy when the United States rather habitually interfered in the internal affairs of small countries in the Caribbean and in Central America. Indeed, for many years we did so unilaterally under the sweeping provisions of the Platt amendment by which the United States asserted the authority to move its troops at its pleasure anywhere in Panama, in Central America and in the Caribbean whenever we chose, whenever a government displeased us.

That was the 20th Century version of the Brezhnev doctrine as it is applied today to Eastern Europe. To my knowledge, it is only the Soviet Union, alone among the countries of the world, which today claims the right to move its troops anywhere it pleases in Eastern Europe whenever a government there displeases the Politburo. We saw them do it in 1968 when the Soviet Army moved into Czechoslovakia because the internal actions of the Czechoslovakian Government were not approved in Moscow.

So, Mr. President, far from repudiating what has been the centerpiece of American policy towards Central and South America since the days of Franklin Roosevelt, we hereby reaffirm it, and we do so in words that make it unmistakably clear that the United States shall claim no right to intervene in the internal affairs of the Republic of Panama or to interfere with its political independence or sovereign integrity.

That is the purpose of this leadership amendment. I proudly support it, and I am confident that the great majority of Senators will proudly support it, because it will make clear to all the world that the United States wants no part of the Brezhnev doctrine; and that the United States shall not use its power, as the Soviet Union claims the right to use its power to interfere in the internal affairs of our neighboring states. That is all there is to it.

Mr. SCHMITT. Mr. President, will the Senator yield?

Mr. CHURCH. That is why I am confident that this leadership amendment will be approved not only in the Senate but in Panama as well. It does, in fact, represent a dignified solution to a difficult problem that arose in the first place out of a misunderstanding we can now correct by supporting this amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LAXALT. The Senator from Nevada yields time to the Senator from New Mexico for a question, as I understand it, 2 minutes.

The PRESIDING OFFICER. the Senator from New Mexico has 2 minutes.

Mr. SCHMITT. Mr. President, I generally admire and concur in the remarks of the distinguished leader of this treaty debate, the proponents of this treaty debate, here on the floor, Mr. Church. I think he has stated the fundamental position of the United States very well.

My concern, however, is that, not being an international lawyer, but having only logic as a tool, I see an inconsistency in the reservation that has been presented to us by the leadership and, as I understand it, the distinguished Senator has already indicated that if a revolution in Panama threatened the canal we would have the right to intervene.

My first question is, is that true?

My second question is, is not a revolution the internal affair of Panama?

If I read the reservation that actions taken by the United States of America shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama, then I am afraid I do not understand the situation.

I am the last to advocate interference in the internal affairs of any country. But I think if we are going to put a reservation on the treaty we had better have it a consistent reservation. I would like very much to have Senator Church respond and educate me, if he would.

Mr. CHURCH. Well, I respond to the Senator by saying he finds in the language of the leadership's proposal a problem that I do not see there.

It is conceivable, of course, that a revolution could occur. Normally that would not be our affair, and we claimed——

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

Mr. LAXALT. I will yield 1 additional minute.

The PRESIDING OFFICER. The Senator may proceed.

Mr. CHURCH. We claim no right to interfere to put down a revolution or otherwise decide for the Panamanians what kind of government they should have. Our only claim runs to discharing our obligation under the treaty to keep the canal open, secure, accessible, and neutral.

If, under some circumstances, the Panamanian Government is no longer capable of doing that, as it has pledged itself to do, then the United States, as the other party to the treaty, reserves the right

to do so. But the purpose would be limited to the canal itself and would not be directed toward determining for the Panamanians who shall govern them or what form of government they should adopt for themselves.

Mr. SCHMITT. Mr. President, I think the inconsistency is there whether the Senator sees it or not, and he is concerned about it. Of course, that was the basis for trying to encourage the Senate to look toward hemispheric management of the canal to remove just these kinds of inconsistencies.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. LAXALT. Mr. President, I yield at this time 5 minutes to the Senator from Alaska (Mr. Stevens).

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, let me state at the outset again I am one who originally sought to find a way to make these treaties acceptable to the people of the United States through amendments, and I find it unfortunate that it is necessary to vote against the treaties because it is my conclusion that they are so ambiguous that they can only lead to a prolonged period of misunderstanding and disputes between the United States and Panama, and that this leadership amendment is one of these things that is going to cause the trouble.

We are again left in the position where we are leaving a legacy to future generations that can be solved only by force.

It seems to me that the very least the United States can do is to assure that the relationships it has with foreign countries through treaties are not subject to misinterpretation or, even worse than that, are not subject to one interpretation in the foreign country and another in our country.

Mr. President, the original DeConcini amendment, which I voted against because it was capable of being ignored that is the Panamanians are capable of ignoring it under their constitutional domestic law, at least stated that the United States independently had the right to take such steps under our own constitutional processes, including the use of military force, to reopen the canal or restore the operations of the canal.

As I said, our research showed that the Panamanians could ignore that. As a matter of fact, I think that is what General Torrijos has done by going to foreign nations with his letter. He has set the stage to ignore it.

The leadership amendment now attempts to amend the DeConcini amendment to the Resolution of Ratification on the treaty that does not become effective until the year 2000. At least that is this Senator's opinion, and I would like to propound a parliamentary inquiry to the Chair.

The PRESIDING OFFICER. (Mr. Ford). The Senator will state it.

Mr. STEVENS. Is the neutrality treaty, or the Resolution of Advice and Consent thereto, before the Senate?

The PRESIDING OFFICER. The opinion of the Chair is that it is not.

Mr. STEVENS. I would make another parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. STEVENS. Is that Resolution of Ratification, the advice and consent resolution to the neutrality treaty, subject to amendment by an amendment at this time?

The PRESIDING OFFICER. In the opinion of the Chair it is not.

Mr. STEVENS. Then, Mr. President, I am constrained to make a point of order, and I do make a point of order, that this amendment is an amendment to the Resolution of Ratification to the Neutrality Treaty, which has already passed and is not before this body.

I make that point of order specifically on the ground that the DeConcini amendments specifically says that each nation, the United States and the Republic of Panama, shall have the right independently to take such steps as deemed necessary in accordance with its constitutional processes, and this amendment states specifically that it is an amendment to the provisions of this treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, and it is intended to be at least a limitation on the action previously taken by the Senate in adopting the Resolution of Ratification to the Neutrality Treaty, as amended by the DeConcini amendment.

I make that point of order.

The PRESIDING OFFICER. A point of order is not in order until the proponent's time on the reservation has been used or yielded back.

Mr. STEVENS. I ask unanimous consent that it be in order now.

The PRESIDING OFFICER. Is there objection? Without objection it is so ordered.

The PRESIDING OFFICER. The Chair is prepared to rule.

As the Chair has stated, the Resolution of Ratification of the Neutrality Treaty is not before the Senate. The one on the Panama Canal Treaty is. Under the rules and the precedents of the Senate, the nature and scope of amendments or reservations are not defined and even though his reservation may incorporate the Resolution of Ratification of the Neutrality Treaty by reference, that is not proscribed by the rules.

Therefore, the Chair holds the point of order not well taken.

Mr. STEVENS. Mr. President, I can only say that, having confused the people of Panama before, the Chair has certainly confused them once again. At least he certainly has confused this Senator. I know there will be trouble when they try to translate this amendment to the Resolution of Ratification of the Panama Canal Treaty as it affects the Resolution of Ratification of the Neutrality Treaty into Spanish so that the Panamanians can understand it.

There is no question in my mind but that this is a precedent of the Senate that needs the total consent of a majority of the Senate to understand. I can only appeal the ruling of the Chair, and I do so.

I think it is incumbent upon the Senate to understand that it is setting a new precedent, that if you have two treaties and you have previously acted on one Resolution of Ratification and given advice and consent of the Senate, when the next one comes along all you have to do is hang an understanding as to the first treaty on it, and that is binding on us. Is that also binding on Panama?

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. STEVENS. I appeal from the ruling of the Chair, and I ask for the yeas and nays.

The PRESIDING OFFICER. The Chair would like to state that the Chair's ruling was made as to form and not substance.

Mr. STEVENS. I beg the Chair's pardon; I specifically stated the conflict in substance between this amendment and the previous DeConcini amendment, and pointed out that it specifically amends the Neutrality Treaty. That is a point of order of substance, and not of form.

The PRESIDING OFFICER. The Chair was attempting to state that the Chair is not supposed to interpret possible effect but only to rule as to form.

The question is on the appeal from the ruling of the Chair.

Mr. ROBERT C. BYRD. Mr. President, I think that the Chair is preeminently correct in its ruling. I say so with all due respect—and when I say "due respect," I mean great respect—to the distinguished Senator from Alaska (Mr. Stevens).

I move that the appeal be laid on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the appeal from the ruling of the Chair. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk), the Senator from Arkansas (Mr. Bumpers), and the Senator from South Dakota (Mr. McGovern) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Kansas (Mr. Dole) is necessarily absent.

The result was announced—yeas 74, nays 22, as follows:

[Rollcall Vote No. 111 Ex.]

YEAS—74

Allen	Hart	Morgan
Anderson	Haskell	Moynihan
Baker	Hatfield, Mark O.	Muskie
Bayh	Hatfield, Paul G.	Nelson
Bellmon	Hathaway	Nunn
Bentsen	Hayakawa	Pearson
Biden	Heinz	Pell
Burdick	Helms	Percy
Byrd, Harry F., Jr.	Hodges	Proxmire
Byrd, Robert C.	Hollings	Randolph
Cannon	Huddleston	Ribicoff
Case	Humphrey	Riegle
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Church	Javits	Sparkman
Clark	Johnston	Stafford
Cranston	Kennedy	Stennis
Culver	Leahy	Stevenson
Danforth	Long	Stone
Durkin	Magnuson	Talmadge
Eagleton	Mathias	Weicker
Eastland	Matsunaga	Williams
Ford	McIntyre	Young
Glenn	Melcher	Zorinsky
Gravel	Metzenbaum	

NAYS—22

Bartlett	Hansen	Schweiker
Brooke	Hatch	Scott
Curtis	Laxalt	Stevens
DeConcini	Lugar	Thurmond
Domenici	McClure	Tower
Garn	Packwood	Wallop
Goldwater	Roth	
Griffin	Schmitt	

NOT VOTING—4

Abourezk	Dole	McGovern
Bumpers		

So the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. CHURCH. Mr. President, I have spoken with the distinguished Senator from Nevada (Mr. Laxalt). It has been agreed between us that the time for the rollcall vote that has just been taken should be divided equally between both sides. I ask unanimous consent that that may be the case.

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Nevada, I yield to the Senator from Massachusetts 6 minutes.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 6 minutes.

Mr. BROOKE. Mr. President, let me take just another tack from that that was taken by my distinguished colleague from Alaska. No one knows whether this treaty is going to be ratified, but in the event the treaty is ratified, I think we ought to be as clear as we can be without any ambiguity, if we can avoid it, as to just what is meant by the so-called DeConcini condition.

I think that it is well and proper that we seek to reassure the Panamanian people that no slight to their dignity has been intended during our debate. I personally hold a deep affection for the Panamanian people and understand and sympathize with their desire to obtain legitimate national aspirations. I believe the American people, armed with the facts, will support justified efforts to help the Panamanians achieve those aspirations.

I am troubled, nevertheless, by the intensity of the controversy that has arisen over the so-called "DeConcini condition." As a result of that controversy, on April 11 I wrote the President and asked the following question:

Under the so-called DeConcini condition does the United States reserve to itself the option to take whatever actions are necessary, including the unilateral decision to use military force on the territory of Panama if necessary, to ensure that the Canal will be available for the passage of U.S. vessels, regardless of whether the

threat to the Canal comes from any source external to Panama or from any internal source within Panama?

Last night I received a reply from the President that stated, and I quote, "The answer to that question is affirmative."

Therefore, regardless of what is contained in the language offered by the majority leader today, I believe it is clear that the United States retains the option to use military force on Panamanian territory, by unilateral decision if necessary, to keep the canal open even if the threat is from a source internal to Panama.

To be sure, this is a discrete right, to be exercised in a limited way and for a limited purpose. But it exists and there should be no equivocation about its meaning.

I do not and would not support an interpretation of the "condition" that claimed for the United States a wide-ranging right to intervene in the internal affairs of Panama. We do not intend in any way to challenge the political independence of Panama. We do not wish to control Panamanian affairs. Therefore, I believe the so-called leadership language may be a useful explanation. But I do not believe that it in any way limits our right to take whatever steps are necessary to maintain U.S. access to the canal in the face of a threat from whatever source. As the President also write in his letter:

It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.

That is, so to speak, the bottom line.

I readily admit that the "condition" is a unique qualification. It has come about because of a very unique situation. It would be foolish to ignore that this is the case. The United States is being asked to give up title to property that it clearly owns, without recompense. It is being asked to forfeit unique "rights" it presently possesses under a binding international agreement. As I have said previously, I am not adverse to legitimate changes in our relationship to the canal and to Panama. They are needed, they are justified. I will vote on this treaty. But, to say this does not diminish the uniqueness of the situation and the likelihood, indeed perhaps the necessity, for unique initiatives such as the "DeConcini condition."

I personally want to assure our Panamanian friends who are listening to this debate that I, for one, deeply desire a continued close relationship between our two peoples.

I think others of my colleagues, perhaps all of my colleagues, want to do that.

I must admit to no particular regard for the present Government of Panama to the principles I believe should govern the relationship between a government and its constituents. But to say that I have a dislike for the Panamanian Government is in no way intended as an insult to the Panamanian people. That I would never do, for I deeply desire that the affinity of our two peoples for each other will continue and deepen as we seek acceptable solutions to difficult problems of concern to both countries.

I again want to make it clear that the "DeConcini condition" should be understood by the Panamanians as well as by us to mean that if there is a threat to the canal arising from within Panama,

the United States will have the right to go in and keep that canal open. That is what we have said in this "condition." That is what the President says in even more forceful language in his letter, and I think this ought to be understood clearly by the Panamanians, or else we are going to have great difficulty down the road.

I ask unanimous consent, Mr. President, that both my letter addressed to the President, dated April 11, 1978, and the President's letter addressed to me, dated April 17, 1978, be printed in full in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

U.S. SENATE,
Washington, D.C., April 11, 1978.

President JIMMY CARTER,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: For the past several months, I have tried in my activities relating to the Panama Canal debate to reduce the level of ambiguity and potential for misunderstanding inherent in both of the treaties. While with my colleagues I feel comfortable in claiming a modest degree of success, the events of the past week indicate that the potential for tension and future debilitating rancor between Panama and the United States is high.

I am particularly disturbed over the controversy that has arisen regarding the so-called "DeConcini condition" attached to the resolution of ratification of the Neutrality Treaty. When the Senate acted upon this matter, I believe the prevalent assumption was that Panama had been informed of the substantive nature of the "condition" and had not indicated any deep reservations regarding it. That does not appear to be the case in light of the Panamanian communications to the Secretary-General of the United Nations and Heads of State of various countries.

Now, we are faced with the spectacle of various members of the Senate and the Administration trying to tell the Panamanians that the "DeConcini condition" does not reserve to the United States the option to act unilaterally with military force on Panamanian soil to keep the Canal operating in the face of an internal threat from Panama while at the same time trying to assure various Senators that that is its impact. I do not believe we can act responsibly on this matter and leave the door open to such ambiguity.

Therefore, I would deeply appreciate it if you would provide me with your thinking regarding the following question. Your answer could do much to clear the air on this matter and would indicate to both the Senate and Panama what interpretation the Administration will consider binding.

"Under the so-called DeConcini condition, does the United States reserve to itself the option to take whatever actions are necessary, including the unilateral decision to use military force on the territory of Panama if necessary, to ensure that the Canal will be available for the passage of U.S. vessels, regardless of whether the threat to the Canal comes from any source external to Panama or from any internal source within Panama?"

It would greatly assist me in my decision regarding the Panama Canal Treaty if I could receive an answer to this question before April 17th.

With warm personal regards, I am

Sincerely,

EDWARD W. BROOKE.

THE WHITE HOUSE,
Washington, D.C., April 17, 1978.

Hon. EDWARD W. BROOKE,
U.S. Senate, Washington, D.C.

SENATOR EDWARD BROOKE: I appreciate your thoughtful letter of April 11, raising the question whether the United States reserves to itself the option to take any necessary action to ensure that the Panama Canal will be available for the passage of U.S. vessels. The answer to that question is affirmative.

Article IV of the Panama Neutrality Treaty gives to each of the Parties ". . . the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations" and provides that each Party ". . . shall have the right to act

against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal." The first "Condition" included by the Senate in its Resolution of Ratification reaffirms this right of the Parties.

In his letter to me dated March 15, General Omar Torrijos noted that, to clear up any confusion in this regard, he and I had earlier prepared a Memorandum of Understanding "which clearly interpreted the unilateral capability of each one of our countries to protect the regime of neutrality against threats, attacks, or a closing of the Canal . . .".

It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.

The correlative part of the Memorandum of Understanding, embodied in the leadership amendment to the Neutrality Treaty, makes it quite clear that action of this character must be confined to the stated objective alone, and that it will not be interpreted as a right of intervention in the internal affairs of Panama.

Thus, the provisions of the Neutrality Treaty are clearly consistent with our existing international objections concerning non-intervention. We have no interest in or intention of intervening in the internal affairs of Panama. Our position in this regard should be clearly understood in both countries.

I am confident you will agree that the Panama Canal Treaties protect the interests of both parties and that they serve the highest national interests of the United States.

Sincerely,

JIMMY CARTER.

The PRESIDING OFFICER. Who yields time?

Mr. GRIFFIN. Mr. President, on behalf of the Senator from Nevada, I yield the remaining time on this side to the Senator from North Carolina. May I ask how much time that is?

The PRESIDING OFFICER. The Senator from Nevada has 3 minutes.

Mr. GRIFFIN. I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I think it is essential to read into the Record a paragraph from the letter of the President of the United States to Senator Brooke, to which the able Senator has added. I quote:

> It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the canal from any threat, regardless of its source.

"Regardless of its sources." I submit, Mr. President, that the President of the United States has, in fact, with those words, introduced a new element into the debate by including the phrase "regardless of its source."

At least he is candid to that extent, but he is not quite so candid, I would say to the Senator from Massachusetts, when he says that such intervention will not be interpreted as intervention in the internal affairs of Panama.

Now, I anticipate that the Panamanians will interpret this differently. I pray, of course, that the obligation to this flawed treaty will not result in violence in Panama. But this treaty is an engraved invitation to agitators. This Senate will make a grievous mistake if it does not send these treaties back for renegotiation.

Mr. President, here we are in the final day of debate on the Panama Canal treaties, and this reservation, submitted so late, in such a state of frenzy, and drafted in such secrecy, shows clearly that we are no nearer to a consensus on the meaning and importance of the treaties than when we started. It is still the generally accepted wisdom that the decisions of two or three Senators today, the last day, will decide the ultimate disposition of the matter.

Mr. President, why is it that the President of the United States, the entire foreign policy apparatus, the power structure of academics, businessmen, and bankers, and the most powerful voices of the media have been unable to convince the American people that these treaties are in the best interests of the United States? Why is it that in the last 2 weeks or 10 days that even the supposed beneficiary of these treaties, the Republic of Panama, has balked at accepting the work of the Senate?

The fact is, Mr. President, that these treaties are still under a cloud. They originated under a cloud, they were negotiated under a cloud, they have been debated under a cloud.

The result is that it will be virtually impossible for the United States and the Republic of Panama to work out a mutually acceptable and productive relationship, whether the treaties pass or whether the treaties fail. The threat of violence and disagreement was the ostensible reason for negotiating these treaties; yet the threat of violence and disagreement still hangs over the future, even if the treaties are ratified.

The Senator from North Carolina was one of the first Senators to visit Panama after the treaty drafts were announced. On August 19, when I arrived at the airport, the press asked why I had come. I said then, and I repeat it now, that my intention was nothing but that of good will toward the Panamanian people. I said that I stood ready, should the treaties fail, to work together to help the Panamanian people; that, indeed, oppostion to the treaties was not to be interpreted as hostility toward the Panamanian people.

I repeat that today because I feel that these treaties are not in the best interests of the Panamanian people. If they fail today, there will be bitterness and disappointment, and it will be difficult to pick up the pieces. But if the treaties are ratified, it may well be the beginning of the distintegration of the Panamanian freedom and independence.

For it has already been demonstrated that the treaties are fatally flawed. There is already bitter disagreement between Panama and the United States as to the meaning and interpretation of the most significant passages. Once the treaties go into effect, should they be ratified, the practical application of these terms and requirements will inevitably continue, destabilizing Panamanian economic and social structures. I have demonstrated on this floor that Panamanians will lose jobs, not gain them as a result of the treaty. And when this new unemployment is added to the present economic stagnation, the climate will be ripe for political agitation.

Why are these treaties under a cloud? Why are they fatally flawed? They are fatally flawed because there has never been a meeting of the minds on the fundamental problem, which is the transfer of sovereignty. Now I realize that the notion of sovereignty has been ridiculed on this floor from the beginning, as something of no importance. But if the treaties flounder, they will do so because that issue was never resolved. Sovereignty was not the issue, we were told over and over again; yet it is the issue upon which, even if the treaties succeed, we will come to grief.

For sovereignty is the question of ultimate power. It answers the question: who has the right to decide what actions may take place within a defined territory? As long as the United States is free to

exercise all the rights of a sovereign within the territory of the Canal Zone, there was no doubt that we could do whatever was necessary to defend it. There was no question of intervention in the internal affairs of Panama. There was no question of violating the territorial integrity of Panama.

But the moment that the United States surrenders its sovereign rights, then every thing that we do, every action, is subject to the will of Panama. It is as simple as that. When Panama is sovereign, Panama decides.

At the root of the problem is a fundamental unresolved contradiction that our negotiators failed to solve. The treaties are an attempt to paper over that contradiction.

The ultimate issue in sovereignty, of course, is the right to use force. That is what sovereignty is all about. There may be disputes about actions of a lesser level, but in the end, they come down to the issue of who has the right to use force.

The treaties attempt to pretend that there will never be any division of opinion between the United States and Panama on how the ultimate right to use force will be exercised. But that is an absurd supposition. It is an insult to the people of Panama. It assumes that they will be forever subservient to the desires of the United States.

That is why the people of Panama have been so disturbed over the past few weeks. The United States has made it clear that, despite the pretence of handing back sovereignty, we intend to keep the ultimate right to use force, even against the Panamanian people if necessary. There can be no other interpretation.

The President of the United States has said in writing that we intend to use force against any threat to the canal. I repeat, against any threat to the canal. From the standpoint of the United States, I applaud his intention; but from the standpoint of the people of Panama, it can only mean that the President of the United States intends to use force against the people of Panama if the President decides that the people of Panama are the threat.

Let us not pretend that it does not mean that. It does mean that. The DeConcini reservation simply makes manifest what is implicit in the formula of the treaties. The DeConcini reservation brings out into the open what is merely implied. And the attempt of the leadership to hide the true meaning of the treaties does a disservice to the people of the United States and the people of Panama.

The Senator from North Carolina knows full well that some of his colleagues have adopted a cynical attitude. They have been saying to him privately that the problem is not in the concept of the treaties, but in stating it openly. In other words, they say that it is all right for the dictator of Panama and the President of the United States to have a private understanding that the United States has the right to exercise the ultimate sovereign power of force, but that it is wrong to state it in writing.

Indeed, when the Senator from North Carolina spoke to President Lakas of Panama, even President Lakas attempted to make the same proposal.

But the Senator from North Carolina rejects that concept as unworthy of two great nations, one large, and one small. It can only be described as deception. Furthermore, it is a violation of

every international agreement that we have ever signed. Indeed, Panama is absolutely right in asserting that the DeConcini reservation is a violation of the U.N. Charter, the Rio Pact, and the OAS Charter. But if the DeConcini reservation is such a violation, so are the basic treaties if you make their implicit logic explicit.

Nor is the Senator from North Carolina raising this issue belatedly I raised it in the hearings of the Senate Armed Services Committee, and received replies from Admiral Holloway that made it crystal-clear that our military leaders had an imperfect understanding of our rights under international law. I am almost embarrassed to read his reply. He said:

> The relationship of the Canal to the national security of the United States is such that the independent introduction of military forces into the territory of Panama by the United States in response to a reasonably perceived threat to the neutrality of the Canal, likewise would constitute a reasonable exercise of the inherent right of individual self-defense by the United States and so would be permitted by the (UN) Charter.

Now I want to make it clear that I agree wholeheartedly with the sentiment that the canal is so important to the national security of the United States that defense of the canal is tantamount to the defense of the United States. But the point is that we are hamstrung in exercising such defense once sovereignty is turned over to Panama because of other agreements which take precedence over the Panama Treaty, namely, the UN Charter and the OAS Charter. I think that it was unwise to agree to the restrictions of the UN and OAS Charters; but we did agree. If we are going to keep our word, then Admiral Holloway's reply is sheer nonsense.

Nor did the Senator from North Carolina fail to attempt to highlight the fundamental contradiction in the treaties. On the very first day of debate, I introduced a substitute for the leadership amendment to the Neutrality Treaty, a substitute that would make explicit our right to intervene. When that substitute was debated, I pointed out that only by such explicit language, agreed to by Panama, could the right of intervention have the color of legality. In a lengthy colloquy with the distinguished Senator from Utah, Mr. Hatch, the whole issue of sovereignty, intervention, and their relationship with our international obligations was developed at length and in detail for the edification of the Senate.

The Senator from North Carolina proposed the retention of an enlarged Galeta Island base under the terms of the 1903 treaty; such a base would have preserved the sovereign jurisdiction of the United States, including the sovereign right to use force, without violating the internal affairs of Panama. But the Senate, in its apparent wisdom, also turned that down.

During the debate on the final passage of the Neutrality Treaty, the Senator from North Carolina warned that the leadership amendment failed to meet the problem posed by the transfer of the exercise of sovereignty back to Panama. I stated at that time:

> Once the transfer takes place, then the United States has no right to assert its interpretation of treaty rights over another sovereign state. The Senator from North Carolina pointed out that our obligations under the United Nations Charter, the Rio Treaty, and the OAS Charter precludes us from using force or the threat of force for any purpose except individual or collective self-defense. Since the Canal will no longer be defended as part of U.S. territory, it is manifestly absurd to hold that we

could defend the Canal as part of our own self-defense; we could only defend the Canal as part of collective self-defense with the Republic of Panama.

Once the Canal falls under Panamanian sovereignty, then Panama is the sole judge of any treaty right or of any interpretation of the regime of neutrality. The Treaty proponents are in the position of claiming that the United States has the unilateral right to invade the territory of another nation in order to assert our own interpretation of a treaty right. . . .

In any case, the introduction of U.S. troops into the territory of Panama, without Panama's permission, in order to assert our interpretation of the treaty would be a blatant violation of Panama's territorial integrity and Panama's political processes. Whatever political process Panama would use to come to her interpretation of the impact of the treaty on events or situations on her sovereign territory obviously would be violated.

Mr. President, the issue remains unresolved today. The President has written to the distinguished Senator from Massachusetts, and he attempts to assert both sides of the contradiction at the same time. He says, and I quote:

It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.

That is what the President of the United States says: any threat. Any threat. The President does not exclude threats which arise from the internal affairs of Panama. The President does not exclude threats which arise from within the integral territory of Panama. How can he exclude such threats? Is it not possible that such threats may be the most likely of all threats?

So the President is not excluding actions when the threat arises from Panama's internal affairs.

Nevertheless, the President has not abandoned the agreed-upon double-talk. He says:

The correlative part of the Memorandum of Understanding, embodied in the leadership amendment to the Neutrality Treaty, makes it quite clear that action of this character must be confined to the stated objective alone, and that it will not be interpreted as a right of intervention in the internal affairs of Panama.

What the President is saying is that any intervention in the internal affairs of Panama for the sake of defending the canal will not be interpreted as an intervention in the internal affairs of Panama.

Well, of course, the United States will not so interpret our intervention in the internal affairs of Panama; but can anyone have any doubt that Panama will interpret it as an intervention in the internal affairs of Panama?

The terms of the argument are contradictory. The President is trying to reconcile two opposites by declaring that they are not opposites. But the two propositions are mutually exclusive. And if the Senate of the United States attempts to assert both propositions at the same time, our whole relationship with Panama inevitably will come to grief.

It is far better to have the language explicit, rather than attempt to sort things out later when our only choice would be to use force against Panama. Our only choice would be the much discussed "gunboat diplomacy." Unless of course, we simply surrendered our rights and our best interests and withdrew.

Therefore, no one is doing a favor, either to the people of the United States or to the people of Panama by insisting that the right to intervene against "any threat regardless of source" does

not include threats whose source is the internal affairs of Panama. Of course it includes threats from Panamanians. Of course it includes threats that arise from social conditions, including strikes, riots, and demonstrations. Of course it includes intervention against any decision of the Government of Panama that threatens the operations of the canal. What else could it mean?

And if it does mean these things, what good does it do to issue a declaration that intervention against any of these internal affairs will not be interpreted as intervention in internal affairs. I submit that the President of the United States has, in fact, introduced a new element into the debate by including the phrase "regardless of its source." At least he is candid to that extent; but he is not candid when he says that such intervention will not be interpreted as intervention in the internal affairs of Panama.

That phrase "any threat regardless of source" may well be sufficient reason for Panama to reject the treaty, in whole or in part, either now or in the future. There is no way in which any person who understands the English language can interpret that as a nonintervention pledge. Rather, it is the opposite; it is a pledge to the people of the United States that the United States will intervene in Panama.

So, Mr. President, I say again that if this Senate acts with wisdom, it will return these treaties to the negotiating table so that we can come up with a solution that will be acceptable to the Panamanians and acceptable to the American people, 72 percent of whom are in strong objection to these treaties.

The PRESIDING OFFICER (Mr. Riegle). Who yields time?

Mr. Church addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, earlier in this debate I spoke to the leadership amendment and emphasized that its purpose was to underscore the fact that the United States remains firmly committed to a policy of nonintervention in the internal affairs of the other countries of this hemisphere.

I alluded to an earlier policy of the United States, often described as the gunboat diplomacy of the 1920's, and also to the mentality of the Platt amendment through which we sought to enforce our authority inside Panama whenever we chose to do so.

Mr. President, the Platt amendment was repealed by the Congress of the United States in 1934.

Ever since that time, consistent with the Good Neighbor Policy enunciated by Franklin Delano Roosevelt, the United States has firmly committed itself to respect the rights to self-determination of our neighboring countries.

But I did not mean to suggest in my earlier remarks that the United States alone practiced a policy of interventionism in the early years of this century.

I think that Ambassador Jorden, the U.S. Ambassador to Panama, put this whole matter in proper perspective when he testified before the Foreign Relations Committee. I think his testimony ought to read into the Record at this point. This is what Ambassador Jorden had to say on the sensitive question of interventionism as it is seen by Latin Americans:

Now, intervention in Panama and in the minds of the Latin Americans has a very special meaning. When Latin Americans think about intervention they think of foreign troops coming in, killing their people, removing their government or replacing their government, taking over and running the show, and that is the context of intervention for the last 50 years in Latin America.

They remember the Spanish, they remember the French in Mexico, they remember Haiti and Nicaragua and all the rest of it. When they talk about intervention that hits a very sensitive nerve and it is bloody difficult for any Panamanian to say, "Yes; we have given the United States the right to intervene."

Now, when we are talking about intervention we are talking about a very different thing. We are talking about fulfilling a specific treaty obligation to protect the Panama Canal, not to destroy Panama or replace the government but to protect that canal. I think that most Latin Americans would not have any problem with that because the canal is important to them, to Peru and Ecuador and Nicaragua. All these countries that use the canal want to have it protected, want to have it open and safe, and would be quite happy if the United States did protect it.

Now, the Ambassador said everything that needs to be said on this score and, clearly, this is what the language of the leadership amendment accomplishes.

Mr. President, I reserve the remainder of my time.

Mr. GRAVEL. Will the Senator yield to me?

Mr. SARBANES. Mr. President, how much time is left to the managers of the bill?

The PRESIDING OFFICER. The Chair would advise that the managers of the bill have 7 minutes remaining.

Mr. SARBANES. We need to reserve about 5 minutes. I yield 2 minutes to the Senator from Alaska.

The PRESIDING OFFICER. The Senator from Alaska (Mr. Gravel) is recognized for 2 minutes.

Mr. GRAVEL. Mr. President, just briefly, when the heads of state came to Washington to witness the signing of the treaty by Jimmy Carter and Omar Torrijos, we Senators had a reception in the Russell Office Building, a luncheon, to receive these gentlemen.

I was fortunate enough to be seated at my table next to the President of the nation of Colombia, whose name is Lopez Michelsen.

I was struck by the intellect of this gentleman and felt very proud to be associated with him. I was impressed that South America would have this kind of a leader.

I had previously met Carlos Andres Perez of Venezuela, who I thought was similarly a great intellect and a great leader.

So I would like at this time to have printed in the Record a statement made by President Michelsen with respect to the issue of intervention at the recent dedication, in the last few days, in his country, and it deals with the subject most cogently.

I think it is something that should be part of this record because of the fine statements already made by others.

There being no objection, the material was ordered to be printed in the Record, as follows:

SPEECH BY PRESIDENT MICHELSEN

(Excerpts of speech delivered by the President of Colombia, Alfonso Lopez Michelsen, on Sunday, April 16, at a ceremony of the laying of the cornerstone for the museum Jose Eliecer Gaitan, named after the liberal leader assassinated in Bogota, Colombia, during the signing of the "Bogota Charter" also known as "The Charter of the Organization of American States," which spell out very clearly the principle of nonintervention.)

President Lopez Michelsen praised Gaitan's opposition to any type of intervention and the adoption by OAS of the "Charter of Bogota", under which for the last three decades the right of non-intervention by a foreign power is guaranteed.

"Gaitan's struggle", he said, "was not against the United States, but against the type of imperialism, that we, as Latin American countries, have to stand united against."

"What a strange coincidence that precisely when we are commemorating the end to the unilateral intervention of the United States in our countries, an amendment of the U.S. Senate, in the treaties that set forth the autonomy and sovereignty of Panama, would want to protocolize again, after 30 years, the U.S. right to intervene in our territories."

He advised the foreign powers not to set foot on "the sacred soil of Latin America." (Quote: "That the foot of a foreign country never be set on the sacred soil of Latin America.")

"It can't be that today under the pretext of assuring transit through the Canal, or tomorrow under the pretext of fighting drug traffic, or the day after tomorrow in the name of man's right against one or other ideology, it is justified that a country, unilaterally, acquires the right of intervention."

Mr. GRAVEL. I ask unanimous consent to have printed in the Record a statement made by the Prime Minister of Great Britain, James Callaghan, as to the interest that his nation places with respect to Panama.

There being no objection, the material was ordered to be printed in the Record, as follows:

STATEMENT BY BRITISH PRIME MINISTER JAMES CALLAGHAN

Britain has vital interests in the Panama Canal. Our ships are the second largest users. We have made an exhaustive study of the texts of the new treaties, which we unreservedly support as a permanent and stable solution to the future of the canal.

In our view, the treaties will insure the maintenance of the canal as a major international waterway, free and open to all nations.

Mr. GRAVEL. Mr. President, how much time do I have?

The PRESIDING OFFICER. Fifteen seconds.

Mr. GRAVEL. I do not think I can read what I have in 15 seconds so I will try to get another 15 seconds or a minute later on in the discussion.

I thank my colleagues.

The PRESIDING OFFICER. Who yields time?

Mr. Melcher addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana (Mr. Melcher).

PANAMA'S SUCCESSFUL ECONOMY AND THE IMAGE OF THE UNITED STATES IN LATIN AMERICA

Mr. MELCHER. Mr. President, although I am one of the minority who opposed the Neutrality Treaty and who, therefore, opposes this treaty, I have asked for this time to summarize my concerns on economic matters of Panama operating the canal as contrasted with our image in Latin America.

Many supporters of the treaties expound that a strong and powerful United States can demonstrate its greatness by giving all of the canal facilities to Panama, and they espouse it as the proper act for us to salvage or enhance our prestige in Latin America. Accompanying that proposition is the administration admonition that there should be no strings attached, no amendments to the treaties other than those of Baker-Byrd, and no reservations of substance such as the DeConcini reservation. Can the assumption

that this gift to Panama will enhance our image in Latin America bear analysis?

It is not my purpose to argue ownership, sovereignty or the propriety of the 1903 treaty. The facts concerning these three points are relevant, but they are not the central issue concerning the adoption of the treaties.

There are several points that I would stipulate to in the old or new treaties. Our original purchases of the land in the Canal Zone—both from the individual owners of parcels of land (about one-third of the total), and the balance from the Government of Panama—may have been at prices that were too cheap. I would have further stipulated that the annual return to Panama for the operation of the canal and the Canal Zone should be much higher and that the restricted use of the land within the Canal Zone has been unreasonable and harmful to Panama. These stipulations could and should have been remedied more than a generation ago. The treaties do correct those inequities in a strange mixture.

Gradually over the next several years we give up control of the land in the Canal Zone. Likewise, gradually over the next several years we give up control of the canal's operation but continue for 22 years to participate in the management. During this period of time—22 years—we provide funds for Panama to assure—I repeat—to assure—make certain—guarantee, if you will—that the canal's operation will be efficient and effective. So the economic and land injustices for Panama are corrected.

If there were no more to the treaties than that, or if the treaties provided some form of a beneficial partnership for Panama and the United States beyond 1999, I would not fault them—I would vote for them. But there is much more.

Under the treaties, after 1999 we cannot participate in the canal's operation. This apparently is the price we are to pay for Panama to accept the complete ownership of the canal's facilities, the railroad, the buildings, homes, land, and military facilities, In 1976 dollars the fair market value of all of this is $10 billion. We will further assist in military sales of $50 million; help in up to $200 million of Export-Import Bank credit; $75 million in housing guarantees; and participate in $20 million through the Overseas Private Investment Corporation. There will be $43 million cost to us for transfer of military, and $165 million spread over 20 years for early retirement of Canal Zone employees.

Will this generosity be an enhancement of our prestige in Latin America? To turn over the $10 billion in assets to provide the other monetary assistance, it is raionalized by the administration, will show how strong and fair a nation we are.

Actions of benevolence by the United States during the past two decades have not necessarily enhanced our world prestige, which has slipped during this era while we have been generous with foreign aid. It is an old axiom that one cannot buy friends, and our foreign aid efforts in Latin America have borne that out.

The per capita value of all that goes with the treaties is about $6,000 for every man, woman, and child in Panama. Naturally, the individual people will not see much of it, because the bulk is in assets connected with the canal's operation. They have benefited from that operation and will continue to do so. The per capita loss

to each man, woman, and child in the United States of about $46 will not be felt directly, because the canal for us has been a principal asset only in the sense of facilitating world commerce—an indirect but important benefit and, therefore, if the canal continues to operate efficiently, the benefit continues, and no actual loss is felt by Americans.

For the Panamanian people to benefit in the long run from the canal depends on its continued successful operation in the future. It is at this point that I believe the treaties falter and demonstrate not U.S. strength, but clearly demonstrate weakness in our lack of practical planning and our willingness to sub-jugate ourselves to the clamor of the administration that beyond 22 years there should be no concern about the canal.

That argument—after 22 years everything will work out fine—is a very tempting lyric from a tune orchestrated by the entire administration. All of us in the Senate have extremely pressing problems for our individual States. Indeed, collectively congress and the administration are well aware that our own domestic problems are so grave and urgent that we should not be spending great amounts of time on the Panama Canal Treaty debates while the U.S. economy stagnates, basic American industries founder, the dollar shrinks from inflation, and millions of Americans cannot find a job. So the temptation of the treaties is to say "yes" and get them behind us. But that, I believe, is the true weakness of the United States—the willingness of the Executive branch—three Presidents—and their State Department to concede unreasonably, to believe that all will work out for the best in the treaties, and to assert that the cash and canal assets turned over to Panama will show us to be a truly strong nation.

Their faulty concession is that U.S. money backup and comanagement is essential for 22 years, but after 1999 neither will be required at all. We are dealing with a small country under a pretty tough dictator. Panama surely does not now have the economic base to operate the canal efficiently without our help.

It takes patience and persistence by us to work out long-range practical comanagement of the canal with Panama. Both sides of the negotiators—probably for political reasons—bargained and stalled for years and never reached a reasonable comanagement arrangement. The politics on the Panamanian side involved the symbolic removal of the United States from their country—get out, period, Getting rid of us has become the focal point for General Torrijos' national guard to gain a "liberation" image that helps their control over Panama. For the United States to abruptly abandon all interest or participation in the canal would be a startling event for individual Americans. Hence, the limbo period of 22 years of comanagement. It is a "Catch-22"—long enough so Americans are not to worry about what happens to the canal's operation after that, and short enough so the Panamanians can see complete control of the canal without a U.S. presence.

It has been argued by some on one side of the issue that there is a threat of Communist takeover by Cuba or Russia. It has been argued by some on the other side that failure to agree—here and now—to these treaties precipitates another "Vietnam" requiring 100,000 or 200,000 American troops guarding the canal. There is

neither any sign of a Communist takeover nor a new "Vietnam." For Cuba, Russia or any aggressor to disrupt the canal's operation brings down the solid wrath of all the world's countries that use the canal. As for the "new Vietnam" argument, that assumes the Panamanians have given up on negotiating and have reversed their generally peaceful nature to become warriors without weapons to destroy that which provides their best economic base—the canal's operation itself.

Rather than view a form of comanagement of the canal as an infringement on the country of Panama, I view it in a business sense, as the sensible procedure to help Panama in a meaningful way. For the very same reasons that continued financial help for panama is necessary for 22 years to operate and maintain the canal, we need some arrangements for the same joint responsibility after 1999.

Panama has attracted foreign capital through banking and insurance laws that are looser than most countries. They have attracted foreign capital for other reasons—principally because of their close ties to American business with the solid backing of the U.S. Government. Panama's share of U.S. investment in the Latin American Republics is 42 percent. That is the lion's share. Almost half of all business investment by U.S. interests in Latin America is in Panama. It amounts to $1.8 billion. That is, indeed, close business ties between Panama and the United States.

The Panamanians argue that with the treaties they will be on even more solid ground for continued opportunities to secure outside capital. However, it is important to note that Panama is overextended now, paying 28 percent of their annual revenue for interest due on their debts. They, in particular, need the financial gains the treaties guarantee them to even hold their own shaky economy together.

If foreign investment at decent interest rates are to be available for Panama over a period of time, the complete absence of American participation in the canal's operation will be a disadvantage to Panama's credit. Efficient operation of the canal is the cornerstone of Panama's economy, and assured financial backup for effective maintenance and management is their best collateral to attract capital. That is the basis to attract long-term, long-line credit, which has been available to Panama partly—or, perhaps, largely—because of its close ties to the United States. With annual annuities and other funds backed by the U.S. Government for 22 years, Panama's credit for that period of time should be good. After 1999, without the financial backup from the United States and without our comanagement of the canal, the Panamanians are less likely to attract outside capital to expand their economy.

I believe world bankers, as a group, are more conservative and careful on investments than most of us, but I ask of you: Would any of you care to invest in long-term bonds for Panama to mature after 1999? In short, I believe that the business world outside of Panama and the business community within Panama rely on the backing of the United States both for credit and for a responsible government in Panama and, from that, a growing economy can possibly be nurtured.

The existing government under General Torrijos' national guard denies so much that is basic in a democracy that I believe their government will either be deposed or gradually reshaped. Torrijos has succeeded for 10 years, because of our solid backing. Substantial U.S. backing cannot continue if Torrijos and the national guard continue to deny democratic elections, an independent judiciary, and a government run by fairly elected officials rather than elections rigged by the national guard, and government official subservient to the national guard.

The treaties do not affect that directly but, because they do not continue a form of active cooperation in the canal's operation after 1999, there is a likelihood that U.S. business investment will decrease then. Since the canal is the basic part of Panama's economy, any slippage in its efficient operation damages them first in lost revenue then, second, in credit rating. Inadequate funding works against the best interests of the canal's operation. We share that interest with the rest of the world who use the canal.

We have a special relationship with Panama, because of our development of the canal and our responsible operation of it. Although we have negotiated with Panama for a long period of time to reach the point where we now are, in my judgment the treaties do not produce a satisfactory long-term arrangement with and for Panama.

With more negotiation there is every reason to believe the treaties could become a firm and productive arrangement between Panama and ourselves. As they are, Panama receives a big gift but we, by the treaties terms, remove our backing and all responsibility after the year 1999. That gift and withdrawal is not necessarily a sign of strength. Rather, it would be a stronger United States that patiently but pointedly renegotiated arrangements with Panama to back up, assist and participate in the continued management of the canal's operation.

Negotiations to reach such a treaty would provide a sensible, sound leadership position helpful more to Panama than ourselves. That would provide an assurance of continued efficient operation of the canal, basic to Panama's economy, and an important advantage for world commerce, which is of great significance for all of Latin America—probably more beneficial to them collectively than to us.

But, then, that is the true sign of greatness and that is what is now lacking in the treaties.

Renegotiated treaties could retrieve it for us.

Mr. President, if I have any time remaining I reserve the remainder of it.

The PRESIDING OFFICER. The Senator is advised that he has 2 minutes remaining and it is so reserved.

Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Illinois seek recognition?

Mr. PERCY. Mr. President, will the Senator yield 1 minute?

Mr. SARBANES. Mr. President, what is the time situation?

The PRESIDING OFFICER. The Chair advises that the proponents of the amendment have 5 minutes remaining and the opponents have 1 minute remaining.

Mr. SARBANES. I yield 1 minute.

Mr. PERCY. Mr. President, I supported the DeConcini amendment.

The pending reservation before us now does not diminish the DeConcini amendment, or anything else in the treaty, as many Senators opposing the treaties have been arguing. In my judgment, it simply interprets what we mean in the treaties. It states that our purpose in taking any action will be to keep the canal open, not to intervene in the internal affairs of Panama.

This is a clarification, not a weakening of the treaties or the DeConcini amendment.

I am pleased to be a cosponsor of the reservation.

Mr. President, I indicated I would support the treaties only conditioned upon our accepting amendments that would make it possible for U.S. warships in perpetuity to go to the head of the line and that would make it possible to protect the neutrality of the canal from outside intervention at any time there was a threat to the canal. I think the leadership reservation improves the DeConcini amendment by clarifying that the objective and purpose of all of us, including Panama, is to keep the canal open. The United States stands ready to help and assist in that regard, whenever it is threatened, working in partnership with Panama.

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. SARBANES. Mr. President, I yield 1 minute to the Senator from Arizona.

Mr. DECONCINI. Mr. President, I support the leadership amendment.

I am rising to speak, Mr. President, on behalf of an amendment to the instrument of ratification which bears the name of the majority leader, the minority leader, a number of other distinguished Senators, and myself. This amendment is designed to clarify a few very simple concepts that apparently have been misunderstood by the Panamanians and some Members of this Chamber. The misunderstanding centers around what has become known as the DeConcini amendment to the Neutrality Treaty.

Let me begin by indicating that I have approached these treaties negatively from the outset. After my visit to Panama which included numerous discussions with Panamanian leaders, including General Torrijos himself, I came away with the very distinct impression that Americans and Panamanians had radically differing perceptions of these treaties and the rights they conferred on the United States and Panama. Since that time, I have stated publicly and privately that I would not support the treaties unless certain questions were satisfactorily answered. Of most concern to me was the Americans' right to keep the canal open after the year 2000 should it be closed for any reason.

I should add that I have never been an opponent of the idea of new treaties with Panama. I sincerely believe that our relationship with that nation needs to be redefined in order to reflect the changed values of the 1970's. In all too many ways, the present treaty arrangement reflects a bygone era.

However, I have also felt that any new treaties must protect the special and historic American interests in the canal.

Quite frankly, Mr. President, it was my intention to vote against these treaties, although I held out the option of voting "yea" if certain changes could be incorporated. It was not until it became apparent to the administration that my vote might be crucial that serious overtures were made to accommodate these concerns. After a period of serious negotiations with the administration in which the Senate leadership played a key role, agreement was reached on both the form my amendment would take—that is, as a condition to the instrument of ratification—and its content.

Although there have been conflicting reports on this point, it appears that the administration may have been unaware that the wording of the DeConcini amendment would cause profound consternation in Panama. At least, we can say for sure that on March 16, none of us in the Senate believed that it would cause much protest from the Panamanians. And the reason for this is quite simple. The DeConcini amendment asserted no right that had not already been asserted in the report of the Foreign Relations Committee. On page 6 of that report and unequivocal American right to use force to protect and defend the canal was clearly stated to be the intent of the "leadership amendments." At one point, the report says:

> The United States has the right to act as it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

In other words, Mr. President, the DeConcini amendment in no way sought to go beyond the rights already asserted by the Senate Foreign Relations Committee. My amendment was specifically addressed to the question of whether those rights were actually conferred by the language of the treaty itself and the subsequent leadership amendment. In my view—and in the view of a number of my Senate colleagues—the actual language was insufficient to sustain the rights asserted. Thus, we sought at the time to remedy the situation, not by creating any new rights, but by less ambiguously stating those rights we were told by the Foreign Relations Committee already existed.

The amendment we have before us now is an attempt to reassure the Panamanian people that the United States is not asserting, nor has it ever asserted, a right to intervene in the internal affairs of Panama. I would like to reiterate my words at the time the original amendment was introduced and passed:

> I believe I speak for all Senators in stating that it is not our expectation that this change gives to the United States the right to interfere in the sovereign affairs of Panama. The United States will continue to respect the territorial integrity of that Nation. My amendment to the resolution of ratification is precautionary only; and it is based on the long history of American stewardship of the Canal. It recognizes the very special relationship that the Panama Canal has to American security. I certainly hope that if this right is attached to the treaty it will never need to be exercised. Yet, it is important that the American people know that should the need arise, the United States has sufficient legal sanction to act.

It is unfortunate that so many Panamanian people and their leaders have misconstrued the original DeConcini amendment. I believe that the misinterpretation may, in part, have been the result of considering the amendment in the context of a sometimes intemperate Senate debate on the canal treaties. In the heat of debate, we have occasionally used phrases or words that do not

truly reflect the high regard we have for the Panamanian people and the respect that we have for every sovereign state. That, however, is the price we pay for openness and democracy. I sincerely believe, Mr. President, that not viewed in the context of this debate, the Panamanian people surely would not have reacted as they did to my amendment.

But that does not change the facts. This negative impression has been fostered by certain segments of both the American and Panamanian press. Thus, Mr. President, what we are doing today is asking the Senate to adopt an amendment to the resolution of ratification that was carefully worked out with all parties. Its purpose is to put to rest Panamanian fears that the United States is asserting in the DeConcini amendment a right to intervene in the internal affairs of the Republic of Panama. But—and this is equally as important—we are leaving intact the thrust and purpose of the DeConcini amendment which is to allow the United States to retain the right to keep the canal open.

I am satisfied, Mr. President, that the amendment we have before us today accurately reflects American policy. It restates our traditional view of nonintervention in the internal affairs of other nations, and it makes clear that in the exercise of our rights to keep the canal open we shall never have as our purpose the interference in the internal, sovereign affairs of the Republic of Panama. On the other hand, we also make it clear in the words of this amendment that the right to keep the canal open is unaffected. We are saying, simply, that in the exercise of that right we shall clearly have as our objective only the keeping open of the canal and not any other objective, such as interfering in Panama's internal politics.

Let me say, Mr. President, that the majority leader has shown great wisdom, restraint and patriotism in his handling of the delicate discussions that have led to this amendment. He has displayed an even-handedness toward each party and a respect for the interests of each party that sets him apart as a true leader. I believe this Nation owes him the deepest debt of gratitude.

I thank the Chair.

Mr. SARBANES. Mr. President, I simply wish to underscore, as we close out our time on the leadership amendment that these treaties represent an opportunity for the United States and for Panama and for the peoples of both countries to join together in a constructive and positive partnership. It offers the opportunity to assure that the canal will remain open, secure, accessible, and neutral. It will continue to serve as a great international waterway, at the same time that it gives assurances to the people of Panama that there will not be intervention in their internal affairs, that their sovereign integrity or their political independence will not be interfered with, that the very things which the able Senator from Idaho mentioned as being encompassed within the term "interventionism" in the thinking of Latin America will not take place.

Mr. President, much has been said over the course of this debate and as a consequence reactions have been prompted both here and in Panama. One would hope, as we come to the closing minutes, that, should these treaties take effect, then both parties would seize the opportunity which is presented to develop a new relationship

and to enhance the strength of both the United States and the Republic of Panama. These treaties are fair treaties. They are treaties designed to respond to the interest of both parties and to do so in such a way that fully recognizes and accords the respect that peoples are entitled to.

The leadership amendment, which is before us, is an important contribution to this objective just as the other amendments which have been made to the resolutions of ratification have been important contributions as the Senate has carried out its role of advising and consenting to these treaties.

The PRESIDING OFFICER. The time of the proponents has expired.

Mr. MELCHER. Mr. President, I have no further requests for time. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina has 1 minute remaining.

Mr. HELMS. Mr. President, I yield that 1 minute to the distinguished Senator from Alabama. I see him shaking his head. So in that case, I yield it back.

The PRESIDING OFFICER. All time has been yielded back.

AMENDMENT NO. 104

Under the previous order, the hour of 2:30 p.m. having arrived, the Senator from Alabama (Mr. Allen) is recognized to call up an amendment on which there shall be 30 minutes debate with vote thereon to follow the debate.

Mr. ALLEN. Mr. President, I ask that the amendment be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. ALLEN) for himself, Mr. THURMOND, and Mr. HELMS, proposes amendment numbered 104.

At the end of the amendment, add the following:

This reservation shall not be construed as limiting, detracting from, or diminishing the rights reserved to the United States in the DeConcini Reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 10 minutes.

Mr. ALLEN. Mr. President, the pending leadership amendment to which this amendment is offered is brought to us by the same people who brought the leadership amendment to the Neutrality Treaty, an amendment that was found to be so deficient and so full of holes, in the judgment of many here in the Senate, and it is brought to us by the same people who brought the DeConcini amendment.

I say that after the DeConcini amendment was offered, the leadership embraced the amendment, recommended it to the Senate, and it was approved by the President of the United States.

So a moment ago, when a point of order was raised that the leadership amendment was out of order, because it sought to amend the DeConcini amendment in the other treaty, I voted with the leadership in moving to table that appeal, because I do believe that the leadership can offer amendments and get anything added onto this treaty that they see fit, because they do have a majority

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who follow their recommendation with respect to approval or disapproval of amendments.

But that does not remove the fact that no matter what is placed in this treaty as an amendment or as a reservation, it cannot alter the terms of the DeConcini amendment. That is there to stay. It is frozen into that treaty, because it has already been passed on by the Senate. The time for reconsidering the vote has expired.

It was an amendment that was recommended to the Senate by the leadership.

But I must say, Mr. President, that since the Panama Canal Treaty has been under consideration, the main thrust of the leadership has been to undercut or dilute the provisions and the meaning of the DeConcini amendment.

But, Mr. President, if the DeConcini amendment can withstand, as it apparently has, the provisions of the first two leadership amendments, and the present leadership amendment is on all fours with the first leadership amendment in the Neutrality Treaty, but if it can withstand the provisions of the leadership amendment to the Neutrality Treaty by the wording in the DeConcini reservation saying that "Notwithstanding the provisions of article V or any other provision of the treaty, if the canal is closed or its operations are interfered with, the United States can take whatever means, including military action, to keep the canal open," if the DeConcini amendment has survived the leadership amendment in the Neutrality Treaty, certainly it is going to survive the leadership amendment offered to a treaty that expires with the end of this century when the DeConcini amendment takes over. So no matter what the leadership adds to the Panama Canal Treaty, the DeConcini amendment will still be there, and you may rest assured that the United States is going to use the DeConcini amendment to assert any right it may need to assert in order to keep the canal open and to keep it in operation, notwithstanding the leadership amendment in the Neutrality Treaty and notwithstanding the present leadership amendment that is now pending.

So, Mr. President, there being so much doubt and so much ambivalence in the amendments that have been offered heretofore, since the leadership now is trying to dilute the DeConcini amendment, they had control over the DeConcini amendment, they accepted it, they assured the Senators that that is what they needed and what they wanted—never mind that it was to get sufficient votes to approve the treaty—but it, in effect, was also a leadership amendment, so, Mr. President, that being the leadership amendment also, and there being so much confusion caused by that amendment, can we now depend upon the second leadership amendment as a solution of the dilemma that we find ourselves in as a result of the action of the leadership?

Mr. President, I submit we need to clarify just what the leadership is driving at in this amendment. What do they say? The amendment was not made available to Senators, the rank and file Senators, I will say, until after 12 o'clock today, after the amendment was offered. What does it mean? It cannot interfere with the DeConcini amendment and, as I read it this morning, quoting from the Rubaiyat of Omar Khayyan—I guess, Mr. President, that is where the dictator got his first name from Omar Khayyan, Omar

Torrijos—but I do not believe he would approve of this paragraph from the Rubaiyat, because it is very pertinent as to the standing of the DeConcini amendment. It stands there and it is going to stand there as a part of history.

Reading from the Rubaiyat:

The Moving Finger writes; and, having writ, moves on:

So we have moved on from the Neutrality Treaty—

Nor all your Piety nor Wit

I do not know whether they are talking about the Senator from Idaho or the Senator from West Virginia or the Senator from Maryland when they speak "nor all your Piety nor Wit":

Shall lure it back to cancel half a Line.

So you can talk about diluting the DeConcini amendment all you want to, but the Rubaiyat is proof that that cannot be done:

Nor all your Tears wash out a Word of it.

So no matter what we do here on this treaty which expires with the year 2000 it is not going to affect the Neutrality Treaty and the DeConcini amendment which starts with the year 2000.

When the year 2000 comes this treaty and the leadership amendment are going to fall and we are going to take up with the Neutrality Treaty and the DeConcini amendment.

This amendment I have offered, along with the distinguished Senator from North Carolina (Mr. Helms) and the distinguished Senator from South Carolina (Mr. Thurmond) would merely state—and I think it is necessary to help the leadership here to advise the Senate and advise the country of just what they mean by their amendment—this amendment we are offering will help them define what they mean by their amendment. It does say:

This reservation—

That is, the leadership amendment—

shall not be construed as limiting, detracting from or diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the canal open and operating.

That is what the reservation would be defined as if this amendment to the leadership reservation is agreed to.

Mr. President, I reserve the remainder of my time, and I now yield 5 minutes to the distinguished Senator from Kansas (Mr. Dole).

The PRESIDING OFFICER. The Senator from Kansas (Mr. Dole) is recognized for 5 minutes.

Mr. DOLE. Mr. President, I thank the distinguished Senator from Alabama.

Mr. President, I believe, having participated in some of the debate, and having offered amendments, some the Senator from Kansas thought were meritorious, and having had those amendments rejected, that in the years to come all of us will grow more aware of the importance of the treaty guarantees proposed by the distinguished junior Senator from Arizona (Mr. DeConcini).

The so-called DeConcini reservation to the Neutrality Treaty, which has already been approved by the Senate, was the vital assurance of America's right to take independent action as it

deemed necessary to insure that the Panama Canal shall always remain open for the transit by ships of all nations.

The DeConcini reservation to the second treaty, which was adopted last evening, will provide the very important guarantee that any decision our country makes with regard to the defense of the canal may not be vetoed by the Panamanians who sit on the Combined Military Board created by the treaty. This provision also preserves our right to act independently—not to intervene in Panama's internal affairs—that was never the intent—but to protect and defend the canal whenever its operations are threatened in any way.

Mr. President, I support the DeConcini reservation to the Panama Canal Treaty now under consideration, just as I supported the DeConcini reservation to the Neutrality Treaty last month. I believe that both of them are necessary preconditions to Senate ratification of the treaties even though they do not, in my opinion, make the treaties entirely acceptable.

The real significance of these assurances, however, is that they underscore the inherent weaknesses of both treaties as originally proposed by the administration. When the text of the two Panama Canal treaties was first released last September, the Senator from Kansas thought he recognized some very basic and some very fundamental weaknesses in the defense provisions of the negotiated accords.

There were conflicting interpretations of America's rights to protect and defend the Panama Canal, despite the fact that President Carter told us the provisions were "clearly understood" by the leaders of our two nations. These conflicting interpretations were not dreamed up by anyone on this floor. They were stated by witnesses before the committee. It was indicated that there was some difference of opinion by former Panamanian negotiators, and on the strength of that, the Senator from Kansas as well as others offered amendments as far back as last September. Our Nation's military leadership, which had endorsed the treaties, expressed their interpretation that "if neutrality is violated, then the United States has the responsibility to intervene in Panama and restore the neutrality regime of the canal." This was Adm. James Holloway's testimony before the Senate Armed Services Committee on January 24.

But Gen. Omar Torrijos continued to state his interpretation that "it is necessary for the United States to be committed so that when we ring the bell here, when we push the button, a bell rings over there, and the United States comes in defense of the Panama Canal." General Torrijos' interpretation obviously contradicted that of our own military leaders, who had been led to believe by our administration that our decision to defend the canal would be unilateral in nature.

At the outset, the Senator from Kansas stated that the only way to resolve the ambiguity, and to resolve the concerns of the American people, would be to clarify the treaty language as forthrightly as possible.

DOLE AMENDMENTS

Last September 23, I introduced an amendment which I felt could help resolve the problem. My amendment No. 5 to the Neu-

trality Treaty was designed to specifically guarantee our authority to intervene militarily on behalf of the canal whenever we alone determined its neutrality to be threatened. At the time, the administration complained that my amendment was unnecessary. They suggested that the Senator from Kansas was trying to be an obstructionist.

But I might add that within 2 weeks, on October 14 of last year, the administration itself released a "joint statement of understanding" reached by President Carter and Gen. Omar Torrijos, thereby underscoring the fact that there was a difference in interpreatation.

Even though the Senator from Kansas did not feel that the "Carter-Torrijos understanding" was a perfect answer to the problem, I took the administration at its word and proposed that the statement of understanding itself be incorporated as part of the treaty. I introduced treaty amendment No. 7 for that purpose. Again, the administration and other treaty proponents complained that the Senator from Kansas was trying to "kill" the treaties. They said it was unnecessary to put the statement of understanding directly into the treaty.

I do not believe that those Senators who supported the two DeConcini reservations will now consent to any dilution or diminishment of those guarantees. Yet, I share the concern already expressed by my colleagues from Nevada, Alabama, and Idaho, that the so-called leadership reservation does, in fact, limit the scope of the DeConcini reservation. If this were not so, there would be no purpose in offering it.

The leadership has told us time and time again how unnecessary it is to attach modifications to these treaties, because certain guarantees and limitations are "understood" by the leaders of the two countries. That was the reason originally set forth last fall, for opposing the defense amendments proposed by the Senator from Kansas. If the new leadership reservation in fact makes no change in the treaty, and simply reflects aspects already implicit in the articles, then perhaps the leadership reservation is unnecessary.

In any case, I support the Allen amendment of the second degree, to the leadership reservation, providing that it shall not limit, diminish, or detract from the rights of defense guaranteed by the De-Concini reservation, to keep the canal open and operating.

The American people and many of my colleagues disagreed with the leadership position. Momentum and support for the amendment was building, and in January of this year, the administration capitulated and agreed to give its blessing to an amendment of this type. The majority and minority leaders of the Senate agreed to introduce a new amendment to that effect, and it became known as the leadership amendment. It passed by an overwhelming majority vote, and made an important improvement in the treaty, but was not enough in itself to fully guarantee our basic defense rights.

And so, on January 19 and March 2 of this year, the Senator from Kansas introduced two additional amendments designed to protect our base rights in Panama during the future. The first of these proposed that the United States and Panama work together to find a mutually acceptable arrangement under which we might retain a military presence into the next century. If such an ar-

rangement was not completed before December 31, 1999, we would retain the right to keep our present bases until a separate agreement was reached. The second amendment, which was similar in nature, would simply have added 10 words to the Neutrality Treaty, to hold open the possibility that Panama and the United States could agree at some point that a continued American military presence would be necessary.

The junior Senator from Arizona, Mr. DeConcini, cosponsored both of these amendments. He, like many others in this body, shared a valid concern about our ability to protect the canal after the year 2000. Of these last two amendments offered by the Senator from Kansas, the first received 34 votes and the second, 37 votes. So the handwriting was on the wall at that point. More than one-third of the U.S. Senate—enough to deny ratification of the treaties—expressed strong support for efforts to strengthen the defense provisions in the neutrality treaty.

Therefore, it should have come as no surprise to anyone when the DeConcini reservation was adopted 1 week later, on March 16. Given the political situation, it was probably necessary for a so-called "swing Senator" to be the one to achieve victory with such a strengthening amendment, and I commend the junior Senator from Arizona for his ability to accomplish this. We know that the administration, and the pro-treaty leadership on the Senate floor, would have fought the same reservation if it had been offered by any except the "undecided Senators." The Senate leadership, along with the floor managers of this treaty, would have argued that the vital DeConcini reservation was "unnecessary" because U.S. defense rights were already "understood." They would have said it was "redundant" to spell out those rights because President Carter and General Torrijos already had implicit understandings along those lines.

Fortunately, those voices were silent during consideration of the DeConcini reservation to the first treaty, and apparently they will be willing to accept the DeConcini reservation to the second treaty, as well. This fortunate. These treaty modifications are necessary, and they will serve the best interests of our country for decades to come.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. CHURCH. Mr. President, I yield myself such time as I may need.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CHURCH. Mr. President, the distinguished Senator from Alabama keeps quoting from the Rubaiyat. He has told us again that:

> The Moving Finger writes; and, having writ,
> Moves on: nor all your Piety nor Wit
> Shall lure it back to cancel half a Line
> Nor all your Tears wash out a Word of it.

Well, there are other passages from that same poet that seem to me to be applicable to this debate. For example:

> Myself when young did eagerly frequent
> Doctor and Saint, and heard great argument
> About it and about: but evermore
> Came out by the same door where in I went.

With them the seed of Wisdom did I sow,
And with mine own hand wrought to make it grow;
And this was all the Harvest that I reaped—
"I came like Water, and like Wind I go."

That, in a way, characterizes this argument. First, the Senator from Alabama takes the position that somehow we are seeking to dilute the DeConcini reservation. He is saying, "First of all, you cannot do it because that has been riveted into the resolution of ratification for the Neutrality Treaty."

Well, Mr. President, we are not attempting to erase, withdraw, or weaken the provisions of the DeConcini reservation. We are trying to make clear what its purpose is, as agreed upon by its sponsors and by those who voted for it.

So the Senator from Alabama is dead wrong when he says that we are here for the purpose of diluting the DeConcini reservation.

Then he goes on to say that in any case it cannot be done, whatever our intention may be, because the Neutrality Treaty starts at the end of the century when the Panama Canal Treaty expires.

Again I say the Senator from Alabama is dead wrong. The Neutrality Treaty and the Panama Canal Treaty start at the same time. Their provisions become binding at the same time, to wit, when the articles of ratification are exchanged by the two governments. That is the effective date when both treaties come into force. This leadership amendment addresses itself to all the provisions in both treaties and to all the provisions of the articles. So the argument has no merit, and the Senator is playing games.

I see three different Allen amendments. I do not know if the Senator intends to present all of them. The pending amendment, No.104, reads:

This reservation shall not be construed as limiting, detracting from, or diminishing the rights reserved to the United States in the DeConcini Reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

The next amendment, No. 105, reads:

This reservation, to the extent set forth herein, shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

And there is another, which reads:

This reservation shall be construed as limiting, detracting from, and diminishing the right. . . .

And so on. As I said, the Senator is playing games. He wants to add something, anything, to the carefully crafted language of the leadership reservation, when nothing should be added. The leadership reservation makes explicit exactly what the sponsor of the DeConcini reservation himself sought: Namely, that any action by the United States of America in the exercise of its right to assure that the Panama Canal shall remain open, neutral, secure, and accessible pursuant to the treaties and the articles of ratification thereto shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose intervention in the internal affairs of the Republic of Panama or interference in its political liberty or sovereign integrity.

It cannot be better stated. But the Senator from Alabama has done everything he can to defeat these treaties and he is not in a mood to acknowledge the clarity of this language. Rather, he is in a mood to confound and confuse the question by adding one amendment after another, inconsistent as they may be.

I hope the Senate will have none of that. I strongly urge the Senate to overwhelmingly defeat each of these amendments. They are mischievous. We should see them for what they are, and we should vote them down. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Every amendment the Senator from Idaho does not approve of is mischievous. This is not a mischievous amendment. I ask the question, is it fair for the leadership to obtain approval of the Neutrality Treaty by accepting the DeConcini amendment, by making it their own, and thereby getting the first treaty approval and to now try to undercut the provisions of that reservation? It is not fair. It is not fair to those who cast their vote on the approval of the DeConcini amendment.

Now he says I am trying to undercut the DeConcini amendment. If that be true, why is he opposing my amendment which says that this reservation shall not limit or detract from or diminish the DeConcini amendment. It is patently incorrect on its face.

Mr. President, the distinguished Senator also said that the Neutrality Treaty starts at the very same time as the Panama Canal Treaty. He knows that the United States is in full charge of the Defense up until the year 2000, and that the DeConcini amendment was aimed at article V of the treaty. I will read it. It has to do with the effective date of article V:

> After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces.

So he knows. I do not know why he states the contrary is true. He knows that the DeConcini amendment goes into effect in the year 2000, even though the Neutrality Treaty does go into effect at the same time as the Panama Canal Treaty, if that is approved.

So the DeConcini amendment starts in the year 2000, and the distinguished author of that amendment stated that he—I know it did not become an amendment—intended to have a similar amendment to offer to the Panama Canal Treaty. I do not believe it has come in.

I think the Chair.

The PRESIDING OFFICER. That time of the Senator has expired.

Mr. CHURCH. Mr. President, I yield myself such time as I may require.

In the first place, the DeConcini reservation is addressed not simply to article V but to any other provision of the treaty, and the reservation explicitly says this, on its face.

Now I read from article II, section 1 of the Panama Canal Treaty. It says:

> 1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the

Panama Canal, six calendar months, from the date of the exchange of the instruments of ratification.

Both treaties enter into force at the same time. That was written plainly into the language of the treaty. Why do we pretend otherwise? It is irrefutable. We do not have time to waste on arguments that are grounded in nothing but whimsy.

Mr. President, I am happy to yield to the distinguished Senator from New York.

Mr. JAVITS. I thank my colleague.

Mr. President, let us get to the substance of this amendment and the substance of what we are talking about. The substance is the internal affairs and the sovereignty of Panama. That is what this is all about. The original article V stated very clearly that both parties may do whatever they think they have to do to maintain the neutrality of the canal permanently.

That covered everything DeConcini or anybody else could think of. Then along came the people of Panama and said, "What about using this as a reason for getting into Panamanian politics or invading our territory just because you always can contrive an instance? Somebody threw a rock at a ship."

General Torrijos and President Carter got together and they said, "We have no such design." They therefore said, "What we mean by protecting the neutrality is to take any action each of us thinks we ought to take independently of the other, including military action, in order to maintain the canal"—I would like to give the words because they are very clear—"open and secure."

Then along came DeConcini and he said, "Regardless of any other consideration, whatever that may be, we have to keep this canal," said he, and I would like to use his words because they are also very important in considering this matter, "to reopen the canal or restore the operations, as the case may be if the canal is closed or its operations are interfered with."

Still, everybody was saying the same thing. But DeConcini did not say, just like article V did not say, without interfering in the internal affairs of Panama, including the invasion of its sovereignty or messing around with its politics.

So now we come along and we say that. That does not diminish anything DeConcini did. It does not diminish anything article V did. It does not diminish anything the leadership did in the first treaty.

It simply makes clear what we mean. We mean that we are going to keep this canal open, secure, neutral, and free. But it does not mean, and that is all we are saying now, the negative, it does not mean that we are going to interfere with Panamanian politics or invade its sovereignty, or just invade its territory because we feel like it.

It seems to me, Mr. President, that when we put each of these things bside the other, it makes clear exactly what we intend, and we are saying what we intend, in the reservation.

Now we come to a matter of law. A reservation, which makes a particular meaning clear and is then accepted by the other side, is a free-standing contract, whether the proponent of this amendment is right or wrong as to the linkage, and I think the linkage is very clear. That is why we put these articles which relate to linkage,

that is article II and article VIII, into the record. They link both treaties. One does not take effect without the other, and it says so in the treaties themselves. Even under normal rules of relevance you can make an amendment to either treaty with that linkage.

Be that as it may, the point is this is a free-standing relationship between Panama and the United States which has nothing to do with DeConcini, but which is defined further by this reservation to mean that we will not, whatever may be our other rights, either use those rights or any other fancied rights to interfere in the political affairs of Panama or to invade its sovereignty.

That dos not exclude us from its territory or its troops, or anything else, to keep this canal open, secure, and neutral.

Mr. President, that, in my judgment, is the intention of both peoples, the people of Panama and the people of the United States, and it is properly expressed. It needs no further embellishment. It needs no further going up hill and down hill just for the sake of making a change. I hope very much, therefore, that the amendment will be rejected.

Mr. SARBANES. Mr. President, we are prepared to yield back the remainder of our time and move to table the amendment. Has all time expired?

The PRESIDING OFFICER. All time has expired on the proponents side and the motion to table is in order.

Mr. SARBANES. Mr. President, I move to table the amendment offered by the Senator from Alabama, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Alabama. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from South Dakota (Mr. Abourezk) and the Senator from Montana (Mr. Melcher) are necessarily absent.

The result was announced—yeas 60, nays 38, as follows:

[Rollcall Vote No. 112 Ex.]

YEAS—60

Anderson	Glenn	Leahy
Baker	Gravel	Long
Bayh	Hart	Magnuson
Bellmon	Haskell	Mathias
Bentsen	Hatfield, Mark O.	Matsunaga
Biden	Hathaway	McGovern
Bumpers	Hayakawa	McIntyre
Byrd, Robert C.	Heinz	Metzenbaum
Case	Hodges	Morgan
Chafee	Hollings	Moynihan
Church	Huddleston	Muskie
Clark	Humphrey	Nelson
Cranston	Inouye	Pearson
Culver	Jackson	Pell
Danforth	Javits	Percy
Durkin	Kennedy	Proxmire
Eagleton	Laxalt	Ribicoff

Riegle	Sparkman	Stone
Sarbanes	Stafford	Weicker
Sasser	Stevenson	Williams

NAYS—38

Allen	Garn	Roth
Bartlett	Goldwater	Schmitt
Brooke	Griffin	Schweiker
Burdick	Hansen	Scott
Byrd, Harry F., Jr.	Hatch	Stennis
Cannon	Hatfield, Paul G.	Stevens
Chiles	Helms	Talmadge
Curtis	Johnston	Thurmond
DeConcini	Lugar	Tower
Dole	McClure	Wallop
Domenici	Nunn	Young
Eastland	Packwood	Zorinsky
Ford	Randolph	

NOT VOTING—2

Abourezk	Melcher

So the motion to lay on the table the Allen amendment No. 104 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Leahy). Under the previous order, the Senator from Alabama (Mr. Allen) is recognized to call up his second amendment, on which there shall be 30 minutes of debate, with the vote thereon to follow the debate.

The Senator from Alabama (Mr. Allen).

AMENDMENT NO. 105

Mr. ALLEN. Mr. President, I call up amendment No. 105 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. Allen), for himself, Mr. Thurmond, and Mr. Helms, proposes an amendment numbered 105:

At the end of the amendment, add the following:

This reservation, to the extent set forth herein, shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

Mr. ALLEN. Mr. President, I yield 30 seconds to the distinguished Senator from Indiana (Mr. Bayh).

Mr. BAYH. I thank my colleague from Alabama.

Mr. President, I ask unanimous consent that a member of my staff, Chris Alridge, be granted privilege of the floor during the remainder of the debate and votes on this particular matter of the treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama.

Mr. BAYH. I thank the Senator very much.

Mr. ALLEN. I am glad to accommodate the distinguished Senator.

Mr. President, I yield myself 9 minutes.

Mr. President, even though the distinguished managers of the treaties have stated that the leadership amendment now pending does not dilute the DeConcini amendment, which was added to the resolution of ratification to the Neutrality Treaty, yet they have seen fit to have the Senate table an amendment to their amendment which would merely have made that statement, that the purpose of the leadership amendment is not to limit or detract from or to diminish the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the canal open and operating.

One wonders why they would object to this statement, which is something they have stated on the floor is not their intention. Yet, when we ask them to state that in the form of an amendment, they have the Senate table that amendment.

Mr. President, the DeConcini amendment was added to the Neutrality Treaty. Already there was a leadership amendment which had been agreed to and added to the Neutrality Treaty and it had substantially the very same provisions in the leadership amendment as are now contained in this leadership amendment to the Panama Canal Treaty—that is, that in intervening to protect the canal, we should not interfere with the internal affairs of Panama; that we should not interfere with their territorial sovereignty; that we should not interfere with their independence—the very same provisions that are contained in the present leadership amendment.

So the same provisions in the Neutrality Treaty did not limit the scope of the DeConcini amendment, because the DeConcini amendment said that notwithstanding the provisions of article V of the Neutrality Treaty, which says that starting with the year 2000 only Panama could have troops in Panama—notwithstanding that provision or any other provisions of the treaty, the United States could act unilaterally, even to the extent of using military action to keep the canal open and operating. That was despite the provisions of the leadership amendment actually inserted in the Neutrality Treaty.

So, Mr. President, if the DeConcini amendment could survive as an integral part of the treaty and as a provision that was offensive to the Panamanians, as being an affront to their dignity and their sovereignty, how could it be contended that it is not going to survive exactly as written in the Neutrality Treaty, despite a second leadership amendment to limit the meaning of the DeConcini amendment?

If the actual words in the Neutrality Treaty would not limit the DeConcini amendment, how are you going to limit the DeConcini amendment by a leadership reservation offered to the Panama Canal Treaty which expires at the end of this century, even though the DeConcini amendment would not become effective until the year 2000?

Mr. President, the leadership has seen fit to defeat an amendment to their amendment which would say that the leadership

amendment does not diminish or decrease or detract from or limit the DeConcini amendment.

Just what does the leadership amendment mean? We would not be in this impasse today if we had had some clarity of expression in the treaty as shaped by the leadership, because they are responsible for the DeConcini amendment with its ambiguities. Yet, they come forward and say, "This is going to correct it. Maybe it will not dilute the DeConcini amendment, but it will be a concession to Panama and will save their face," and so forth. But I do not know that it is going to do that. Let us define what the leadership amendment does.

I have sought by amendment 104, which has just been tabled, to have the amendment say that it shall not be construed as limiting or detracting from or diminishing the right reserved in the DeConcini amendment. If they think the opposite, if the leadership feels that it does diminish it, let us hear from them. They have had the original treaty approved. We all know—it is a matter of historic record—that they got it approved by agreeing to the DeConcini amendment, and it seems likely that that carried three Senators over to vote for the Neutrality Treaty. Now they are seeking to diminish and detract from and undercut the DeConcini amendment.

If that not be so, if it does not diminish it, they had the opportunity to say so in the other amendment, which they tabled even though they have been contending that it does not detract from the DeConcini amendment. Now let us see what their attitude is. In trying to probe for what this amendment means, let us try to find out now, before we agree to it, as was the case with the DeConcini amendment. We found out what it meant after it had been approved, and the leadership has been working ever since to change that meaning or to dilute that meaning on the floor of the Senate.

This amendment says:

This reservation—

That is, the leadership amendment—

to the extent set forth herein, shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation to the Neutrality Treaty to take action to keep the Canal open and operating.

So if they table the one saying it does not diminish, let us see what their attitude is going to be when this amendment says that it shall be construed as limiting or detracting form the DeConcini amendment.

Mr. President, I yield the remainder of my time to the distinguished Senator from Texas (Mr. Tower).

Mr. TOWER. I thank the distinguished Senator from Alabama.

Mr. President, much of the debate in recent weeks has been speculation on our judgment by the court of world opinion, should the Senate reject the second treaty. Many in the media have editorialized that continued operational control of the canal would represent a throwback to the turn-of-the-century jingoism we have been accused of before. Our continued presence in the canal—regardless of the practical reasons why we should stay—would be judged as an example of a powerful nation out of touch with

international realities, unable to shake its preoccupation with the colonialism of the past.

Relinquishing control, on the other hand, would underscore and enhance our status in the eyes of the world as a country setting an example for others to follow. If we buy this line of reasoning, then relinquishing control is a sign of strength, an example of our magnanimity in the conduct of foreign policy.

I say, "baloney!" In fact, no informed or fair-minded nation in the world could believe that the United States is bent on territorial and political aggrandizement in this world, when everything in our recent history has proved to the contrary.

As a matter of fact, in the face of countless examples of adventurism, aggression, and threats to world peace on several fronts, we appear less committed to maintaining American strength and resolve—and yet more expectant that stability will be preserved if we simply demonstrate our good faith to the world. We have been asked to show foresight by overlooking international realities and by ignoring very serious flaws in the language of the proposed treaty.

I will not argue that the existing 1903 treaty cannot be improved upon or even replaced by a treaty more in keeping with American foreign policy goals for the remainder of this century and beyond. I do not believe, however, that the treaty before us today is the most prudent and responsible basis for the future of the Panama Canal and the future of United States-Panamanian relations.

Testimony before both the Foreign Relations Committee and the Armed Services Committee has demonstrated without question the critical importance of the Panama Canal to our national security. The notion that the canal is not a vital element of our economic and security structure has been repeatedly shown to be mythical.

The Senate has, in my view, paid little attention to the inherent and undeniable risks to which the canal will be exposed if the treaty before us is ratified and put into effect. Potential threats to the future security of the Panama Canal exist not only from sources external to Panama, but from the potential for political instability within Panama's own borders.

In addition to these security considerations, the proposed treaty would result in great cost to the American taxpayer and would bestow extremely generous payments to the Panamanian Government from canal tolls. The economic consequences of these provisions have not been taken into full account in my view during the course of the Senate's debate. Direct and indirect costs to the U.S. Treasury could well exceed $1 billion. The absolute minimum direct cost to the taxpayer will exceed $750 million. The necessary payments to Panama from canal revenues will require substantial toll increases, particularly as inflation raises the cost of operating and maintaining the canal. This in turn will have a detrimental effect on the economies of those ports handling ships which use the canal and specifically could cost thousands of jobs in the gulf cost ports.

I might note, Mr. President, that we have operated this canal for the benefit of all maritime nations and have done so evenhandedly.

In sum, the economic consequences of entering into the treaty now before the Senate will be decidely adverse to the American taxpayer and the U.S. economy.

This reason alone is sufficient to warrant dramatic revision to the treaty provisions involving economic factors. Since the Senate has failed to accept modification to these terms, and as the provisions related to the canal's future security are clearly inadequate, I urge my colleagues to avoid a serious national mistake by voting to reject the treaty before the Senate today.

This reason alone is sufficient to warrant dramatic revision to the treaty provisions involving economic factors.

Since the Senate has failed to accept modification of these terms and as the provisions relating to the canal's future security are clearly inadequate, I hope my colleagues will avoid a serious national mistake, indeed an international mistake, by voting to reject the treaty before the Senate today.

I thank my colleague from alabama.

The PRESIDING OFFICER. The Senator from Idaho (Mr. Church).

Mr. CHURCH. Mr. President, I yield myself such time as I may require, and I shall be brief.

A few minutes ago the Senate tabled an amendment offered by the Senator from Alabama which said that the leadership reservation shall not be construed as limiting, detracting from, or diminishing rights reserved to the United States in the DeConcini reservation. Now the Senator from Alabama asks us to adopt just the opposite language, to wit, this reservation shall be construed as limiting, detracting from, and diminishing the rights reserved to the United States in the DeConcini reservation and he has still a third amendment which is in between.

Mr. President, I submit this is gamesmanship, and I concede, first off, that the Senator from Alabama has a great sense of humor. He also is capable of advancing the most intriguing kinds of arguments. For example, he has repeatedly said that the DeConcini reservation does not take effect until the end of the century. Then he has said if we amend the articles of advice and consent to the Panama Canal Treaty, which expires at the end of the century, how can we possibly reach the DeConcini reservation?

That is an intriguing argument. Its only weakness is that it has no relationship whatsoever to the provisions of the two treaties.

Article II of the Panama Canal Treaty and article VIII of the Neutrality Treaty provide that both treaties go into effect simultaneously, 6 months after the articles of ratification are exchanged by the two nations.

So, the argument advanced by the Senator from Alabama simply cannot be reconciled with clear provisions of these two treaties.

So I hope that nothing deflects us from our course. This is the 38th day of Senate debate on these two treaties. As I recall, the Senate debated only 11 days on the NATO alliance. We must not in this, the 38th day, permit ourselves to be distracted from our purpose.

The treaty we vote on today is right for the United States, right for the Republic of Panama, and right for the times in which we live. But it can never be made popular. This means that Senators are confronted with the hardest of choices: Either to vote for what

is best for their country or for what is best for them in their own home States.

If as few as two Senators voted for the first treaty cut and run on the second, ratification of this treaty will fail. But the issue, I assure you, Mr. President, will not die with the defeat of the treaty. Rather it will fester and grow more inflamed, making its ultimate resolution all the more painful.

Mr. CRANSTON. Mr. President, will the Senator yield?

Mr. CHURCH. Yes. I am happy to yield.

The PRESIDING OFFICER. The Senator from California (Mr. Cranston).

Mr. CRANSTON. Mr. President, a few minutes ago, the Senate tabled an amendment stating that the leadership amendment does not limit the DeConcini reservation. Now we are asked to vote on an amendment that it does limit the DeConcini reservation.

The fact is, of course, that the leadership amendment does neither. It simply makes clear that any action taken under the DeConcini reservation is not a departure from the principle of nonintervention.

Mr. President, the vote today is not on a "giveaway" of the Panama Canal or on the right to "intervene" in Panama. The vote today is an affirmation of the international public trust under which the United States built and operated the Panama Canal. The vote today is on a passing of that international public trust to Panama where the canal is located.

The international public trust to which I refer is that spelled out in article I of the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal:

> The Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty.

The United States has maintained the canal as a permanent neutral international transit waterway—"secure and open to peaceful transit by the vessels of all nations on terms of entire equality." Panama, of course, assumes this exact obligation under article II of the Neutrality Treaty. The United States and Panama, jointly and individually, agree to maintain this "regime of neutrality" under article IV of the Neutrality Treaty.

By accepting this public trust, Panama does not relinquish its national sovereignty over the canal; indeed, Panama reaffirms it. By transferring the operation of the canal to Panama, the United States is not relieved of its obligation to maintain this "regime of neutrality"; indeed, the United States reaffirms it.

In recent days I have been distressed by the controversy that has arisen over certain reservations this Senate has attached to the Neutrality Treaty or this Panama Canal Treaty. Those reservations concern the obligation and right of the United States to maintain the "regime of neutrality" and to assure that the canal shall remain open, secure, and accessible. Those reservations are not a right of intervention in the internal affairs of Panama, they are not directed against the political independence or territorial integrity of Panama. And they are not in violation of any of the rights or obligations of the United States or Panama under the Charter of the Organization of the American States or the Charter

of the United Nations. Indeed, these reservations merely spell out in detail and specifics the obligations and rights of the United States in maintaining the regime of neutrality.

May I say to our friends in Panama: If Panama performs that trust, as I have every confidence that Panama will, the United States need never take any act to maintain the regime of neutrality of the canal. And if for some unforeseen reason in the future, Panama should be unable to maintain the regime of neutrality, certainly both Panama and the United States—indeed the world—would expect the United States to act.

These treaties have a basic purpose even more important than establishing Panamanian sovereignty over the canal: The continuation of the canal as a permanently neutral international transit waterway. This is what the United States built and has given to the world. This is what Panama now acquires.

In ratifying these Panama Canal treaties, this Senate can reaffirm this international public trust. In agreeing to these treaties as ratified, Panama will affirm its national sovereignty over the canal and accept this international public trust. And the canal will remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality.

Mr. Sarbanes addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, I have listened to the distinguished Senator from Alabama as he argues first for one amendment and then for the other, two amendments diametrically opposite to one another. The one amendment says this reservation shall not be construed as limiting, detracting; the other amendment which he offers says this reservation shall be construed as limiting, detracting.

I am reminded, "Oh, what a tangled web we weave," by the skillful Senator from Alabama, and I must say I was given considerable pause when the amendments were first presented at the desk as to in what order they would be presented or brought up.

After all, one would then have to anticipate, I assume, that the arguments would have been completely reversed from the argument that was made, given the order that was followed, had we come with No. 105 ahead of No. 104, and we would have had to reverse all the arguments.

The Senator from Alabama would have been, I know, as he is in all of the arguments he makes, extremely skillful in doing that.

Mr. ALLEN. Mr. President, will the Senator yield inasmuch as I have no time?

Mr. SARBANES. I do yield.

Mr. ALLEN. I thank the Senator.

The Senator realizes, of course, had the first amendment, the amendment saying that the leadership amendment shall not be construed as limiting or detracting or diminishing the DeConcini amendment, if the leadership had accepted that amendment, as it stated on the floor was the intention of the leadership, then there would have been no amendment.

But inasmuch as the leadership had the Senate table the first amendment, then the Senator from Alabama, in an effort to find

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out what in the world the leadership did mean by the amendment, offered the second amendment to let the leadership pick and choose what it does mean by the amendment. That is the purpose of the inconsistent amendments. There would have been no second amendment offered had the first amendment been accepted.

Mr. SARBANES. It is very helpful for the Senator from Alabama to give us inconsistent, diametrically opposite, amendments in order to be of help to the leadership.

I think, in the course of this debate, both those who have offered various amendments which have been adopted and the leadership in offering the amendment that is now presented, have been very clear in terms of what they are trying to accomplish.

I know the Senator from Alabama would like to structure it in his own way and in his own manner, but I only have recourse again to the fact that the Senator from Alabama has been against a treaty with Panama ever since October 1971. In the newsletter which he communicated to his constituents he has been opposed to a treaty; he has participated in cosponsoring a resolution that would have the United States maintain all sovereign rights, all jurisdiction in Panama; would make no concession—I think the only concession he is prepared to make is to pay a little more money.

I think it is clear to everyone that what is at stake with these treaties is not a little more money; what is at stake with these treaties is whether we are to develop a fair and equitable relationship between ourselves and the people of Panama, one that respects their dignity and independence just as we expect other nations to respect our dignity and independence.

The Senator has been extremely skillful in proposing amendments. He has been very good at moving in the stone walls on consideration of this treaty.

He keeps pushing the stone walls in closer and closer in order to leave less and less room within the walls on the basis of which the United States and Panama can reach an agreement. So the stonewalling which he has talked about so frequently is really something he has been extremely skillful at carrying forward here, and he keeps moving those walls in and narrowing down that space so there will not be a sufficient basis for an agreement.

I recall one debate in which one moment he was saying that these treaties were very unfair to the people of Panama and they should be angry about what was happening to the treaties. The next moment he turned to the Members of the Senate and said, "If the Panamanian people are going to be angry about what happens with these treaties then we ought to reject them."

So he creates his own closed circle just as these two amendments have created a closed circle. The way to dispose of the amendments, Mr. President, is to table both of them. We have tabled the previous one.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SARBANES. I move, Mr. President, to table this amendment, the amendment pending, of the Senator from Alabama, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Maryland to lay on the table Mr. Allen's amendment No. 105.

The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

The PRESIDING OFFICER (Mr. Hart). The Senate will be in order. Senators will please take their seats. The rollcall will be suspended until the Senate is in order.

The clerk may proceed.

The call of the roll was resumed and concluded.

The result was announced—yeas 59, nays 41, as follows:

[Rollcall Vote No. 113 EX.]

YEAS—59

Abourezk	Hart	McIntyre
Anderson	Haskell	Moynihan
Baker	Hatfield, Mark O.	Muskie
Bayh	Hatfield, Paul G.	Nelson
Bellmon	Hathaway	Nunn
Bentsen	Hayakawa	Pearson
Biden	Heinz	Pell
Bumpers	Hodges	Percy
Byrd, Harry F., Jr.	Hollings	Proxmire
Byrd, Robert C.	Huddleston	Ribicoff
Case	Humphrey	Riegle
Chafee	Inouye	Sarbanes
Chiles	Jackson	Sasser
Church	Javits	Sparkman
Cranston	Johnston	Stafford
Danforth	Leahy	Stevenson
DeConcini	Long	Stone
Eagleton	Magnuson	Talmadge
Glenn	Mathias	Williams
Gravel	Matsunaga	

NAYS—41

Allen	Goldwater	Randolph
Bartlett	Griffin	Roth
Brooke	Hansen	Schmitt
Burdick	Hatch	Schweiker
Cannon	Helms	Scott
Clark	Kennedy	Stennis
Culver	Laxalt	Stevens
Curtis	Lugar	Thurmond
Dole	McClure	Tower
Domenici	McGovern	Wallop
Durkin	Melcher	Weicker
Eastland	Metzenbaum	Young
Ford	Morgan	Zorinsky
Garn	Packwood	

So the motion to lay on the table amendment No. 105 was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The hour of 4 p.m. having arrived, the Senate will now proceed to a vote on the leadership.

Mr. ALLEN. Mr. President, inasmuch as tabling seem to be in order, or seem to be the order of the day, and since the Senate is in the habit of voting to table, I move to table the leadership amendment and I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, let me say I did this last night so as to accommodate the distinguished Senator: In my original unanimous-consent request, I phrased it so that a tabling motion would not be in order to this amendment. But I felt in fairness to those like the Senator from Alabama who might move to table, I would give them the opportunity to do so, and I intend to vote no.

Mr. ALLEN. I thank the distinguished Senator for his debate.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. During this rollcall vote, the Senate will be in order. Senators should take their seats or retire to the cloakrooms to conduct conversations.

Mr. STONE. Mr. President, inasmuch as the Senate has completed one vote and is about to proceed to two other votes, I ask unanimous consent that this be a 10-minute rollcall vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. NUNN. Mr. President, I ask unanimous consent that John Roberts, of the Senate Armed Services Committee staff, be granted the privileges of the floor for the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BENTSEN.Mr. President, I ask unanimous consent that a member of my staff, Laura Katz, be granted the privileges of the floor during the debate and vote on the pending treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MATHIAS.Mr. President, I ask unanimous consent that Margaret S. Nalle, of my staff, be granted the privileges of the floor for the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. Edward Kennedy, of the Senate Armed Services Committee, be granted the privileges of the floor for the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senate will be in order.

Mr. STEVENS.Mr. President, I ask unanimous consent that Steven Perles, of my staff, be granted the privileges of the floor during the votes and consideration of the pending treaty.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I make the same request for Skip Priest, of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to the motion of the Senator from Alabama. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

The result was announced—yeas 21, nays 79, as follows:

[Rollcall Vote No. 114 Ex.]

YEAS—21

Allen	Garn	Lugar
Bartlett	Goldwater	McClure
Curtis	Hansen	Schmitt
Dole	Hatch	Schweiker
Domenici	Helms	Thurmond
Eastland	Johnston	Tower
Ford	Laxalt	Wallop

NAYS—79

Abourezk	Hart	Nelson
Anderson	Haskell	Nunn
Baker	Hatfield, Mark O.	Packwood
Bayh	Hatfield, Paul G.	Pearson
Bellmon	Hathaway	Pell
Bentsen	Hayakawa	Percy
Biden	Heinz	Proxmire
Brooke	Hodges	Randolph
Bumpers	Hollings	Ribicoff
Burdick	Huddleston	Riegle
Byrd, Harry F., Jr.,	Humphrey	Roth
Byrd, Robert C.	Inouye	Sarbanes
Cannon	Jackson	Sasser
Case	Javits	Scott
Chafee	Kennedy	Sparkman
Chiles	Leahy	Stafford
Church	Long	Stennis
Clark	Magnuson	Stevens
Cranston	Mathias	Stevenson
Culver	Matsuaga	Stone
Danforth	McGovern	Talmadge
DeConcini	McIntyre	Weicker
Durkin	Melcher	Williams
Eagleton	Metzenbaum	Young
Glenn	Morgan	Zorinsky
Gravel	Moynihan	
Griffin	Muskie	

So the motion to lay on the table UP amendment No. 36 was rejected.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion was rejected.

Mr. ANDERSON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

UP AMENDMENT NO. 37

Mr. CANNON. Mr. President, I have an unprinted amendment at the desk. I call it up and ask that it be stated.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows:

The Senator from Nevada (Mr. Cannon) proposes unprinted amendment numbered 37. Amending unprinted amendment No. 36 by striking the words "nor be interpreted as a right of".

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that Mr. Cannon have 2 minutes and Mr. Church have 2 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CANNON. Mr. President, this amendment would simply eliminate any possibility of confusion, either on the part of the Panamanians or on our own part, as to how it might be interpreted. I think the amendment without that provision is absolutely clear that if we take any action, it should be for the purpose stated in the DeConcini amendment, to keep the canal open.

Therefore, if we leave the language in relating to how it might be interpreted, we open it up to all kinds of differing interpretations.

I submit it is a good amendment.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, I hope very much that the Senate will reject this amendment. This language that has been chosen by the leadership has been carefully crafted. Every possible consideration has been given to it.

The point I emphasize is this, we are not claiming the right of intervention in the internal affairs of Panama. Never have we claimed that. In fact, we are committed in the United Nations Charter, in the Rio Treaty, and all the major treaties with the members of the Organization of American States, against intervention in the internal affairs of Panama or any other Latin country.

All we claim is the right to intervene for the purpose of keeping the canal open and neutral and accessible and secure.

The language could not be plainer as it now stands, and if we strike "nor be interpreted as a right of intervention in the affairs of the Republic of Panama" it could only be subject to the interpretation that we intend to set aside American policy since the time Franklin Delano Roosevelt first declared the good neighbor policy for this hemisphere.

I do hope the Senate will reject this amendment.

The PRESIDING OFFICER. All time has expired.

Mr. ALLEN. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. The yeas and nays are called for. Is there a sufficient second?

Mr. ROBERT C. BYRD. Is the Senator satisfied with a voice vote?

Mr. ALLEN. I ask for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, the Senator from Nevada would be satisfied with a voice vote.

I merely want to point out we are impinging, as we did on the last vote on the tabling motion, upon the time of the Senators who yet have amendments to offer, and impinging on the time of the debate.

Mr. ALLEN. I ask for the yeas and nays. It is an important amendment and I think we should have a rollcall.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. Robert C. Byrd addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I move to lay on the table the amendment of the Senator from Alabama (Mr. Allen) and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Alabama (Mr. Allen). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARRY F. BYRD, JR. Mr. President, may we have the well cleared?

The PRESIDING OFFICER. The clerk will suspend the rollcall until the Senate is in order. Will Senators take their seats? Will Senators clear the well?

The clerk will proceed.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Mississippi (Mr. Eastland) is necessarily absent.

The result was announced—yeas 58, nays 41, as follows:

[Rollcall Vote No. 115 Ex.]

YEAS—58

Abourezk	Bentsen	Chiles
Anderson	Biden	Church
Baker	Byrd, Robert C.	Clark
Bayh	Case	Cranston
Bellmon	Chafee	Culver

YEAS—58

Danforth	Humphrey	Percy
DeConcini	Inouye	Proxmire
Durkin	Javits	Randolph
Eagleton	Kennedy	Ribicoff
Glenn	Leahy	Reigle
Gravel	Long	Sarbanes
Hart	Mathias	Sasser
Haskell	Matsunaga	Sparkman
Hatfield, Mark O.	McGovern	Stafford
Hatfield, Paul G.	Metzenbaum	Stevenson
Hathaway	Moynihan	Stone
Hayakawa	Muskie	Weicker
Heinz	Nelson	Williams
Hodges	Pearson	
Huddleston	Pell	

NAYS—41

Allen	Hansen	Roth
Bartlett	Helms	Schmitt
Brooke	Hollings	Schweiker
Bumpers	Jackson	Scott
Burdick	Johnston	Stennis
Byrd, Harry F., Jr.	Laxalt	Stevens
Cannon	Lugar	Talmadge
Curtis	Magnuson	Thurmond
Dole	McClure	Tower
Domenici	McIntyre	Wallop
Ford	Melcher	Young
Garn	Morgan	Zorinsky
Goldwater	Nunn	
Griffin	Packwood	

NOT VOTING—1

Eastland

So the motion to lay on the table UP amendment No. 37 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question recurs on the leadership amendment.

Mr. ALLEN. Mr. President, have the yeas and nays been ordered? If not, I ask for the yeas and nays.

The PRESIDING OFFICER. They have not been ordered.

Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

UP AMENDMENT NO. 36

The PRESIDING OFFICER. The question is on agreeing to amendment No. 36. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

The PRESIDING OFFICER. Will Senators take thier seats? Will the Senate be in order?

The second assistant legislative clerk resumed the call of the roll.

The PRESIDING OFFICER. The Senate is not in order. The rollcall will be suspended until Senators have taken their seats.

The clerk will continue.

The second assistant legislative clerk resumed and concluded the call of the roll.

The result was announced—yeas 73, nays 27, as follows:

[Rollcall Vote No. 116 Ex.]

YEAS—73

Abourezk	Hart	Moynihan
Anderson	Haskell	Muskie
Baker	Hatfield, Mark O.	Nelson
Bayh	Hatfield, Paul G.	Nunn
Bellmon	Hathaway	Packwood
Bentsen	Hayakawa	Pearson
Biden	Heinz	Pell
Brooke	Hodges	Percy
Bumpers	Hollings	Proxmire
Byrd, Harry F., Jr.	Huddleston	Randolph
Byrd, Robert C.	Humphrey	Ribicoff
Cannon	Inouye	Riegle
Case	Jackson	Roth
Chafee	Javits	Sarbanes
Chiles	Kennedy	Sasser
Church	Leahy	Sparkman
Clark	Long	Stafford
Cranston	Magnuson	Stennis
Culver	Mathias	Stevenson
Danforth	Matsunaga	Stone
DeConcini	McGovern	Talmadge
Durkin	McIntyre	Weicker
Eagleton	Melcher	Williams
Glenn	Metzenbaum	
Gravel	Morgan	

NAYS—27

Allen	Goldwater	Schmitt
Bartlett	Griffin	Schweiker
Burdick	Hansen	Scott
Curtis	Hatch	Stevens
Dole	Helms	Thurmond
Domenici	Johnston	Tower
Eastland	Laxalt	Wallop
Ford	Lugar	Young
Garn	McClure	Zorinsky

So UP amendment No. 36 was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 103

The PRESIDING OFFICER. Under the previous order, the Senator from Michigan is recognized to call up an amendment on which there will be 30 minutes debate.

The Senator from Michigan.

Mr. GRIFFIN. Mr. President, on behalf of myself and Mr. Wallop I send an amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Michigan (Mr. Griffin) for himself and Mr. Wallop proposes Amendment No. 103 to the Resolution of Ratification in the nature of a substitute:

Resolved, That the Senate return to the President of the United States the Panama Canal Treaty, together with the annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Ex. N, Ninety-fifth Congress, first session), with the advice of the Senate that negotiations to develop a new treaty relationship with the Republic of Panama be resumed and continued until a treaty is agreed upon that better serves the interests of both nations.

Mr. GRIFFIN. Mr. President, this might be called the last-chance amendment. This is the last opportunity the Senate will have before a vote will be taken where the Senate, perhaps by only a one-vote margin, will take a very dangerous step.

Mr. President, I ask unanimous consent on behalf of the majority leader that the time for this amendment be limited to 20 minutes, 10 minutes to each side.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. GRIFFIN. This step will be a dangerous gamble for the United States and the security of the United States.

Mr. CURTIS. Mr. President, may we have order.

Mr. GRIFFIN. I wish I could characterize the exercise through which we have gone today as something other than a charade. Our action today would be ludicrous were it not so serious. Today we adopted a leadership amendment to a treaty that expires in the year 2000, as a way of trying to modify the DeConcini reservation that was attached to another treaty. That other treaty is not now before the Senate, and it does not assume great importance until after the year 2000, when this treaty will have expired.

It is a charade, also, in that the substantial wording and effect of this leadership amendment was already in the leadership amendment attached to the other treaty.

The Senate is being asked this afternoon to paper over the serious and obvious differences that exist with vague and ambiguous language, which both sides will be able to interpret to serve their own interests.

But let us be clear about what we are doing. We are not solving or clarifying anything—we are burying our heads in the sand like a bunch of ostriches, hoping all the while that the almost inevitable confrontation for which we have set the stage will be delayed until after we have left the scene.

What was wrong with the DeConcini amendment was that it underscored the differences of interpretation concerning the Neu-

trality Treaty that have existed all along. Actually the DeConcini amendment was relatively mild. It provided that:

> If the canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall independently have the right to take such steps as it deems necessary, in accordance with its constitutional precedents, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

That is milder language than the interpretation placed upon the Torrijos-Carter joint statement as put forth by the Committee on Foreign Relations in its own report, which said this:

> The meaning of these amendments, which together constitute the entire Joint Statement, is plain. The first amendment relates to the right of the United States to defend the Canal (*It creates no automatic obligation to do so. . . .)* It allows the United States to introduce its armed forces into Panama *whenever* and *however* the Canal is threatened. *Whether* such a threat exists is for the United States to determine on *its own* in accordance with its constitutional process. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act as it deems proper against *any* threat to the Canal, *internal* or external, *domestic* or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.
>
> The above-described rights are *not* affected by the second paragraph of the amendment, which provides that the United States has no "right of intervention . . . in the internal affairs of Panama", and which prohibits the United States from acting "against the territorial integrity or political independence of Panama". (Emphasis supplied.)

But what the Panamanian reaction to the DeConcini reservation pointed up that the Panamanians did not agree with our interpretation, and this was not the first signal we have had that the Panamanians do not agree with our interpretation concerning the U.S. rights to defend the canal.

We found out what their interpretation was on the eve of the plebiscite when General Torrijos, himself, told the Panamanians:

> . . . (I)f we are attacked by superior forces the United States *is obligated* to come to our defense.
>
> . . . (I)t is necessary for the United States to be committed so that *when we ring the bell* here, *when we push the button,* a bell rings over there, and the United States comes in defense of the Panama Canal. . . .
>
> I repeat, we *push the button,* the bell rings, and the United States is *obligated* to come to our defense. (Emphasis supplied)."

In the General's view, we do not have a unilateral right, but rather an obligation to respond, when they ask us.

There were many other interpretations put forth by Panamanian spokesman before that plebiscite interpreting the Neutrality Treaty as meaning that we could defend the canal in the event of a threat to the canal "a foreign power," but never acknowledging that we could defend the canal against an internal Panamanian threat.

We proceed to a vote now, and the treaty may carry by one vote, perhaps, two. But what will happen if there is a labor strike after the year 2000, closing down the canal? What will happen if the Government of Panama then refuses to act? What will happen if an anti-American labor union refuses to operate the canal for the transit of U.S.-bound cargo and the Government of Panama refuses to act, Will that be an "internal affairs?" I do not think that we have resolved that question. So I think that we are taking serious risks here.

I fervently hope and pray that if this treaty is ratified, the President will be proved right by history, and those who support him in the Senate will be proved right. My great fear is that they will be proved wrong.

The hope that we are going to guarantee peace and contentment in Panama by approving this treaty may be a vain hope, and if so what will we have accomplished? We will have terminated the 1903 treaty—because that will happen as soon as this treaty is ratified. We will have set in place the machinery to transfer the canal to the Panamanians. But will have really achieved the objectives that those who vote for this treaty desire?

I think this is a dangerous gamble. The right approach is to adopt this substitute, and to say to the President, "We do not want to reject the treaties outright, but we do not think these treaties serve the interests of the United States. We give the advice of the Senate that you send the negotiators back to the negotiating table, taking into account the debate of the Senate, and try to fashion more acceptable treaties."

Mr. President, I hope this substitute will be adopted. I yield to the distinguished Senator from New Mexico.

Mr. SCHMITT. I thank the Senator from Michigan for yielding.

Mr. President, most efforts to improve the treaties during Senate consideration have been resisted successfully. The questions which I and many of my colleagues and, I believe, the majority of the American people have about these treaties remain unanswered.

Mr. President, many of the amendments proposed to both this treaty and to the Neutrality Treaty received the support of 35 to 40 Senators. This could only mean that less than the two-thirds needed for ratification are fully satisfied with the treaties in their present form. Yet, if we ratify this treaty today, these unresolved problems will remain to plague our future.

I suspect and hope that the President of the United States is listening to the conclusion of this debate. I am now addressing my remarks to him.

A few weeks ago when Senator Griffin offered this renegotiation amendment in the form of a substitute for the resolution of ratification it had become clear that the Neutrality Treaty would be ratified by one or two votes. Therefore, I can understand why there was insufficient support for this substitute.

Today, however, things have changed. No one is sure how the votes will fall between 6 and 6:15 this evening. That many in this hemisphere will lose is the only certain thing. Proponents and opponents are thus playing a form of Senatorial russian roulette.

This renegotiation substitute is our last opportunity to work together with Panama to create and ratify a new treaty in the best interests of the United States, Panama, and the Western Hemisphere.

It is clear to me that renegotiation has been in order ever since the President signed the treaties. During the week of March 13 I described the preferable conditions under which this renegotiation should occur: Namely, in consultation with all the major interested parties of the Hemisphere. A proposal for such consultation goes to the heart of both the political and economic needs of our Hemispheric friends.

I call on President Carter to ask his supporters on this treaty issue to back away from the brink. I call on the President to help the Senate lay the foundation for a brighter and more cooperative future for all the people of the Hemisphere.

The PRESIDING OFFICER (Mr. Sasser). The 10 minutes of the Senator from Michigan have expired. The Senator from Idaho has 10 minutes.

Mr. SCHMITT. Mr. President, I ask unanimous consent that I be permitted to proceed for 1 more minute.

The PRESIDING OFFICER. Is there objection?

Mr. CHURCH. Mr. President, I have no objection as long as we retain our 10 minutes on this side, in fairness to my colleague from Maryland.

The PRESIDING OFFICER. Is there objection? Without objection, the Senator from New Mexico has 1 additional minute.

Mr. SCHMITT. The Griffin amendment, with a Presidential commitment to immediately begin new negotiations with the major user nations of the Hemisphere, will give the Senate, Panama, the Hemisphere and possibly the world a new lease on their economic and political lives. It is the only way we can now defuse the time bomb these treaties have created. At the same time, we can take the most positive step ever taken toward a new hemispheric relationship; a relationship of hope and trust; a relationship for the future.

Mr. President, the Senator from Michigan has agreed to accept my amendment to his substitute for the Resolution of Ratification. I send the amendment to the desk. This amendment would require that other Hemisphere nations be included in the new negotiations mandated by the distinguished Senator's substitute resolution.

Mr. GRIFFIN. Mr. President, is it in order that I accept this as a modification of my amendment?

The PRESIDING OFFICER. It would require unanimous consent.

Mr. GRIFFIN. I ask unanimous consent that my amendment be so modified.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The modification (UP amendment No. 38) is as follows:

On page 7, after "Panama", insert, ", involving all the nations of North and South America who wish to participate,".

On line 9, after "nations", strike the period and add ", and all the nations of the Western Hemisphere."

The PRESIDING OFFICER. The Senator from Idaho (Mr. Church) is recognized for 10 minutes.

Mr. CHURCH. Mr. President, after 14 years of negotiations between the United States and the Republic of Panama, directed by four different Presidents of this country, and after 38 days of debate on these treaties in the Senate of the United States, we are asked to approve a motion to return this treaty to the Committee on Foreign Relations and to the President of the United States, in order that it might go back again to the bargaining table.

If there is one thing clear, it is this: Should the Senate adopt the motion of the distinguished Senator from Michigan, these treaties will not go back to the negotiating table. We will go back, instead, to a condition of deadlock and defiance. It just is not any longer

possible for one country to maintain a colony in another against the wishes of the inhabitants of that country.

We began negotiations back in 1964, when 24 people died in riots in Panama, because the overwhelming sentiment of the Panamanian people finally flared into open flames. Since that time we have undertaken to negotiate at arm's length a just set of treaties, a fair bargain fairly arrived at.

As each Senator prepares to cast his vote on the pending resolution, let him consider that the treaty before us is right for the United States, right for the Republic of Panama, and right for the times in which we live. And let him take into account what his final vote will mean.

A vote against this treaty represents a vain attempt to preserve the past.

It represents a futile effort to perpetuate an American colony in Panama against the wishes of the Panamanian people, in an age when colonies have disappeared elsewhere, gone with the empires of yesterday.

It represents an ill-destined desire to cling to American ownership and control of an aging canal, which, by the end of this century, will be able to accommodate less than one-tenth of the commercial tonnage then on the high seas.

It represents a sentimental journey back to the era of Teddy Roosevelt, the Big Stick, and the Great White Fleet, in a day when our modern aircraft carriers and nuclear submarines can no longer even use the present canal.

It represents a dangerous folly that will exacerbate an old Panamanian grievance stemming from the Treaty of 1903, in an age when such grievances can readily deteriorate into endless harassment and guerrilla war.

But a vote for the treaty looks forward to a new day.

It would restore to Panama jurisdiction over her own soil and thus lay the basis for a close and friendly cooperation between the United States and Panama in the years ahead.

It would give us the best guarantee available of dependable use of the canal from now until the end of the century, and beyond.

It would enhance the prospects for the construction of a sea-level canal to meet our naval and commercial needs of the 21st century.

It would protect our security interests by insuring that our right to go to the head of the line will be preserved in case of need, and by guaranteeing our right to defend the canal with military force if ever that should prove necessary.

It would create a sense of mutual respect and trust, nurtured from the knowledge that this is a just treaty, fair to both sides, which will make for better relations throughout the hemisphere and redound to our benefit everywhere in the world.

Yet the vote, Mr. President, will be a difficult one. Every Senator knows that ratification of these treaties will not be popular, given the deep division in public opinion. But the Senate was envisioned by our Founding Fathers as the legislative body where unpopular decisions might be made, when the long-term interests of the Nation demanded it.

Today I pray that the Senate will defeat this amendment, and then, by approving this treaty, will rise to its historic responsibili-

ty, as each Senator is called upon to put the country first—above personal and political considerations.

Mr. President, the moment of truth approaches. The outcome will either cast our future relations with Latin America and the developing world in a bright new light, or plunge it under a gathering shadow that could last for years to come.

I yield the remainder of my time to my good friend and able colleague, to whom I am so deeply indebted for the past 2 months of cooperation on this floor, the able Senator from Maryland.

The PRESIDING OFFICER. Senator Sarbanes, of Maryland, is recognized.

Mr. SARBANES. Mr. President, 10 weeks ago tomorrow we began on the floor of the Senate the consideration of these treaties. The question which we are now about to answer is whether we have the maturity of judgment, the wisdom, the understanding, and the vision of ourselves as a people, and our role as a leader of the free world to seize the opportunity which is before us.

We are a powerful country, and we can use our power to protect our interests. But we should seek to use that power in accordance with a legal and a moral basis which makes its exercise justified. We should seek such a basis for the exercise of our power. These treaties give us that basis and thereby bring might and right into harmony.

These treaties are a positive opportunity for this country. They are not a retreat. They are not a flight from leadership. They are an assertion of what American leadership should be all about. They are a chance for America to move forward. They are an opportunity to bring forth the best, the very best, in the American people, to call upon the finest traditions for which this Nation stands and to do it in such a way that our defense interests, our economic interests, and our foreign policy interests are all served. More importantly, what we stand for as a people will be well served.

The treaties give us an opportunity to join with Panama in a cooperative relationship which will stand as an example to the entire world. An example of the proper and just relationship between a great power and a small nation, a relationship based on self-respect and dignity.

David McCullough, the author of that superb book, "The Path Between the Seas," said in his testimony before our committee:

> The Panama Canal is expressive of one of the oldest, noblest desires in the human heart, to bridge the divide and to bring people closer together. These treaties are expressive of that same desire. They are a progressive step, an act of strength, and confidence, and of good will.

We ought not to lose today the opportunity which the treaties offer to the American people. I hope the Senate will advise and consent to this treaty.

The PRESIDING OFFICER. The time of the Senator has expired.

The question is on agreeing to the amendment of the Senator from Michigan.

Mr. SCHMITT. Mr. President, I ask for the yeas and nays.

Mr. CHURCH. Mr. President, I move to table the amendment. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to lay on the table the amendment of the Senator from Michigan as modified. The yeas and nays have been ordered and the clerk will call the roll.

The assistant legislative clerk called the roll.

The result was announced—yeas 64, nays 36, as follows:

[Rollcall Vote No. 117 Ex.]

YEAS—64

Abourezk	Hart	Metzenbaum
Anderson	Haskel	Moynihan
Baker	Hatfield, Mark O.	Muskie
Bayh	Hatfield, Paul G.	Nelson
Bentsen	Hathaway	Nunn
Biden	Hayakawa	Pearson
Bumpers	Heinz	Pell
Byrd, Robert C.	Hodges	Percy
Cannon	Hollings	Proxmire
Case	Huddleston	Ribicoff
Chafee	Humphrey	Riegle
Chiles	Inouye	Sarbanes
Church	Jackson	Sasser
Clark	Javits	Sparkman
Cranston	Kennedy	Stafford
Culver	Leahy	Stevenson
Danforth	Long	Stone
DeConcini	Magnuson	Talmadge
Durkin	Mathias	Weicker
Eagleton	Matsunaga	Williams
Glenn	McGovern	
Gravel	McIntyre	

NAYS—36

Allen	Goldwater	Randolph
Bartlett	Griffin	Roth
Bellmon	Hansen	Schmitt
Brooke	Hatch	Schweiker
Burdick	Helms	Scott
Byrd, Harry F., Jr.	Johnston	Stennis
Curtis	Laxalt	Stevens
Dole	Lugar	Thurmond
Domenici	McClure	Tower
Eastland	Melcher	Wallop
Ford	Morgan	Young
Garn	Packwood	Zorinsky

So the motion to lay on the table amendment No. 103 (as modified) was agreed to.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. SARBANES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD addressed the Chair.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I ask that the distinguished Senator from Nevada be recognized to call up an amendment at this time and that there be 1 minute to the side to be equally divided in accordance with the usual form on the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada (Mr. Cannon) is recognized.

UP AMENDMENT NO. 39

Mr. CANNON. Mr. President, I withdraw my unprinted reservation No. 35 and ask that a substitute reservation be stated, which the clerk has at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment will be stated.

The legislative clerk read as follows:

The Senator from Nevada (Mr. Cannon) for himself, Mr. Bentsen and Mr. Paul G. Hatfield, proposes an unprinted amendment numbered 39:

Strike out the period at the end of the resolution of ratification and insert in lieu thereof the following: "subject to the following reservation:

"After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless it is otherwise provided by legislation enacted by the Congress, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase 'net direct investment' has under section 62 of title 2 of the Canal Zone Code.

Mr. ROBERT C. BYRD. Mr. President, I ask that there be 1 minute for Mr. Cannon and 1 minute for Mr. Church.

Mr. LEAHY. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order?

Mr. ROBERT C. BYRD. Mr. President, how about my request?

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. CANNON. Mr. President, I ask unanimous consent that Senator Nunn be added as a cosponsor of this amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CANNON. Mr. President, according to the Comptroller General, this amendment would save a loss to the Treasury over the next 22 years of approximately $505 million. It simply insures that no waiver of the interest payments from the Panama Canal Commission to the U.S. Government can be made unless it has the affirmative action of the Congress.

I think that is very important, that we have the opportunity to act on it if any waiver is to be made. Therefore, I believe it is a good amendment and I hope the leadership will accept it.

Mr. CHURCH. Mr. President, since the reservation offered by the distinguished Senator from Nevada provides that the final decision on the reimbursement of interest will be left to the Congress when it passes upon the enabling legislation to implement this treaty, we see no objection to the adoption of the reservation.

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It is my understanding the sponsor desires a rollcall vote and we are happy to oblige in that regard.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to unprinted amendment No. 39 of the Senator from Nevada (Mr. Cannon). The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 90, nays 10, as follows:

[Rollcall Vote No. 118 Ex.]

YEAS—90

Allen	Hansen	Muskie
Anderson	Haskell	Nelson
Baker	Hatch	Nunn
Bartlett	Hatfield, Mark O.	Packwood
Bayh	Hatfield, Paul G.	Pearson
Bellmon	Hathaway	Pell
Bentsen	Hayakawa	Percy
Biden	Heinz	Proxmire
Brooke	Helms	Randolph
Bumpers	Hodges	Ribicoff
Burdick	Hollings	Riegle
Byrd, Harry F., Jr.	Huddleston	Roth
Byrd, Robert C.	Humphrey	Sarbanes
Cannon	Inouye	Sasser
Case	Jackson	Schmitt
Chafee	Javits	Schweiker
Chiles	Johnston	Scott
Church	Laxalt	Sparkman
Cranston	Leahy	Stafford
Curtis	Lugar	Stennis
Danforth	Magnuson	Stevens
DeConcini	Mathias	Stevenson
Dole	Matsunaga	Stone
Domenici	McClure	Talmadge
Eagleton	McGovern	Thurmond
Eastland	McIntyre	Tower
Ford	Melcher	Wallop
Garn	Metzenbaum	Williams
Glenn	Morgan	Young
Goldwater	Moynihan	Zorinsky

NAYS—10

Abourezk	Gravel	Long
Clark	Griffin	Weicker
Culver	Hart	
Durkin	Kennedy	

[So Mr. Cannon's amendment (UP No. 39) was agreed to.]

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CANNON. I move to lay that motion on the table.

[The motion to lay on the table was agreed to.]

Mr. ROBERT C. BYRD. Mr. President, under the schedule that was outlined on yesterday there was to be 1 hour for general debate before the final vote on the resolution of ratification.

Every Senator who was known to have a reservation at that time was allotted some time in the schedule.

There have been at least two rollcall votes that were not anticipated yesterday, and they have eaten into the time.

I ask unanimous consent that the 1 hour for debate which had been originally scheduled be restored and that the vote occur at the expiration of that hour or upon the time being yielded back.

Mr. LONG. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I hope no objection will be heard. I hope the Senator will not object because there are Senators who have been promised time during the hour of debate.

Mr. LONG. I will be glad to give unanimous consent that all speeches made after a vote appear in the Record before the vote.

We did that on a tax bill some years ago. The public as a whole will not know, except those in the Senate Chamber. But those who read about it in our history will think those stirring speeches changed the vote that made the outcome what it was. [Laughter.]

We have debated these treaties for almost 2 months now. Mr. President, it would be an insult to the intelligence of Senators to think anyone is going to change his mind at this late date.

We have people here who want to know the final vote count. Radios are tuned all around the country. The galleries are packed. Everyone wants to know what will happen. Anyone who makes a speech now will be doing a very unpopular thing. [Laughter.]

I am not sure my vote will be popular, Mr. President, but I think my objection on this will be. [Laughter.] I must insist on my objection. But I am willing to give consent that anyone who wants to make a speech have it appear in the Record immediately following the vote, and the Record will show his speech is what determined the outcome.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the time the distinguished Senator from Louisiana has taken not be charged against the time for debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MCCLURE addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I have listened——

[Mr. McClure addressed the Chair.]

Mr. ROBERT C. BYRD. Yes.

Mr. MCCLURE. Mr. President, I was on my feet seeking recognition.

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator.

Mr. MCCLURE. I thank the Senator.

Mr. President, it was stated by the majority leader, and I think in good faith, that all Members who had reservations that were known were allotted time. The junior Senator from Idaho had a reservation and it was not included on the list. There might have been time had we not run into three rollcall votes that were not anticipated, and I have made arrangements with the managers of the treaty that if as a matter of fact there is an extension of time for debate the junior Senator from Idaho will have at least time to explain what would have been offered had it been possible to offer it.

With that, Mr. President, I will not object to the request, but I thank the Senator for yielding to me at this time.

Mr. TOWER. Regular order.

Mr. BURDICK. Regular order.

The PRESIDING OFFICER. Regular order has been called for.

[Mr. Robert C. Byrd addressed the Chair.]

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be one-half hour for general debate before the vote occurs.

Mr. SCOTT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that there be 10 minutes equally divided.

Mr. SCOTT. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from South Dakota (Mr. Abourezk) be allowed to speak for 5 minutes.

Mr. SCOTT. Mr. President, I object.

Mr. ROBERT C. BYRD. Mr. President, I hope the Senator will not object. There will come a time when the Senator will want 5 minutes, and the majority leader has never, never objected to any Senator on this floor having at least 5 minutes to speak.

Mr. SCOTT. Mr. President, If the distinguished majority leader——

Mr. ROBERT C. BYRD. I am giving up my time. I would like for the Senator from South Dakota to have 5 minutes and the Senator from Virginia may have 5 minutes under my request.

Mr. SCOTT. Mr. President, if the Senator will yield——

Mr. ROBERT C. BYRD. Yes.

Mr. SCOTT. Reserving my right to object, I have listened here the last few days to amendments being offered and accepted by the leadership, in my estimation, in an effort to placate some of the Senators and obtain some votes, and frankly it is disgusting to me, and I am going to continue to object to anything except the final vote on the treaty.

Mr. ROBERT C. BYRD. Very well, Mr. President.

I ask the Senator from South Dakota be recognized for the remaining minutes before the vote.

The PRESIDING OFFICER. The Senator from South Dakota (Mr. Abourezk) is recognized for 1 minute.

Mr. ABOUREZK. Mr. President, I thank the Senator from West Virginia for yielding.

I only want to say that starting last week after the closed meetings of the so-called Senate-House conference committee on natural gas met at the White House in secret with the Secretary of Energy and with the President, at different times, I became determined after that, because of the fact that for the last 50 or so years oil policy in the Government has been made behind closed doors, that I would vote against this treaty on the Panama Canal.

Now, the treaty itself, while it may be important, I do not believe is as important as the issue of deregulation of natural gas and the

economic impact that will have on the people of this country. I believe it is much more important.

I have had discussions with the White House for the past few days, and I have in those discussions learned from the White House that they intend to try to encourage an open democratic process in spite of the fact that they have committed what I would call great many transgressions in the past weeks on this natural gas issue, and I am convinced that although the treaty itself is only marginally better than the treaty that we are living under, in fact it does nothing but it legitimizes the imperialist aspect of the way that we are intervening in the affairs of Panama and other Third World countries, I might add, it is not the reality that is important here. It is the perception that the defeat or the passage of this treaty will have on the people of Panama and the people of the United States itself.

I asked for this time from the leader to announce that I intend to vote for the treaty for those reasons.

Mr. TOWER. Regular order.

Mr. ROBERT C. BYRD. Mr. President, regular order has been called for, but, Mr. President, I thank the Senator from South Dakota. I congratulate him on his courage, and I want the Senator from Virginia to know that I forgive him.

Mr. SCOTT. I appreciate the kindness of the distinguished majority leader.

Mr. TOWER. Regular order.

Mr. ROBERT C. BYRD. The Senator from Virginia may want 5 minutes sometime. I will try to help him get it.

Mr. GRAVEL. Mr. President, will the majority leader yield?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that all Senators who had statements they were prepared to make orally be permitted to insert them in the Record, and that they appear as though made orally.

Mr. VICE PRESIDENT. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I believe it was Justice Oliver Wendell Holmes who once observed that close decisions make bad law. It is no less true that close votes make bad legislation and poor treaties.

The vote on this treaty will be very close. And why? Because there is no public support for it. The American people are against this treaty. There is no national consensus. Even the Congress may be opposed to this treaty, because the House of Representatives has been deliberately pushed aside and the Constitution ignored if not abused.

And because neither Congress nor the American people favor this treaty, the treaty—like the war in Vietnam—is doomed to failure, no matter how many votes the proponents receive today.

And why are the American people against this treaty? Because it has the stench of defeat, withdrawal, and weakness. Because it is poorly drafted, ambiguous, filled with translation difficulties, and does not protect American interest and rights. Because, Mr. President, it is even unconstitutional.

When another Edward Gibbon appears on the scene to chronicle the decline and fall of the United States, the Panama Canal

Treaty, if it is approved, will be remembered as one of the darkest days in the history of this country.

Should these treaties be ratified, our hemispheric problems are just beginning. Hostile forces will then begin winning. and America will be perceived as a receding power—unwilling to stand anymore, while its citizens weep, and watch the fall.

Mr. LAXALT. Mr. President, this is, indeed, a historic occasion. As Senators, we will soon be called upon to decide a question that will go a long way toward determining the kind of people we are and the role we wish to play in the world. Many thoughtful presentations on both sides of the Canal Treaty question have been made during the past 2 months. But, I would like to take this opportunity at the close of a truly historic debate to speak to the significance of what we are about to do.

HISTORIC OCCASION

It is rare that this Senate comes to showdown votes on momentous questions with the outcome possibly hanging on a single vote. Any Senator thinking back historically, can easily think of votes such as that on the North Atlantic Treaty in 1949 which were important but not close. And, each of us has his own examples of cliffhangers of no particular moment. But, make no mistake about this one. Like the Versailles Treaty in 1919, the vote we are about to have on the Panama Canal Treaty is of immense import.

My good friend, the distinguished majority leader, in his customary learned fashion, spoke of Philipi and the Rubicon in underscoring the importance of the vote on the Neutrality Treaty. As usual, his allusions were right on point. The Rubicon sounded the death knell of the confusion and vacillation of the late Republic while Philipi set the stage for the emergence at Rome of the golden age of Augustus.

In my judgment, a negative vote on the pending resolution of ratification could signal a similarly hopeful turn in our foreign policy. From our weak and vacillating current position, where we seem unable to determine where we are or where we wish to go, we are now afforded an opportunity to move in the direction of a mature, strong and self-confident posture which our people so clearly deserve.

In his campaign, President Carter promised a government as good as the American people, but he has not yet delivered. Certainly, the Panama Canal Treaty fails to measure up. Our people know we cannot buy friends. Our people know that capitulation under threat of force simply merits graver threats. And, most importantly of all, our people know that in international affairs, while it is nice to be appreciated, it is even more important to be respected. And, this treaty in no way adds to the diminishing stock of respect in the world.

Mr. President, our people oppose this treaty. Although some effort was made in the debate on the Neutrality Treaty to argue that the American people had come around, that they had shifted from a position overwhelmingly in opposition to one slightly in favor, that effort was abandoned in the debate on the second treaty. This is because it has become clear that no such shift

occurred. Indeed, if the American people have moved at all during the course of these debates, they have only grown more strongly opposed.

Perhaps, reply the proponents, but, echoing Burke, they argue that a Senator owes his constituents his judgment. They say a Senator is more than just a seismograph for registering the depth and intensity of his constituents' feelings. As far as it goes, this is certainly true. But, the mere fact of being opposite one's constituents on an important issue cannot so lightly be assumed tantamount to good judgment. Quite the contrary. For those of us with strong faith in the character and good sense of the American people, it is a most perilous position and one not to be assumed without the deepest reflection and the most serious conviction.

It is well for my colleagues to remember that the very same Edmund Burke, whose quote on the judgment of the representative outweighing that of his constituents was so bandied on the debate on the Neutrality Treaty, also said in a letter to the Bell-Club of Bristol on October 31, 1777:

> We members of the House of Commons are like other men who all want to be moved by praise or shame; by reward and punishment. We must be encouraged by our constituents and we must be kept in awe of them or we shall never do our duty as we ought.

JUDGMENT

Mr. President, those among my colleagues who genuinely feel that our canal in Panama is some kind of colonialist anomaly, who really believe that the Neutrality Treaty provides adequate safeguards for our vital defense interests, who honestly think that the economic provisions are fair and workable and who truthfully see our relations with Latin America being improved and strengthened by this pact; they should in good conscience vote "aye."

Needless to say, I do not believe any of these assertions. Our canal in Panama is a circumstance unique to world history. Dating virtually simultaneously from the birth of the Republic of Panama and conveying enormous benefits to the Panamanian people, it is in no sense a colonial possession. Unlike the Suez situation, where an ancient nation was dispossessed of its territory to create a canal, in Panama the canal and the neighboring nation came into being at the same time.

It is also difficult to see how anyone can feel comfortable with our defense rights as set out in the Neutrality Treaty for after the year 2000. Indeed, it is not even clear at this juncture whether we will have a Neutrality Treaty, because recent disturbances in Panama indicate that the Panamanian Government may ultimately have to reject it regardless of what it now says. Thus, far from being the finely honed diplomatic triumph pleasing to everyone, that was initially sold to us, it now appears as though that section of the Neutrality Treaty dealing with U.S. defense rights has succeeded in offending nearly everybody. Some Senators see it as insulting to Panama. Others see it as inadequately guaranteeing U.S. rights. And, almost no one is happy with it.

The economic provisions are no better. Despite the acceptance of certain reservations, the uneasy feeling among our people that we are literally paying the Panamanians to take a multibillion-dollar asset off our hands persists. I personally believe that certain reser-

vations accepted by the Senate have gone some distance toward improving what once were totally unacceptable confusions and ambiguities. But, the fact remains that we are turning over our canal to Panama in a manner which will bring considerable profit to the present regime.

Proponents argue that our relations with Latin America will be enhanced immeasurably should the Panama Canal Treaty be agreed to. As a Latin myself, I doubt it. Even more so than most peoples, we Latins respect firmness and are suspicious of vacillation and weakness. What is more, although Latin American leaders have to adhere publicly to a kind of antigringo solidarity on this issue, privately they have let it be known that they are concerned about an economic asset as valuable as the Panama Canal being left in the hands of the present Panamanian regime.

SIGNIFICANCE

At any rate, Mr. President, no one here should underestimate the significance of what we are about to do. However we vote, we can be certain that our constituents will remember. And, more importantly, we will all have our own consciences to contend with.

The press attention which the Canal Treaty issue has drawn, the groups mobilized both for and against, and the general intensity of feeling within the electorate virtually guarantee that this issue will be remembered for a good long time. Although the public is supposed to be fickle and short of memory, on this issue, none of us should count on it.

But, each of us, in the final analysis, must make up his own mind. The ultimate burden of decision rests with us, which is as it should be. Our Founding Fathers wisely afforded to the Senate the advise and consent function on treaties in order to ascertain after due deliberation and mature reflection whether treaties negotiated by the Executive are truly in the national interest.

All the debate will soon be over. The final amendment has been offered. Let us now proceed to deciding whether the Panama Canal Treaty measures up to this exacting standard.

Mr. CHILES. Mr President, today I cast my vote for the ratification of the Panama Canal Treaty.

My decision in support of the Panama Canal Treaty and the Neutrality Treaty has not been an easy one for me. My decision was made only after careful examination of all the public and private information made available to me. I have been briefed by our defense and intelligence gathering agencies. I have closely followed the congressional hearings. I have listened to my constituents on visits to Florida and have examined my mail. I have listened to the arguments put forth by both proponents and opponents. Based upon all this information, I have to come down on the side of supporting the treaties with the amendments and reservations the Senate has adopted.

As I have examined the treaties over the last several months, my major concern has been whether or not the provisions insured that the canal would remain open for our ships and those of all nations. The adoption of two major amendments to the Neutrality Treaty has insured that the United States has the right and the responsi-

bility to defend the canal militarily against any aggression which might threaten the ability of our ships to transit the canal. The second amendment insures that our vessels will be able to transit the canal as quickly as possible, and in times of need or emergency, it would insure that our warships would go the the head of the line.

While these amendments assured our rights in a secure and a neutral canal after the year 2000, it was unclear to me and to many other Members of the Senate just what rights our country had should the canal be closed or its operation interrupted from internal causes. To make it ironclad that the United States has the unilateral right to reopen the canal in such cases, I joined with 74 other Senators in supporting the DeConcini reservation which spells out America's right to act independently to take the steps necessary to use military force to reopen the canal.

With the DeConcini reservation attached to the treaty, there's absolutely no question as to what action the United States can take to keep the canal open.

I am firmly convinced that ratification of the Panama Canal treaties with the amendment and reservation which have been adopted by the Senate are in our best national security interests. It will serve our best national security interests in terms of our overall relations with all of Latin America. It will remove an issue which has been a rallying point for the Communists, and will thus help to curb the possible growth of communism in Panama and Latin America.

As a U.S. Senator, I have been elected to represent the people of my State, and to do this properly I must to the best of my ability fully inform myself on all the aspects of these proposed treaties, listen to all the arguments for and against, weigh all consequences of accepting or rejecting the treaties and having done this, I must vote in the way my conscience dictates is best to protect the interests of the United States. I am doing this today by casting my vote in support of the treaties.

PANAMA CANAL TREATY: AN ANALYSIS

Mr. CLARK. Mr. President, one of the experiences that impressed me most during the prolonged hearings and debate over the Neutrality Treaty was the extent to which, as George Gallup wrote in an analysis:

> The more American know about the Panama Canal treaties, the more likely they are to favor Senate ratification * * *

This was parallel to my own experience, meetings and talking with people of my State. In many instances, persons would begin very much opposed to the treaties but, after a discussion of the pros and cons, would swing around and be much more friendly toward them.

This experience leads me to the conviction that there are still a lot of people in this country who have not yet read the treaty texts, who do not really know what they provide for, and who are in fact taking a position based on bits and pieces of information that they may pick up through the media. As a matter of fact, it occurred to me that even those with the patience to listen to this debate on the

radio would not, from the broadcasts alone, have heard what is in these treaties. There is not even the formal reading of the articles—here on the floor we normally dispense with the reading after a few passages. Instead they have heard debate on isolated items, often in the critical formulation of what is not in the treaties, and what may be added to them.

Mr. President, in my judgement, I think it is imperative that the American people become familiar with the substance of these treaties so that they may better judge what we are undertaking.

I am reminded of Woodrow Wilson's comment that the responsibility of the legislative branch to inform is as great as its responsibility to legislate.

For that reason I have undertaken a lengthy and detailed analysis of the Panama Canal Treaty. I want to spell out right here what is said in the treaty, what it means, why it is phrased in that fashion. I want to look right into the heart of this treaty to try to demonstrate, as I have learned myself, that there is an awful lot of painstaking negotiation embodied in this treaty, a lot of reflection on how best to establish a machinery for the gradual assumption of Panamanian control of the canal, while at the same time protecting the interests of this Nation, and of those American citizens now working in the canal.

Article I of the treaty is entitled "Abrogation of Prior Treaties and Establishment of a New Relationship." Upon entry into force of the new Panama Canal Treaty, the old Treaty of 1903 would be abrogated, as well as two subsequent revisions of that treaty, one in 1936 and 1955.

It would also abrogate a whole host of earlier treaties, conventions, and exchanges of notes between the United States and Panama concerning the Panama Canal. This is a housecleaning provision; if you are going to have new treaties, the old ones have to be abrogated.

The second section describes the extensive rights the United States will enjoy during the period of this treaty, that is, for the rest of the century (until the year 2000):

> In accordance with the terms of this treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America * * * The rights through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal.

Panama further guarantees to the United States "the peaceful use of land and water areas" necessary to carry that out.

Section 3 says:

> Panama shall participate increasingly in the management and protection and defense of the Canal * * *

Section 4 says simply that the United States and Panama—

> * * * shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

To sum up this article, we agree to abrogate the existing treaties, but, in response, Panama guarantees us a broad range of rights necessary to continue operating the canal. These general principles are subject to clarifications and limitations elsewhere according to other terms of the treaty, but these are the broad principles on

which this treaty is based, and on which it would be interpreted in an international court of law.

Article II is the "Ratification, entry into force, and termination" clause. This is the clause that provides that—

> This treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties.

Without editorializing there, I would think it is fair to say that the treaty does not give the United States any authority to interpret the constitutional processes of Panama any more than it gives Panama authority to govern the constitutional processes of the United States; nor should it. These are domestic Panamanian issues.

Article II also links this treaty to the Neutrality Treaty the Senate already has voted to ratify, just as that treaty has a clause linking it to the Panama Canal Treaty. These two are linked so that one cannot come into force without the other. And rightly so, for the Panama Canal Treaty is designed to prepare Panama to assume control of the canal, under the arrangements in the Neutrality Treaty, after the year 2000; and the United States would not transfer operation to Panama absent the ongoing rights and guarantees provided to us by the Neutrality Treaty.

The article also provides that the treaties will enter into force 6 months after the formal ratification.

It also provides that this Treaty, the Panama Canal Treaty, terminates at noon on December 31, 1999, from that point on our relations will be governed by the Neurality Treaty, which has no cutoff date.

Article III establishes the ground rules for "Canal Operation and Management."

In this article, Panama grants to the United States the rights to manage, operate, and maintain the Panama Canal in order to provide for the orderly transit of vessels through it. Among the specific rights are: First, to use the specific lands and waters necessary for this purpose; second to make improvements and alterations; third, to establish the rules and regulations governing such matters as navigation; fourth, to establish, modify, collect, and retain tolls; fifth, to regulate relations with employees of the U.S. Government; and sixth to issue and enforce regulations.

In short, the United States will retain full authority over all aspects of canal operation and management; helping the setting of tolls and establishment of wages, vacations, et cetera, for our employees. All of these matters—and this is extremely important—will remain subject to the legislature jurisdiction of the U.S. Congress.

Moreover, the broad U.S. rights established here are reinforced in great detail in separate agreements and protocols which regulate details in much the same fashion as our status of forces agreement maintained with many countries throughout the world. These agreements provide extremely specific rights and protection for our agencies and employees, and this too is a very important point, our employees are not going to be worse off as a result of these treaties, their status will be different than it is now, but it

will not be worse. Indeed, their situation will be better in many respects.

For example, an employee today who leaves the Canal Zone and goes into other parts of Panama has no specific protection under the existing treaties and agreements, under the new treaty they will have extensive protections wherever they may go throughout Panama, the status of force formula is a proven one, it has worked extremely well in protecting our employees—both civilian and military—in all sorts of environments in various countries throughout the world for 30 years, there is certainly no reason to believe that these modern and proven types of protections cannot work equally well in Panama.

An extremely important provision of section 3 is the provision for establishing a Panama Canal Commission to manage, operate, and maintain the canal.

I think it is vitally important that everyone concerned with this treaty recognize that the commission, which will run the canal, will be a U.S. Government agency, created by and subject to U.S. law.

Thus, it will be subject to the continued legislative jurisdiction of the U.S. Congress. Its Board of Directors will be composed of nine members, "five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals * * *." This is not for 6 months; this is not for 30 months. From the time this treaty enters into force to the time it expires at the end of the year 1999, the United States will run the Panama Canal Commission which runs the canal and will have a voting majority on its board.

Section 3 has a further provision for facilitating the transfer of control while at the same time providing for ultimate U.S. responsbility. It provides that the Administrator of the Canal, the individual who manages the canal under U.S. direction, will be American until 1990, with a Panamanian deputy, after that, the administrator will be Panamanian, but it will be a candidate of Panama's which is appointed by the United States. If we find him unacceptable, if we do not like him, we do not have to appoint him; Panama has to nominate a candidate acceptable to the United States, or he simply would not be named to the post. In fact, if the United States accepts a Panamanian nomination, and names the man as administrator, and then finds him unacceptable, the United States can remove him. Moreover, whatever the nationality of the administrator, or for that matter any other officer or employee of the commission, he will be a U.S. Government employee whose duties and authority will be defined by U.S. law, and his activities will be fully subject to the policy direction of the U.S. Government. This is not unusual. Our big multinational corporations operate throughout the world with local managers. Indeed, the U.S. Government employs foreign nationals both in the United States and in other countries where we have activities. The key to control is not the nationality of the employee, but who directs them. In this case it is clearly the United States which retains this control.

This section of the treaty also provides that the United States will reimburse Panama for a variety of public services in the canal operating area and in some housing areas. I understand that the

United States will actually be saving about $8 million over the current costs of these services. This clearly would be to our advantage. Our agencies and employees deserve high quality public services.

The next section provides for the establishment of a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States and Panama, with the task of advising the United States and Panama on matters affecting the operation of the canal. I would certainly expect that this committee could evolve as a valued and useful advisory board. However, I wish to emphasize that its role is strictly advisory; decisions will be made by the United States and our agency, the Canal Commission.

Section 8 provides for growing participation of Panamanian nationals at high management levels, and throughout the administration. I find this perfectly justifiable, but must emphasize that again there are certain limitations and restrictions on this mandate, designed to protect current employees of the Canal Company, as spelled out in article X, which I will turn to later. The principle is stated, subject to reservations designed to assure proper operation of the canal and protection of its employees.

Finally, article III provides that when this treaty enters into force, the existing agencies—the Panama Canal Company, and the Canal Zone Government—shall cease to operate in Panama. As we have seen, the administrative and managerial functions performed by these agencies will be taken over by the Canal Commission. The municipal government function become the responsibility of the Panamanian Government.

Mr. President, I turn now to article IV, "Protection and Defense," which I consider one of the most vital provisions in this treaty. There are two specific points worth emphasizing:

First of all, the United States and Panama "commit themselves to protect and defend the Panama Canal. Each party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it."

Again, as in the Neutrality Treaty, both countries bind themselves to protect the canal, but each—and I repeat, each—acting alone, determines what actions it will undertake "to meet the danger resulting from an armed attack or other actions * * *"—let me repeat, "or other actions"—which threaten the canal. These "other actions" are wisely, in my judgment, left without further definition. It is the diplomatic way of doing things. Panama knows; the United States knows, that this means the same thing as article IV of the Neutrality Treaty, that is, that the United States can take action against any threat to the canal.

Second, article IV says the United States shall "have primary responsibility to protect and defend the canal." Again, primary responsbility for the protection of the canal. For this purpose the United States is assured the right to station troops, to train troops, and to move troops as necessary. The rights under this article are spelled out in considerable detail in an agreement in implementation of this article—a standard status of forces agreement such as we have with many nations—which contains provisions which our

military leadership says flatly are quite sufficient to carry out our responsibility for defending the canal.

Finally, article IV provides for the establishment of a combined board of United States and Panamanian military officers, to work together—in the spirit of this treaty—in matters pertaining to the protection and use of the canal. This relates to the basic defense rights I just mentioned. Each party has the right to act independently if necessary, but both contemplate working together and cooperating to protect their common interest in the canal. The combined board will in no way affect the chain of command of the U.S. forces in Panama.

There is one other provision in this article IV of considerable significance: Section 5 provides:

> To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

Let me emphasize these words, Mr. President, "to the extent possible * * *" the United States "will endeavor * * *" "in normal time * * *" to maintain force levels "* * * not in excess * * *" of those levels which exist when the Treaty goes into force. Absolutely right; absolutely correct. A good faith statement of policy that is perfectly consistent with the spirit of this treaty. Neither we nor the Panamanians want any more U.S. troops around than necessary to do the job. But in an emergency, where necessary, the United States has the right to increase these levels.

Mr. President, article V contains the "Principle of Non-Intervention" in Panamanian politics which was criticized at various times during the hearings on the treaties. Let us look at just what it does. "Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama."

I do not see what is so unusual about this restriction. It is not strange that Panama does not want these U.S. citizens, who are in Panama, because they work for the U.S. Canal Commission, to be fooling around in their domestic politics. Nor do our NATO allies, who have essentially the same restrictions on the activities of the large numbers of U.S. citizens in their countries, because of the alliance.

This language is no different than that in our status of forces agreements with many countries.

Lest there be any misunderstanding, this provision does not in any way restrict the activities of the U.S. nationals with respect to the American political scene, except, of course, that they will be, as they now are, U.S. Government employees, and subject to the same restrictions of the Hatch Act as any other U.S. employee.

Mr. President, article VI is brief, but of considerable importance in the discussion of particular concern to a broad segment of our

opinion that is particularly alert to environmental issues. In brief, in this section the U.S. and Panama pledge themselves to give due regard to "protection and conservation of the environment" and agree to establish a joint commission to deal with these issues in the operation of this canal or any other which might be built. The two parties agree to submit to the Joint Environmental Commission an impact statement on any actions they take which might have environmental ramifications.

Article VII dealing with "flags" is brief and to the point. The entire area will be under the flag of Panama which will always occupy the position of honor. The U.S. flag will fly along side the Panamanian flag at the headquarters of the Canal Commission. The U.S. flag will also fly on U.S. defense sites, and the U.S. flag can fly elsewhere if both parties agree. I think this is an entirely appropriate reflection of Panamanian sovereignty, and is consistent with normal, international practice.

Mr. President, article VIII on "Privileges and Immunities" is vital to the effective and independent operation of the Canal Commission. It states clearly that the installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this treaty and related agreements, "and their official archives and documents, shall be inviolable." This means that the Panama authorities cannot enter our facilities or inspect our records without our consent. Special arrangement will be made between Panama and the United States to handle criminal investigations at such locations.

Furthermore, although Panamanian law shall generally apply in these areas made available for use by the United States, the agencies and instrumentalities of the United States will be immune from the jurisdiction of Panama. And finally Panama has agreed to give the privileges and immunities accorded to diplomatic agents and their dependents under international law to the top 20 officials of the commission.

In short, throughout the period of this treaty, the Canal Commission's archives will be inviolable, the agencies of the U.S. government will be immune from jurisdiction of Panama, and 20 top officials and their families will enjoy diplomatic immunity. All this in addition to the very specific and extensive jurisdictional arrangements provided for all of our personnel under the implementing agreements which include specific procedural and due process guarantees for American employees of the Canal Commission, the military and their families. This in my judgment is a carefully drafted and thought out guarantee of our ability to run the canal without harassment by the Panamanians or anybody else.

Mr. President, sections 1–7, article IX, which deal with "Applicable Laws and Law Enforcement" are of vital interest to those American citizens who live and work in Panama or in what is now the zone.

Basically, the article provides for a transition period of 30 months during which private business or nonprofit activities established in the zone prior to March 7, 1977, may continue their operation on the same terms and conditions as now. They will be subject to Panamanian law generally, but have this 30-month period to bring their operation into full compliance with the laws

of Panama. At that point, they become fully subject to Panamanian law, but, and I emphasize, "without discrimination." They will be treated as similar private enterprises in Panama. Panama further agrees to recognize private ownership of buildings in what is now the zone, though this does not apply to the real estate, since with one exception, private business and organizations in the zone do not own the land they occupy today.

Panama has agreed, however, that they can continue to rent the land at reasonable rates, and if Panama decides to sell the land, the present occupants will have the first option to purchase at a fair price. Nonprofit enterprises can buy the property on which they are located at nominal costs. If Panama should ever find it necessary to exercise eminent domain powers, the owners will be compensated at fair market value for their property.

Section 8 of article IX relates directly to the fear expressed earlier in this debate that Panama might, by administrative or legislative action, take steps which infringe on U.S. rights. Under this section, "The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right under this treaty or related agreements." I think it is essential to quote this at length, because it certainly should assuage the fears of those who are anxious about Panama's intentions.

In section 10 of this article, the two parties commit themselves to take such steps as are required to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents. In short, everyone working on the canal will be protected, and Panama agrees to pass any additional legislation that may be needed and to punish offenders. Finally, the two nations agree to negotiate a treaty providing that the nationals of either state, who are sentenced by the courts of the other state, and do not live there, may serve their sentence in their own country and agree to enter into a specific treaty on this subject along the lines of our recent treaty with Mexico. This should allay the concerns of those who fear that American citizens would have to spend time in Panamanian jails. Let me emphasize that this is a fillip, a gain for American citizens in general. Do not forget, though, that elsewhere it is provided that in the cases of crimes allegedly committed by U.S. citzens employed by the Canal Commission, Panama will as a matter of general policy waive jurisdiction to the United States.

Mr. President, article X is one of the longest and most detailed articles in the treaty, and well it might be for it deals with the terms and conditions for "Employment with the Panama Canal Commission."

Let me emphasize one point to begin with: Section 1 declares that—

> * * * the United States of America shall establish employment and labor regulations which shall contain terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission.

Thus, the United States retains legislative jurisdiction on all employee matters. Let me very briefly enumerate the other key guidelines:

The regulations shall include a system of preference for hiring Panamanian applicants. This is as it should be. We want to employ more qualified Panamanians so that they are fully in a position to operate the canal by the year 2000. (Of course, 80 percent of the employees of the Panama Canal Company are already Panamanian.)

The terms and conditions to be established will be no less favorable to persons already employed than those currently in effect. In a word, no present employee of the Panama Canal Company will be disadvantaged in working for the Canal Commission.

Employment policy will "generally limit" the recruitment of personnel outside Panama to those with special skills not available there. This provision clearly enables the commission to hire outside Panama whenever persons with the requisite qualifications are not available inside that country.

The United States agrees to accepting programs for Panamanians.

After 5 years the number of present U.S. employees who will still be there at that time must be lowered by 20 percent. Frankly, when allowing for attrition, I find this a perfectly acceptable figure. It does not constitute any sort of ceiling on the total number of U.S. employees we may have at any time during the life of the treaty.

The Coordinating Committee is assigned the function of serving as a liaison on job openings between the Panamanian Government and the United States.

The United States will establish train-Panamanian professional licenses, but reserves the right to require additional professional skills. Like so many other provisions in this treaty, this provision recognizes the legitimate pride and status of the Panamanians, while at the same time reserving the right to establish whatever standards are necessary for running the canal.

This same balance holds for section 4, the provision for periodic rotation, at a maximum of every 5 years, of non-Panamanian employees hired after the entry into force of this treaty. Again, there is an exception made for administrative reasons in the cases of employees with special skills. And note, too, that it does not apply to persons currently employed by the Panama Canal Company.

So here we have another instance where the general principle of turnover is stated and reinforced, but where in practice the Canal Commission will have the authority to hire necessary individuals and keep them longer than 5 years if their skills are needed.

Regarding wage and fringe benefit policy, section 6 states flatly there "shall be no discrimination on the basis of nationality, sex or race." Interestingly, and consistent with the treaty's special concern for U.S. employees, the benefits now enjoyed, such as home leave, will not be considered as discrimination within the meaning of this paragraph. Again, this is a protection for the U.S. citizen now working on the canal.

Section 7 has received considerable attention already, and properly so, for it deals with the fate of those persons displaced from their employment, because of the terms of the treaty. As we know, Panama will assume certain functions now handled by the Canal

Company or Zone Government, including municipal services such as police and certain aspects of fire protection.

Where this happens, the U.S. Government itself is committed to relocate these displaced persons "to the maximum extent feasible, in other appropriate jobs with the Government of the United States, in accordance with U.S. Civil Service regulations." Furthermore, Panama obligates itself wherever possible to retain non-Panamanian employees in activities transferred to Panama, and to maintain current pay rates and working conditions.

Article 9 contains a provision widely misrepresented in this country. Because it is so vital, I will quote it in its entirety:

(A) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

(B) Employee unions shall have the right to affiliate with international labor organizations.

Let there be no doubt about this point. Employees will continue to have the right to collective bargaining, and employee unions will be able to maintain affiliation with international labor organizations. The terms for collective bargaining will be worked out between the United States and the unions.

Section 10 outlines yet another consideration for current canal employees:

The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this treaty.

The section goes on to note that due to special circumstances arising from this treaty the United States will make it easier for employees to retire under existing law, and seek legislation to provide more liberal entitlement to retirement annuities than is currently provided for by law if the employee himself decides he would prefer to go this route.

Again, this represents sincere effort to compensate those many dedicated U.S. citizens who have worked for the Canal Zone Company or the government. This program is expensive; its estimated cost (which ranges up to $150 million) is one of the major expenses incurred in the turnover. But it is just, and it is necessary. It is a benefit not to Panama, but to our own citizens.

Mr. President, article XI is so clearly a provisional arrangement, being the "Provisions for the Transition Period," that I will not go into a detailed section by section analysis. I would call attention only to the provision in section 1 that—

The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this treaty and in related agreements.

Now, Mr. President, we come to article XII, relating to "A sea level canal or a third lane of locks." Let me confess at the outset that I do not think any provision of the treaties has been more misunderstood and misrepresented than this article. Again, for the sake of accuracy, let me quote exactly what this article provides. After recognizing in section 1 the possible future importance of a

sea level canal, and commiting themselves to a joint feasibility study during the duration of this treaty, the two parties agree that if such a waterway is necessary, "They shall negotiate terms, agreeable to both parties, for its construction." As is obvious from the text, this is not a commitment necessarily to build a sea level canal; it is an agreement to negotiate the terms for such a canal if it is deemed desirable.

Then comes the much disputed passage:

2. The United States of America and the Republic of Panama agree on the following:

(A) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this treaty, except in accordance with the provisions of this treaty, or as the two parties may otherwise agree; and

(B) During the duration of this treaty, the United States of America shall not negotiate with third states for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two parties may otherwise agree.

Now, the fact is that this section is a straight trade off. The United States, and I emphasize that it was we who initiated this particular provision, knows full well that if and I say "If" because few persons I know believe the sea level canal will ever prove economically feasible—but "if" the canal is built, it would most certainly be constructed in Panama.

A U.S. commission spent 5 years and some $22 million before concluding in 1970 that of the 34 routes from Atlantic to Pacific, only eight were worth serious investigation, and of these the two best by a huge margin were in Panama. A Department of Transportation study in 1977 reconfirmed these findings. The route in Nicaragua is 140 miles long; through Colombia it is 100 miles long; the path through Panama is about 40 miles long. As I said, most experts I have talked with doubt that the sea level canal will be built anywhere. But if it is built, there is no option except Panama. Plowing through Nicaragua would cost four times more than through Panama. As a matter of fact, the judgment that Nicaragua was unfeasible was so persuasive that the Senate of the United States approved by 66 to 5 the abrogation of the Bryan-Chamorro Treaty which gave us that right. Many of the Senators now concerned with that right voted to renounce the Nicaragua rights 6 years ago.

The United States, aware of the significance of the Panama route, persuaded the Panamanians to pledge that if any canal is built in Panama, it must be by the agreement of the United States. Now, this is a significant restriction on Panama. It cannot build a canal in its own territory or let any other nation build a canal without our agreement. So in agreeing to this provision, Panama wanted to quid pro quo. That was that the United States agree during the same period not to construct a canal elsewhere in Central America.

In my judgment this provision is highly favorable to the United States. As I said, I do not expect in any case that the sea-level canal will be built, and therefore do not find this "right" all that significant. But it is decidedly a point in our advantage. As a matter of fact, we have heard General Torrijos' comment that he would be glad to dispense with this provision—cutting it would make him a national hero.

Let me add in concluding my remarks on article XII, that other sections of this article would permit the United States to build a third lane of locks to the existing canal, and would bind the United States not to use nuclear excavation techniques without the prior agreement of Panama.

Frankly, I think neither of these provisions is particularly important. Nobody speaks seriously of constructing a third lane of locks—but we would have the right to build them under this treaty. And in 1970 the Anderson Commission concluded that the use of nuclear explosives was not particularly feasible; nuclear excavation is contrary to U.S. worldwide policy; and we are prohibited from nuclear excavation by the Test Ban Treaty.

I come now to one of the most discussed articles of the treaty, article XIII, providing for "Property Transfer and Economic Participation by the Republic of Panama." This is the article which describes what we turn over to Panama on that last day of operation, and under what terms.

And, it is in this article where the payments to Panama by the Canal Commission are described.

First, section 1, providing for the turnover upon the termination of the treaty:

1. Upon termination of this treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree.

I know that the issue of "free of liens and debts" has been widely discussed here during the debate on the Neutrality Treaty. Again, without attempting to argue the case here, I want to emphasize that the United States will have control over the Canal Commission throughout the duration of the treaty, and it is that U.S.-controlled Commission which will manage the canal in a fashion which will insure that the operation is free of liens and debts.

This provision means that we will not mortgage the canal or its equipment before we transfer it to Panama. It also means that if in 1995 we find it desirable to make large capital improvements in the canal, but do not want to pay the entire bill, Panama can agree to assume a pro rata share of the cost.

Upon entry into force of the treaty, the United States under section 2, "transfers to Panama all right, title, and interest the United States may have with respect to all real property, including non-removable improvements" located in areas not reserved for U.S. use under the treaty, except for property made available for our use in these outlaying areas. Title to housing owned by the Panama Canal Company is transferred the day the treaty goes into effect, but the United States retains the use of such housing as is necessary.

I am told that the 1977 book value of Canal Company/Canal Zone Government property involved on this initial transfer, and those to be made over the life of the treaty, is roughly $96 million.

Upon termination of this treaty, Panama will assume total responsibility for the canal. All real property, nonremovable improvements and equipment related to the operation of the canal are transferred to Panama at that time.

The book value of the existing property to be transferred at the end, according to the State and Defense Departments, will be approximately $98 million. Panama will also receive all capital improvements made during the treaty's lifetime. With regard to military properties, facilities to be turned over at the start of the treaty have an acquisition cost of $27.5 million. During the treaty's life, additional property with an acquisition cost of $33.5 million will be turned over, and at the treaties and the remaining military facilities with an acquisition cost of $291.9 million will be transferred.

The payments to Panama during this period are supposed to be a "just and equitable return on the national resources which it has dedicated to" the Panama Canal. The payments, by the Canal Commission, from canal revenues, are:

(a) A share of tolls amounting to 30 cents per Panama Canal ton of shipping transiting the Canal;
(b) A fixed amount of $10 million per year; and
(c) An additional sum of up to $10 million per year if there is a surplus from operating revenues.

Why these particular figures? One Senator has an amendment which would cut the payments in half. Many critics describe this as "paying Panama to take the canal off our hands."

To set the record straight, let us understand clearly that these will be payments from revenues. I grant that there are expenses involved from the U.S. Treasury, in the implementation of the new treaty, but the payments to Panama are not part of them.

To understand the significance of these figures it is necessary to go back into the negotiating history of these treaties.

You will recall that initially Panama was asking for incredible sums—a billion dollars—as compensation for the presumed losses to Panama which resulted from the years in which the United States kept tolls at an artifically low level to accommodate the world's shippers, and consequently paid Panama a pittance for use of the canal territory.

The U.S. negotiators went into these discussions with a basic position: Payments to Panama would have to be based on what the canal could earn, not on its theoretical value to the world's shippers, or some abstract value of Panama's contribution—through geography—to the world. Economic research indicated that the canal could absorb toll increases of up to perhaps 75 percent and still increase revenue. The United States took a very conservative position, opting instead for a projected toll increase of about 30 percent, on that basis, it was determined that a payment to Panama of roughly $50 million annually could be sustained. But rather than making this a flat across-the-board figure, this was divided into a payment (30 cents) based on traffic, a fixed $10 million, and a $10 million conditional payment if revenues are sufficient.

The point I want to make is simply that these are not artitrary figures. They are a compromise between what Panama would like to receive, and the U.S. position that payments must be sustainable by canal revenues.

Mr. President, this brings me to the final article, No. XIV, which provides for the "Settlement of Disputes." I can dispense with this

very briefly. In a word, Panama wanted provisions for compulsory arbitration of disputes. The United States felt it would do better without compulsory arbitration. The language in article XIV provides that where the parties are unable to resolve a particular matter, " * * * they may, in appropriate cases, agree to submit the matter to conciliation * * *." In short, there is no compulsory arbitration. That was what our negotiators were instructed to seek, and that is what they achieved. It was quite an achievement.

Mr. President, that concludes my section-by-section analysis of the treaty. I hope that by going through this in such detail I have made it clear why in my judgment this Panama Canal Treaty—as modified by the leadership amendment—represents a balanced and reasonable mechanism for transfer of the canal to Panamanian operation. It is highly protective of American interests during this period. Indeed, for all intents and purposes the United States runs the canal and has full responsibility for its defense through the end of this century. I would hope that the decision on this treaty takes this into full consideration, and that this treaty is seen as being in the best interests of both the United States and Panama. Taken together with the treaty on neutrality, it represents the most effective way, in my judgment, of guaranteeing what the United States wants in the future; that is, the open and free use of the canal by the navies and commercial fleets of all Nations.

NONINTERVENTION AND THE PANAMA CANAL TREATIES

Mr. KENNEDY. Mr. President, we are considering today the last of the reservations and understandings to the resolution of ratification of the Panama Canal Treaty, before that treaty is hopefully adopted by the United States Senate.

The most important of these is clearly the amendment introduced today by the Senate leadership and the floor managers of the treaties. The amendment provides that any action by the United States shall be only—I repeat only—to keep the Panama Canal "open, neutral, secure, and accessible." It provides that the United States will not—I emphasize will not—intervene in Panama's internal affairs or interfere with its "political independence or sovereign integrity."

I shall support this leadership amendment. It has equal application to both Panama Canal treaties, although it is adopted in the course of action on the second treaty. This is a judgment confirmed in a memorandum of law prepared by the Department of State, which I ask unanimous consent to be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. This provision is consistent, Mr. President, with the obligations on neutrality and nonintervention in the two Panama Canal treaties as amended. Our obligations are clearly defined in the Neutrality Treaty as follows:

> Any United States action will be directed at ensuring that the canal remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

The United States has long been committed not to intervene in the internal affairs of any other state under the United Nations charter, which we have agreed prevails over all other international agreements. Article 2, section 4 of the charter provides that:

> All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.

The United States has long been committed not to intervene in the internal affairs of any other State under the charter of the Organization of American States. Article 18 of the OAS charter provides that:

> No state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the state or against its political, economic and cultural elements.

It is my hope that President Carter will also reaffirm these commitments when he moves to exchange the instruments of ratification with Panama. A protocol of exchange, covering both Panama Canal Treaties and signed by both parties, will be a particularly valuable instrument for the United States to state unequivocally its opposition to intervention in Panama's internal affairs.

So I believe that an adequate basis has been established for Panama and the United States to develop a new treaty relationship over the Panama Canal. This relationship must be based on partnership and mutual respect, above all respect for the sovereignty of Panama over its territory which has always included the canal.

This is a relationship of friends and allies, not of patron and client states. This is a relationship which will insure that the canal remains so open and so secure that there will never be a need for us to take military action in that part of the world.

With these understandings, I believe that we can turn from the difficulties and misunderstandings of the past to future friendship and cooperation with the people of Panama.

EXHIBIT 1

MEMORANDUM OF LAW

The question has been raised whether an interpretation of the Neutrality Treaty expressed in a reservation or understanding in the Senate's resolution of ratification of the Panama Canal Treaty would be legally binding on the parties with respect to the Neutrality Treaty.

We are not aware of any reason why such an interpretation, concurred in by Panama, would not be binding. The essential inquiry is whether there is a meeting of the minds. If both parties to a bilateral treaty agree in a separate instrument to an appropriate interpretation of that treaty, there is no legal reason why the separate instrument should not be fully effective in accordance with its terms.

In my opinion, such an interpretation of the Neutrality Treaty would be legally authoritative and binding on the parties.

HERBERT J. HANSELL,
Legal Adviser.

Mr. SPARKMAN. Mr. President, we are about to conclude debate on the most controversial treaty to come before the Senate since I have been a member of this body.

I hope that the Senate will give its advice and consent to this treaty as it did to the Neutrality Treaty and that, subsequently,

Panama will accept the Senate's modifications. The adoption of the leadership amendment today should go far in reassuring the citizens of Panama that the United States has no intention of intervening in Panama's internal affairs.

The two treaties which the Senate has been considering for the last 2½ months are more significant than the words they contain. In our relations with the nations of Latin America, these treaties symbolize the end of an era of paternalism and the beginning of a new era of equality and partnership.

I commend the President for his courage in moving expeditiously to work out a genuine partnership relationship with Panama. The treaties are a fair and equitable bargain for both countries.

Many others deserve credit for bringing the Panama Canal issue to this momemt of decision.

Without the active support of the majority and the minority leaders these treaties would not have had a chance for approval by the Senate. Throughout this long debate, both the majority and the minority leader have demonstrated the highest qualities of political leadership. After careful study of all the issues, they decided to support this unpopular cause, because they believed it was right, and then set out to convince their colleagues and the public of the wisdom of their decisions. Their work on the treaties has been in the highest tradition of great Senate leaders.

I wish to express my gratitude to Senators Church and Sarbanes who have carried the major burden here on the floor for the Foreign Relations Committee for the 38 days of this debate. Day in and day out, since February 8th, Senator Church and Senator Sarbanes have handled these treaties in a masterful manner. As my colleagues know, there is no political mileage in being a floor manager for such a controversial measure. I know that I speak for all members of the committee in expressing my thanks for their able and conscientious efforts.

Many members of the committee staff have assisted in the work on these treaties, under the guidance of Norvill Jones, the Chief of Staff. In view of the limited time, I will not name all of them. However, I do want to mention several whose efforts should not go without notice. Mike Glennon, the committee's legal counsel, has provided sound advice on many legal questions. Bob Barton, Ralph Nurnberger, Joel Johnson, and Bill Ashworth have also assisted on various matters. But, throughout, the primary staff burden has been on the shoulders of Bob Dockery and Ralph McMurphy. They have been on the Senate floor constantly during the debates, providing expert assistance and advice to the floor managers and other Senators. They are true Senate professionals. Both the committee and the Senate are fortunate to have their services.

I also wish to thank all of the personnel of the executive branch who have worked so closely with members of the Senate and staff in providing assistance during the committee's and the Senate's consideration of the treaties.

Finally, I wish to pay tribute to National Public Radio for broadcasting the Senate debate on the treaties. These broadcasts have made a substantial contribution in educating the American public on the issues involved. I hope they will be a forerunner of other live broadcasts of Senate debates. I wish to pay tribute, especially

to Linda Wertheimer and her associates for their competence and patience in interpreting for listeners the events taking place in the Chamber.

The Senate's work on these treaties has been in the finest tradition of the meaning attached by the authors of the Constitution to the advise and consent clause. In great detail the Senate has worked its will on these two treaties. For the first time in more than half a century it has amended a treaty. It has also given its advice to the President in the form of a number of other provisions included in the resolution of ratification. A byproduct is that the debate has pointed up the need for a fresh look at the Senate's rules governing the handling of treaties.

Mr. President, with the approval of this resolution the Senate will have done its work well. It will have demonstrated once more the constructive partnership role that the Senate can play in the making of foreign policy.

Mr. THURMOND. Mr. President, I rise this afternoon to warn the U.S. Senate one last time of the troubles ahead if this treaty is ratified today.

These troubles are sure to come. This is a bad treaty. It is poorly conceived to accomplish what it purports to accomplish. Its flaws are numerous and remain in place because the treaty supporters have allowed no substantive amendments during over 2 months of debate.

In my 24 years in the Senate I have never seen this body so totally reject the obvious wishes of the American people on such an important matter. The Senate should listen to the people because the people are right in opposing these treaties.

PANAMA SOVEREIGN IN 1978

The Senate should also realize that the American people will soon learn, if they have not already, that Panama becomes sovereign in the Canal Zone 6 months after the exchange of the documents of ratification. This will occur in about November of this year, 1978, not the year 2000. At that time, in this very year, 1978, the Panama Canal and other lands in the zone become the property of Panama. In the year 2000 the United States merely passes operating control of the Panama Canal to the Panamanians.

Mr. President, why do the American people oppose this treaty despite Presidential TV appearances and unprecedented lobbying?

REASONS OPPOSED

They oppose it because:

First. It surrenders control of the canal to Panama.

Second. It violates the Constitution on transfer of property.

Third. It transfers a $9 billion asset without any payment to the United States.

Fourth. It could cost the United States up to $2.3 billion to transfer the canal to Panama.

Fifth. It denies the United States base rights from which to defend the canal and protect U.S. interests in the Caribbean.

Sixth. It weakens U.S. ability to be assured of the transfer of Navy ships from ocean to ocean in times of national emergencies.

Seventh. It fails to provide explicit rights for U.S. forces to enter Panama to defend the canal if closed or threatened.

Eighth. It does not assure priority of passage for U.S. ships in times of emergencies.

Ninth. It opens Panama and the canal to Communist subversion and control.

Tenth. It has vast economic disadvantages to U.S. exporters, shippers, ports and consumers.

Eleventh. It represents a retreat of American influence from the Caribbean area in which Communist forces are gaining yearly.

Twelfth. It makes uncertain the availability of a vital Pacific-Atlantic maritime link.

Thirteenth. It permist ships of a nation at war with the U.S. to use the canal to patrol waters in our hemisphere.

Fourteenth. It places a heavy burden on the American people through direct appropriations, loss of payments to the Treasury, and higher costs of goods by increased tolls.

Fifteenth. It fails to make clear what it purports to do and thereby will create trouble and even conflict between the U.S. and Panama.

Sixteenth. It is morally wrong because it places the U.S. in the position of making an important contract with a dictator whose power over his people and denial of their human rights will be strengthened by ratification of this Treaty.

Mr. President, these are but a few of my concerns. Many more have been expressed by myself and other opponents during this lengthy debate. This treaty is the great giveaway of the century—a giveaway of U.S. property, prestige, economic strength and defense strength.

NO TRUST OF TORRIJOS

Mr. President, I do not trust the Panamanian dictator, General Omar Torrijos. He has strong Comminist ties. His rule has brought huge debts on the Panamanian people. His rule has placed his people at the bottom of the list on human rights. I ask the Senate, why should we trust him with the operation and ownership of the Panama Canal, a vital international waterway?

Mr. President, the recent indecision and bargaining over the DeConcini amendment to the first treaty merely highlights the ambiguities, uncertainties and misunderstandings which riddle these treaties. The main purpose of the treaties, the advocates claim, was to develop a clear, concise and fair relationship with Panama. These treaties fail completely in this regard.

The Senate has not been allowed by the advocates of these treaties to improve them because of the very weakness of General Torrijos in his own country. The proponents have argued, in effect, it cannot be changed because General Torrijos is too weak to win approval in a new plebiscite. Practically every change, even the reservation attempting to change the reservation offered by Senator DiConcini has had to be cleared by General Torrijos. This is a mockery of the responsibility of the Senate.

I believe the people of Panama should have a new treaty, but one negotiated with a freely elected government truly representative of

their concerns—not one designed to pay off the debts of a dictatorship.

CHANGES ATTEMPTED

Mr. President, during the course of this debate I have spoken at length on the defense, financial and economic consequences of these treaties. I have offered amendments, reservations and understandings in an attempt to shape these treaties in a way to better reflect the interests of the American people and the people of Panama.

For the most part, the treaties have not been improved except for the DeConcini reservation to the Neutrality Treaty. This reservation improved the U.S. situation, but now the treaty proponents have weakened it because General Torrijos finds it unacceptable.

Never have I seen a foreign figure hold such sway over the Senate. This will be a fateful day in U.S. history if the Senate pays more attention to the wishes of General Torrijos than to the wishes of the American people.

Again, I remind this body that if the Senate ratifies this treaty, later this year of 1978, probably sometime after the November election, Panama becomes sovereign in the zone. As territorial sovereign Panama becomes owner of the canal. This happens in 1978, not the year 2000.

Mr. President, I urge my colleagues to search their minds and their hearts and place the interests of the people of America and the people of Panama first by sending this treaty back to the President for further negotiation.

INTERNATIONAL DEBT, THE BANKS, AND U.S. FOREIGN POLICY AS IT RELATES TO PANAMA

Mr. HELMS. Mr. President, in debating the proposed Panama Canal treaties, no attention whatever has been given to some of the as yet unexplained circumstances surrounding the intended giveaway of the Canal Zone and Panama Canal.

By that I mean the strong support—nationally orchestrated support, I might add—that has been given to the treaties by financial institutions and multinational corporations in the United States which have a direct stake in the economy of the Republic of Panama.

While the American taxpayers who over the years have underwritten the canal and its associated facilities, overwhelmingly oppose the treaties, the American banking and big business communities seem almost solidly for them.

The people want to know, why? U.S. Senators want to know, why?

The citizens of this country made the investment that built the canal, and its defenses, not the bankers and the giant corporations.

The interest-bearing balance on the net direct investment of the United States as of June 1976 was $319,005,661. The noninterest bearing balance was an additional $18,051,630.

Mr. President, that totals $337,057,291—over one-third of a billion dollars.

In other words, the American people have over a third of a billion dollars still unrecovered in their Panama Canal investment.

The treaty proponents have demonstrated their intention to deprive the American people of the opportunity to recover that third of a billion. The toll rates will have to be greatly raised to meet the promised payments to Panama. But the administration and the Senate leadership fear correctly that the basis for such toll rates cannot also include provision for repayment of interest on the people's investment, or amortization of that investment over the 22-year life of the new treaty. That probably would drive the rates up to the point of diminishing returns and canal traffic would begin to go elsewhere.

Naturally, the interests of the American people must be put in second place. I and others have tried, all too unsuccessfully, to put those interests back into first place.

Mr. President, if the American people cannot get back their own hundreds of millions of dollars as yet unrecovered from their creation of the Panama Canal, why should they be forced to pay the Republic of Panama hundreds of millions more for taking over this tremendous national asset of the United States.

We would be already turning it over gratis—but we have not gotten our investment back out of the canal.

The national support for the treaties by American based international banking groups and other multinational institutions includes support for the funding arrangements they contain. By those arrangements Panama benefits greatly. But the American taxpayers are equally—I should say, unequally—mistreated. Some have called the giveaway a "payaway."

Mr. President, because of these circumstances, the American people look askance at the attitude of the international bankers and industrialists who have been promoting this giveaway.

Their own suspicions have been more than a little heightened by numerous articles which have appeared in the national and international press intimating or charging self-interest on the part of the giant banking institutions. These articles have presented a broad picture of the world's international banks being overextended in their loans to the world's underdeveloped nations. Those nations are going deeper and deeper in the red. They are becoming more and more unlikely to be able to repay those debts which grow larger, not smaller.

Mr. President, these articles have appeared in responsible publications; and they have helped to influence the thinking of our people and they have pinpointed questions for them that still remain unanswered.

An article in the London Daily Telegraph, March 3, 1977, stated flatly:

> Apart from political considerations the Carter Administration is also believed to be under pressure from American banking interests to hand the canal over to Panama.

An article appeared in Inquiry for December 5, 1977, entitled:

> The Treaty That Wall Street Wrote.

The author, Dr. Murray N. Rothbard, the distinguished economist and philosopher, wrote:

And so we should not be surprised to discover that U.S. government action in Panama today is for the purpose of subsidizing the Wall Street Bankers. . . . Commercial banks refuse to make public the details of specific loans, like those to Panama, and the Panamanian government is not exactly generous with such information, either. . . .

We might well ask, why did the New York banks pour all these loans into Torrijos' Panama? It seems clear that the money was a quid pro quo for Torrijos' decision—on the advice of leading New York banks—to reorganize Panama's banking laws in July 1970. This reorganization provided a favorable haven, free of taxes and onerous regulations, for foreign banks in Panama, much as Panama has long provided a flag of convenience for world shipping.

Dr. Rothbard then makes a statement and asks a question which go to the very heart of our debate on the new treaties, but which to date have not even been touched upon in the debate.

It was a deal that benefited the U.S. banks and the Torrijos regime, which could thereby expand its wealth as well as its political power in Panama. But now the U.S. taxpayer is being subtly asked to pick up the tab.

If a handful of large U.S. banks will be the major beneficiaries of the Panama Canal treaty, have they also had any role in lobbying for or negotiating the treaty itself?

Mr. President, this article raises the central, but yet unanswered question behind my remarks today.

The Honorable Gene Snyder, U.S. Representative from Kentucky's Fourth District, last year put over 200 questions to the State Department and the Treasury Department on this matter of international banking interests relating to Panama.

Those questions were based on some 22 published articles, including Rothbard's, and also on some 7 additional news stories and momoranda from official sources. I have received from the Library of Congress additional material now known of or utilized by the Representative of Kentucky.

Congressman Snyder's questions and the answers covering several hundred pages soon will be published in the House Panama Canal Subcommittee hearings, under the title, "Panama Canal Treaty Ramifications, Part 2, International Banking Interests Relating to Panama, and Other Treaty-Related Matters."

The hearings of the Panama Canal Subcommittee of the Merchant Marine and Fisheries Committee on November 30 and December 1, 1977 were devoted to the subject, "The economic and financial ramifications of the proposed Panama Canal Treaties."

Quite a few of Congressman Snyder's questions were evasively answered in a most unsatisfactory manner.

We know, of course, of the banker/lawyer, Sol Linowitz, who played a major role in finalizing the treaty negotiations. We know, all too well, how the Carter administration appointed him as Ambassador for but a 6-month period, thereby avoiding the necessity of allowing the U.S. Senate to pursue the normal process of approving the appointment.

Dr. Rothbard closed his long article with the following words which might give pause to the majority in this body which is so set on disposing of the Panama Canal:

There are several ironies that emerge from a careful look at the Panama Canal treaty fight—especially the picture of this country's liberals and progressives battling to pour money into the coffers of a handful of Wall Street banks in the name of a treaty they mistakenly believe represents a withdrawal of U.S. power abroad. It doesn't, and those who automatically oppose anything the right wing favors, need to

do some hard rethinking of their reflexive support for the new Panama Canal treaties.

Mr. President, another informative title appeared on an article by Ms. Cheryl Payer in Bankers Magazine, Spring 1977:

Will the Government Have To Bail Out the Banks?

This article opened with the following paragraph:

American banks with large loan exposures to third world countries are like the person astride the tiger: The dangers of continuing the ride are matched only by fears of what will happen if an attempt is made to dismount. Although most bankers would clearly prefer lending to better credit risks than the deficit-ridden less-developed nations, they are into a number of countries so deeply that a failure at this point to roll over previously extended loans could precipitate the crisis which everyone is trying to avoid. To extricate themselves from their dilemma, the banks are looking toward Washington.

Mr. President, Panama certainly is a deficit-ridden, less-developed nation. Does the Senate know how deeply U.S. banks are into Panama? I do not mean just what appears on the surface, and in statements for public consumption. I mean the real story behind the scenes.

The article in Bankers Magazine states further:

The bankers who are willing to admit that they are in deep trouble because of their Third World exposure are also nearly unanimous about the solution they expect. They propose that the governments of the creditor countries (primarily the U.S., of course) come to the aid of their Third World dependents and their own capitalists by increasing official aid programs, bilateral and multilateral, by massive amounts. The banks also hope that governments will bear the main burden of debt rescheduling as they did in the previous wave of Third World debt crises in the 1960s, when private debt was mainly in the form of supplier's credits. That is, they want the taxpayers of the creditor countries to pay the bad debts, with the money passing—in theory only—through the hands of the debtor governments on its way to repay bank loans. If this does not happen, they warn, we risk a 1930s style collapse of the banking system when the defaults become numerous.

Mr. President, that is not an article from some irresponsible far-out scandalmongering publication. That is from Bankers Magazine. That periodical is for bankers, and talks to bankers about bankers and banking developments and problems.

Let us pay close heed to what is stated in this article.

I repeat:

They want the taxpayers of the creditor countries to pay the bad debts, with the money passing—in theory only—through the hands of the debtor governments on its way to repay bank loans.

Mr. President, Ms. Payer is telling us that the over-extended banks have used as their leverage on Washington to get taxpayer aid, a taxpayer bailout of their bad loans, the fear of another 1930s-style banking collapse.

SENATOR CHURCH REPORT: INTERNATIONAL DEBT, THE BANKS, AND U.S. FOREIGN POLICY

Official U.S. goverment sources have added depth to the picture presented in the articles in the press.

Not the least important of these sources is the Senate's own Committee on Foreign Relations.

The able advocate of the new treaties, the distinguished Senator from Idaho, Mr. Church, as chairman of the Subcommittee on Foreign Economic Policy, has himself issued one of the most ex-

haustive documents dealing with this entire matter. The Senator from Idaho authored the introduction to a staff report dated last August and illuminatingly titled, "International Debt, the Banks, and U.S. Foreign Policy."

Mr. President, the Senator from North Carolina could very well entitle these remarks: "International Debt, the Banks, and U.S. Foreign Policy as it Relates to Panama."

I shall quote extensively from the Church report of August 1977 in a few moments.

Mr. President, many of the articles I have mentioned have implied or charged that the international bankers want the treaties to bail out the Republic of Panama. The Torrijos regime owes a third of a billion dollars to American banks, another third of a billion to international banks abroad, and another three quarters of a billion dollars to governments and quasi-official lending agencies such as the World Bank, International Monetary Fund, and the like.

Senator Church in his introduction to that August 1977 staff report, wrote:

> The Subcommittee on Foreign Econimic Policy of the Committee on Foreign Relations has initiated an inquiry into the relationship between international indebtedness and the foreign policy interests of the United States.

Mr. President, just what is the role of our big banks in promoting these treaties at such an enormous detriment to this Nation's security and at such an enormous cost to our taxpayers?

That is what the citizens of this country want to know.

That is what many Senators in this chamber want to know.

This particular Senator will present a number of facts today as background for this issue as yet totally unexplored by this body. And, Mr. President, I believe it is an issue that should be fully explored before the new treaties are approved.

Mr. President, I have heard more than one U.S. Senator state his own suspicion of the banking connection with the treaties, not only privately, but publicly.

Those of us who cannot fathom any legitimate reasons for disposing of the Canal Zone and the Panama Canal are asking, what is the quid pro quo?

The Senator from Idaho is familiar with bankers' doctrine of quid pro quo.

In his report on "International Debt, the Banks and U.S. Foreign Policy," there is specific mention of one such quid pro quo. The report discloses that Zaire leveraged the huge National City Bank in New York into an additional loan of some $250 million under the threat of otherwise never repaying earlier loans.

In the words of the Church report:

> The Zaire Government is thus holding the money it owes the banks hostage for a $250 million ransom.

The report continues:

> The Zaire case raises some interesting questions about just who has the greatest leverage at this stage of international debt buildup—the creditor banks or the debtor countries?

Mr. President, the Senator from Idaho deserves our compliments for having lifted a little bit the veil that covers the behind-the-

scenes impact on government policy of powerful money interests and for focusing attention on the world banking situation exemplified by Zaire case.

Can the distinguished Senator from Idaho adequately assure the Senate that the situation with Panama and the international banks to which that country is indebted to the tune of two-thirds of a billion dollars is not a parallel to the Zaire case?

The sentence following the one I just quoted from the Church report, adresses the problem still more fully with another question:

> Was Citibank's willingness to undertake the task of raising another large loan for Zaire a prudent and sensible response to restore the creditworthiness of a borrower, or a desperate attempt to avoid as long as possible having to write off a substantial loss on an international loan, and perhaps thereby set a precedent for other debtor countries to follow suit?

Let me paraphrase that question.

Is the willingness of America's giant bankers to promote and support our giving away the Panama Canal enterprise a truly disinterested endeavor on behalf of the United States and a generous offort to aid a small Latin country—or is it a desperate attempt to forestall having to write off substantial losses on their international loans to Panama which is experimenting economic stagnation?

Mr. President, the American people want to know the answer to that question.

The Senator from North Carolina wants to know the answer.

Numerous Senators want to know the anwer.

Mr. President, I now want to quote Senator Church and his report at length to lend additional substance to the various articles I have mentioned in these remarks to raise this extremely important issue in the debate on the Panama Canal treaties. Here is our very own inhouse source.

I repeat, the issue is simply presented in the very title of the Senator Church—subcommittee document—"International Debt, the Banks, and U.S. Foreign Policy." This report alone provides a more than sufficient basis for any Senator to demand a full-scale Senate investigation into the matter of U.S. financial interests and the Panama Canal treaties.

In his introduction, the Senator from Idaho points out that there has been an economic revolution—not a gradual evolution—that in his words "has effected not only the United States but the whole international economic system."

That revolution has developed from the enormous hike in oil prices levied by the oil producing nations. The Senator writes:

> In the first full year after the oil price increase, over $90 billion in oil payments was transferred to the 13 OPEC oil producing countries, from the rest of the world. As a consequence, the oil exporters had a current account surplus of over $65 billion, while the industrial countries had a collective deficit of $33 billion and the developing countries a deficit of $21 billion.
>
> Official lending institutions such as the International Monetary Fund, which are the traditional source of balance of payments financing, have been able to meet only a fraction of the demand for international credit since 1973; it is the commercial banks which have filled the gap.

The distinguished Senator points out that the banks had found:

> A vast new clientele made up of foreign central banks, state and municipal governments, public utilites, and other official entities.

"However," Senator Church continues in his introduction to the report:

The commercial banks have become increasingly wary of extending their exposure to oil deficit borrowers. Consequently the U.S. Congress is being asked by the administration to appropriate additional funds for the IMF as well as other public lending institutions. Specifically, a proposed $10 billion facility, the so-called Witteveen facility is being negotiated for the provision of such additional resources. * * * However, the amount contemplated—approximately $10 billion—is nowhere near the magnitude necessary to cover the balance of payment deficits of the oil importing countries. Consequently, it is anticipated there will be future requests for additional congressional appropriations.

Mr. President, there you have part of the developing picture. More bad news for the hard working taxpayers.

The American taxpayers are about to be hit up for a substantial chunk of this new $10 billion bank bail-out fund. Their actual share, $1.72 billion, has already been approved by the House of Representatives. Not only that, they will be subjected to future appropriations. All this is to help bail out the banks. Note will, Senator Church himself says this new IMF facility was proposed consequent to the problems of the banks.

Is that not what Senator Church is telling us? He is telling us exactly what Cheryl Payer has told us in Bankers Magazine would happen. He forecasts continuing appropriations by which our citizens would continue to bail out the banks—by bailing out the countries deeply indebted to the banks. Is it and wonder many of us are worried that the Panama Canal giveaway is just another aspect of the overall bailout of the banks?

There it is: bail out the banks which have been underwriting the underdeveloped countries' oil consumption.

Would the OPEC countries be able to raise and hold up their prices if the IMF were not so ready to increase credit which validates the increase?

The law of supply and demand are such that when a producer finds no buyers at his prices, he is forced to lower those prices. Here we see the continued extension of credit which enables OPEC to continue their hold up. It is the taxpayers who pays.

Senator Church gives these details in his very important report:

But what we have been dealing with since the oil price increase of 1973 are not temporary deficits by a structural defect in the world economy in which enormous financial surpluses are concentrated in the hands of a very few countries which cannot spend them for goods and services. They are thus deposited in the "strong" industrial countries. The "weak" oil deficit countries then borrow from the major financial institutions in the strong countries. And there is no end in sight to this cycle of a few permanent financial surplus oil producer countries and burgeoning international indebtedness by weaker oil importing countries.

Mr. President, I want to repeat the words of Senator Church:

And there is no end in sight to this cycle of a few permanent financial surplus oil producer countries and burgeoning international indebtedness by weaker oil importing countries.

The distinguished Senator from Idaho is telling us that poor little nations like Panama have only greater indebtedness ahead, not less.

This, of course, Mr. President, means greater precariousness, not less, for the international banks which have overextended themselves in lending to such nations.

Now, I am not saying they are over extended, on my own authority. Senator Church's fine report is one of my main sources for that statement.

The able Senator draws his introduction to the report to a close by expressing the purpose of his subcommittee and the report itself in these words—words by which, indeed, he throws down the gauntlet to the incumbent administration which, ironically, he so earnestly supports in the Panama Canal giveaway:

> Nothing proposed by the present administration—or its predecessor—is likely to correct this underlying structural imbalance. That is the basic issue which confronts the Subcommittee, the Committee and the Congress as they consider the various stopgap finger-in-the-dike measures proposed by both administrations. For that reason, the Subcommittee of Foreign Economics of the Committee on Foreign Relations has initated an inquiry into the relationship between international indebtedness and the foreign policy interests of the United States.
>
> As part of this inquiry, the Subcommittee is publishing this staff report which analyzes the major issues the Committee, the Congress and this country will confront in the years ahead.

We are confronting an issue right now—in this treaty debate—which I believe is heavily influenced by the international indebtedness that concerns our colleague from Idaho.

Mr. President, Senator Church pinpoints a tremendously important issue. We here in the Senate should know much more about it as it relates to Panama. Before we agree to give the debt-ridden tiny country control over the Panama Canal we whould unravel the mystery of the banking and other multinational self-interest in Panama. The canal holds very great inportance for the United States in a world one-third of which is under the domination of an increasingly powerful Soviet Union. That nation's Cuban-based naval and air power is evident in the waters and skies of the Carribbean, the Gulf of Mexico, and the Atlantic Ocean.

Mr. President, Senator Church has brought to our attention an extremely important matter which directly relates to the matter of the Panama Canal treaties.

His report does not address our Panama policy. Nevertheless it poses for us Senators these questions: What is the exact situation with regard to Panama's indebtedness to the banks? What is the influence of those banks under the pressure of that indebtedness—and the attractiveness of Panama as an offshore financial center and tax haven—on U.S. Policy toward Panama?

Those are the questions we should address before we agree to turn our enormously important and valuable property over to Panama.

There may be no link behind banking interests and the treaties at all.

But bankers, like all of us, come under pressures from time to time. Senator Church with no mention of Panama, tells of these pressures at great length in his report. How the banks have been and will continue to react to those pressures should be of very great importance to us Senators in this debate on the Panama Canal treaties.

Senator Church bestowed his blessing on his subcommittee's staff report in these final words in his introduction:

> The paper was prepared by Ms. Karin Lissakers, a professional staff member of the subcommittee. The paper presents in a lucid, thorough and thoughtprovoking

manner the relevant facts and issues for public discussion. We are indebted to Ms. Lissakers for her outstanding work in researching and writing this paper.

Mr. President, we should take this time for the public discussion Senator Church calls for.

This should be the precise time for a very public discussion, Mr. President, of the question I ask, based upon his report:

What is the situation regarding international debt, the banks, and U.S. foreign policy as it relates to Panama and the Panama Canal treaties?

According to the Church report, the world's international banks have become heavily overextended in making loans to oil importing developing nations. The bank's financial positions, the report indicates are growing increasingly more precarious.

The report states:

Doubts are therefore raised about the ability of some countries to ever repay their foreign loans, or, in the long run, even to continue to meet interest payments on those loans.

The report asks, "whether this process of deficits, recycling, borrowing, and debt rescheduling can go on indefinitely," and makes this answer:

The viability of the whole international financial system is premised on the assumption that all the players stay in the game; that the banks continue lending, and the borrowers keep repaying the interest, so that although the principal may be refinanced or "rolled over" for individual borrowers, the money continues to circulate. The biggest threat to the system lies in the possibility that one of the passengers on the merry-go-round will decide to get off—that one of the large debtors finally decides to repudiate its debts, or one of the lenders says "no more" and calls in the chips. Other lenders when following in order to protect their interests and a domino effect sets in. As the crisis created by the collapse of Herstatt and Franklin National several years ago illustrates, even the disappearance of a relatively minor player can set the multinational banking system teetering.

Then the report issued by our colleague pointedly raises several questions. I believe that each of us should ask these questions in relation to the giveaway of the Panama Canal before finally determining how to vote on the treaty.

The question arises of how prudent the banks have been in their lending *.*.*. Has the profitability of this activity blinded them to the underlying risks? Or has the banks willingness to lend to foreign countries for balance of payments purposes been premised on the unstated assumption that in the event of a real debt repayment crisis, the governments of the wealthy industrial countries will have to come to the rescue because they cannot afford to see either the debtor countries or their own large banking institutions go under?

Mr. President, we should be asking ourselves the question Congressman Gene Snyder asked, "Is the Panama Canal vulnerable to international bankers?"

CHURCH REPORT FOCUSES ON BANKS "BEING BAILED OUT"

Mr. President, in these remarks the Senator from North Carolina has utilized the words, "bail-out," in connection with the international banks.

But this Senator is in distinguished company. The report approved and issued by our able colleague from Idaho, Senator Church, uses the words, "bail-out."

It discusses an agreement made in July 1974 by the Board of Governors of the Bank for International Settlements at their meet-

ing in Basle, Switzerland. It describes the BIS as the "central banker's central bank."

By the terms of that agreement, the Church report says:

> Consortium banks which have multinational bank participation will be bailed out on a pro-rata basis by member parent banks, again backed by their own central banks.

Then the Church report makes an extremely important point. It notes the obligations incumbent on these banks in making their international loans in return for this guarantee of a bail-out.

Unbelievably, Mr. President, there are no obligations required of the banks for this guarantee.

The report of the next chairman of the Senate Committee on Foreign Relations says this:

> It is worth nothing that the central banks asked nothing from the private banks in return for their guarantee, at least officially. * * * commercial banks can continue to compete on the Euromarket at margins which do not insure profitability, to take on deposits and external credits without adequate capital reserves and to roll-over hundred million dollar loans to underdeveloped countries who have little or no hope of ever being able to pay them back, without interference from any governmental authority. And if such practices lead to disaster the governments are pledged to come to the rescue.

Mr. President, the Church report says the United States, though not a member of the Bank for International Settlements, agreed to subscribe to the Basle accord at the annual IMF meeting in Washington in October 1974.

Therefore, the United States subscribes to the concept of governments guaranteeing a bail-out of the banks without imposing any reciprocal obligation on the banks to exercise prudent judgment in making their overseas loans.

Mr. President, by that agreement, our Government has signified that it will go to the aid of the bankers who get in too deep regardless of whether their "practices lead to disaster."

The unprecedented drive of the administration to ram these treaties through the ratification process without amendment must be viewed against the background of this agreement.

Mr. President, these are only a few of the more significant points made by the report of Senator Church.

I regret that this report was not given full attention by the Senate early in its deliberations on the treaties.

Mr. President, here we are voting on treaties by which the Panama Canal will be torn from the American taxpayers, whose property it is, and we who shall cast our votes still have no clear idea as to what is really behind this absurd and suicidal policy.

What we do know, however, is that the banking community and the multinational business community seem to be almost solidly lined up behind the dispossession of the people of their tremendous asset in the Canal Zone.

The question we should ask, Mr. President, before voting to approve the treaties is quite simple and direct: What, is in it for the big bankers, and the big industrialists who have been pushing these treaties?

We know what is in the deal for the people, for the taxpayers.

The American people will be deprived after the year 2000—when babies born this year will have just reached maturity—of any control over a tremendously important national defense asset.

The American people will be deprived of a very important commercial asset.

The American people will be subjected, as consumers, to higher commodity prices because of higher canal toll rates because of treaty pledges to Panama.

The American people will be deprived of the opportunity of having their outstanding investment in the Canal of one-third of a billion dollars returned to them.

The American people will be subjected to future appropriations to make up for deficits in Panama Canal income because of financial payments to Panama far in excess of what canal traffic can bear.

That is what is in the deal for the American people.

But, Mr. President, what is in the Panama Canal giveaway deal for the international bankers and multinational corporations?

The facts are that Panama is a highly profitable offshore financial center. It is an unregulated banking center in which, from which, and through which the huge international banks can legitimately carry on activities which are not allowed in this country by U.S. law.

There, U.S. investors can legitimately avoid current U.S. tax liabilities—the real legitimate purpose of a tax haven.

There, unscrupulous individuals and corporations can evade U.S. taxes, and sequester their legally or illegally acquired funds in secret, numbered bank accounts.

Mr. President, an interesting overall view of tax havens is given in "Grundy's Tax Havens, A World Survey" (Matthew Bender & Co., New York, 1972). Editor Milton Grundy states in his preface:

> The general view which I have gathered is that the tax havens must cause some loss to the fiscal authorities throughout the world; but there must also be some truth in the proposition that a good deal of business is done via tax havens which, if the parties were contemplating a net-after-tax return, would not get done at all.

The Practising Law Institute in New York City held a seminar on tax havens in January of 1973. The institute published a book entitled "Foreign Tax Haven," based on the edited transcript of that seminar. A Miami attorney, Marshall J. Langer, discussed Panama. Here are some excerpts from his remarks:

> It is important to highlight the fact that Panama has for many years been a successful major tax haven. Even though they have high tax rates for their domestic source income, they have made it clear over a period of time that there is no taxation of foreign source income, and that there is no taxation of dividends paid with respect to foreign source income. They have never taxed any such income nor is there any likelihood that they ever will.
>
> * * * * * * *
>
> They have a corporation law which is extremely liberal compared to that of many countries.
>
> One of the interesting factors about Panama . . . is the currency situation. There is no exchange control. The so-called Panamanian balboa does not really exist. The

Panamanian balboa, when it comes to anything other than coins, is the U.S. dollar bill.

* * * * * * *

Panama has become an increasingly important international banking center. Literally millions and perhaps billions have been flowing through there.

* * * * * * *

Compared to some of the other tax havens, Panama has a huge number of companies. Two of the law firms represented at this seminar each serve as resident agent for more companies than all of the companies existing in the Cayman Islands. Each serves as resident agent for about 5,000 companies at a standard fee of $100 a year plus whatever else comes up. It's a good business. There are believed to be some 35,000 companies presently registered in Panama, significantly more than most of the places that we have discussed.

Panama is not a party to any income tax treaty. There is no exchange of information between the Panamanian government and other government.

* * * * * * *

Panama is a less developed country for both U.S. income tax and U.S. Interest Equalization Tax purposes. It is a schedule A country for OFDI purposes. It is a major haven for U.S. ship owners. Literally hundreds of American owned ships are registered under the Panamanian flag.

Captive insurance companies can also be established in Panama.

In Appendix O of the book we find the following remarks:

In recent years Panama has adopted banking legislation patterned after Swiss law which permits numbered bank accounts and offers complete assurance of bank secrecy. If Panama has a problem it is probably due to the political unrest which has occurred there in recent years.

Mr. President, that last is of the utmost importance. The new treaties will, in the opinion of everyone I know, unquestionably assure the continuation in power of the Torrijos regime.

That, of course, would offer stability to the banking community, despite what it would do for, or I should say, do to, the Panamanian people.

Early in the seminar the book records we find the following statement by Lawrence A. Freeman, also from Miami:

The element of stability is quite important. If someone is going to set up a company or a trust for a period of 10 or 15 years, or if a major company, such as American Express, is going to set up a holding company or a bank or a finance company to handle its operations in a number of countries, they want to know the company can safely remain in the particular jurisdiction for a long period of time. They are going to be unhappy if they have to move the bank or finance company or holding company two or three years hence. They are interested in the long-term picture from the standpoint both of political and economic stability.

Mr. President, from this we can see the natural, built-in self-interest concern on the part of the international bankers and multinational corporations that have established themselves in Panama, that political and economic stability in Panama be assured.

The dictatorial Torrijos grip on the country has, indeed, brought a measure of stability not previously known in Panama which had some 59 changes of Presidents in its first 70 years of existence.

However, we all know the enormous price exacted of his subjects for the stability Stalin brought to Soviet Russia, and that which Mao extracted for the stability he brought to China. Torrijos has been exacting more and more a price of similar nature.

It is only natural for the international capitalists to prefer the known to the unknown—the existing regime which, despite its unpleasant aspects, favors their operations, as opposed to an un-

known successor regime whose policies, of course, cannot be predicted at all.

Economically, Panama today is going deeper into debt, with no promise for economic rejuvenation other than U.S. aid. That promise which falsely is held out as a cornucopia by Torrijos—acquisition of the canal and the zone—would prove to be unable to produce the prosperity he dangles before them.

On February 22, 1977, I introduced into the Congressional Record a memorandum sent by the American Embassy to the State Department dated October 26, 1976. It was in regard to the economic situation in Panama. A pertinent paragraph from that memorandum is the following:

(B) Increased external financial flows per se, regardless of concessionality, permit Panama to defer grappling with the core problem of low productivity until a later date when the problem will probably have worsened, unless such financing bears specifically on some aspect of costs. Indeed, much of the capital inflow of the past three years has aggravated Panama's economic malaise by exacerbating its debt service burden without enhancing overall productivity. Moreover, total inflows greatly exceeded the current account deficit of Panama's balance of payments, resulting in large negative "errors and omissions" (around $100 million annually) most of which probably represented outflows of domestically-owned capital.

Mr. President, the continuing loans to Panama, according to the American Embassy in Panama, have only served to worsen the economic situation in that country.

What the Embassy did not point out, of course, is how much of those foreign funds have that have poured into Panama have been siphoned off by the Torrijos regime.

Ironically, the banks not only have not helped the economic situation in Panama, but they have worsened their own financial positions by lending to that country which is increasingly unable to repay their loans.

The bankers and international capitalists have pushed the line openly and consistently to the American people that Panama needs the Canal Zone and the waterway's income to prop up its economy.

That much we know.

What we do not know is to what extent that propping up is necessary to their own continued operations in Panama.

Anyone with common sense knows that gaining control of the zone and canal will not help a country for long whose leadership has skimmed off the cream for its own bulging pockets.

That Torrijos is involved in many businesses was brought out in the secret session of drug trafficking in Panama. One of those businesses is that very drug traffic, as we all know, participated in by members of the Torrijos family itself.

Mr. President, the January 1974 issue of the quarterly publication of the American Bar Association's Section of International Law "The International Lawyer," carried an article entitled, "Panama and the Multinational Corporation: Tax Haven and Other Considerations." It was written by Robert Y. Stebbings, J.D., M.B.A.

He sets forth the manifold legitimate features of the tax haven provided by Panama. Stebbings also reports on certain practices, however, engaged in by certain persons or companies that reflect on individuals and corporations legitimately utilizing Panama as a

haven for avoiding current tax liability. He writes of the laundering of dinero negro, dirty money:

Prominent practitioners from two Latin American countries have privately expressed the view that the above tax-haven characteristics of Panama should hold little interest for a truly legitimate Latin American Multinational committed to conforming to the legislation, tax and otherwise, of the jurisdicitons in which it operates. They first point out that operating from Panama may create a bad image. Panama has been used by Latin Americans as a place to which, like Switzerland, money fleeing from tax or other national authorities may find its way, since there is no question of taxation upon entry or exit, and corporate and banking laws permit complete secrecy in all operations. The situation is reportedly such that certain of Panama's neighbors are wary in their approval of business dealings with the country. Mexico, for instance, will not allow royalty payments to a Panama-based company unless fully documented.

A common procedure involves the flow to Panama of *dinero negro* which is then loaned to a real or dummy corporation in another country which can then relend the funds to the original party in the first country or elsewhere without arousing the suspicions that a loan made directly from Panama would create. The person or firm which makes this complete circle thus illegally sends money from his country to Panama without paying taxes, earns tax-free interest on it while it is in a Panama bank and eventually may pay himself tax-free interest when he borrows it back from a dummy company in another country. (Actually there may be withholding on the interest payments.) Additionally, he may deduct his interest payments as business expenses in the country in which he is operating.

Freedom to conduct such illegal or questionable operations may be an important element in Panama's success as an international business and financial center. However, there may be other reasons for setting up headquarters in Panama: The country's tax policies permit a legitimate company's presence in the country for non-tax reasons while not penalizing it for its decision to be there.

* * * * *

Of fundamental importance is the fact that interest on the Panama bank accounts of foreigners is not subject to taxation by Panama. Equally, the interest income on bonds held by foreigners is not subject to Panama taxes which makes the country a feasible jurisdiction for the establishment of so-called finance subsidiaries by means of which loan funds may be raised on international or regional capital markets.

This sort of operation (an international bond flotation) would not require the establishment in Panama of headquarters for a regional multinational, but merely the creation of such a finance subsidiary.

POTENTIAL RESOURCES LOCKED UP AND DISGRACEFULLY UNDEREXPLOITED BY CANAL ZONE AUTHORITIES

Mr. President, the next item I wish to call to the attention of the Senate deserves close attention, indeed. It just may give us some of the answers we all should be seeking.

The Banker for May 1973, published in London, had a revealing article called "Panama and the Canal," by a Robin Adams which reported on Panama's banking boom. However, more to our interest today, Adams made some prophetic observation of a pessimistic note:

Perhaps the most significant feature of the present structure of Panamanian banking is that, unlike some of the Caribbean islands, its progress is only partly of an offshore nature. There is a sharp imbalance between foreign and local assets and liabilities. At the present time, of the total assets of the banks, approximately two-thirds are Panamanian and approximately one-third are foreign. On the other hand, of the liabilities the proportions are reversed—one-third Panamanian and two-thirds foreign. Since by the end of 1972, assets and liabilities were well in excess of $1,000 millions, the result of this structure is that these international banking operations are financing the Panama economy to the tune of at least $300 millions, *an enormous sum in relation to the gross domestic product,* which in 1972 just passed $1,000 millions." [Emphasis added.]

The rationale for this policy is not purely philanthropic. The foreign banks are taking deposits from residents of Latin America and lending this money on in New

York. In doing business in New York they have an edge over New York Banks by the fact that they lend a significant proportion of their funds at higher interest rates on the local Panamanian market which subsidize their New York business. This has certainly sweetened profits, *but it depends of course on the continued availability of sound lending opportunities in Panama itself.* [Emphasis added.]

Mr. President, Robin Adams went on back in 1973 to tell of funds being available for almost any profitable venture. Adams told of the "massive property boom with tower locks of offices and flats going up all over Panama City." Adams asked then "whether an economy as small as that of Panama can continue to sustain a boom of current proportions."

Next Adams described the expansion of "secondary banking activities":

In this, the licensed banks lend to credit-worthy business houses, who in turn lend on to less secure propositions, at higher interest rates, and they in turn lend on to yet more doubtful ventures, quite often the whole process only coming to rest with a large unsecured consumer loan to a middle to low income worker. With urban unemployment well over 10 percent, despite the growth of the past four years, this practice could be dangerous if there is any downturn in business conditions.

Mr. President, now in 1978 we all know there was a great downturn in Panama's economy. The housing boom burst and the economy today is stagnating.

What else did Robin Adams say in that 1973 article?

On the other hand, if the government is forced to curtail its development effort due to lack of funds, there could be a rather nasty recession with one or two expensive property losses, and bad debts. *This would undoubtedly be a setback to the banking industry.* [Emphasis added.]

But then, Mr. President, listen to this:

The main hope of avoiding such an eventuality is for Panama to get its hands on the potential resources that are now locked up and disgracefully underexploited by the Canal Zone authorities. Alternatively, the United States may choose to buy off Panamanian pressure with further generous aid. The future prosperity of the young, and extremely vigorous, international financial community in Panama City therefore depends like most other elements in the economy on the outcome of the struggle to regain the canal.

Mr. President, I do not know who Robin Adams is.

Of course, Adams in May 1973 knew nothing of the forthcoming Kissinger-Tack agreement of February 1974 by which the unauthorized agreement was made to give Panama the Canal Zone.

The Senate should be indebted to Robin Adams, however, for giving us a background that could very well help to assemble the missing pieces of the puzzle of intrigue surrounding the canal giveaway so vehemently opposed by the vast majority of the American people.

Mr. President, let us dwell for a moment or two on the following words of Robin Adams which may, indeed, have great significance, realizing of course, that they appeared in a highly respected banking journal in London, the Banker.

This (recession) would undoubtedly be a setback to the banking industry. The main hope of avoiding such an eventuality is for Panama to get its hands on the potential resources that are now locked up and disgracefully under-exploited by the Canal zone authorities.

Now, Mr. President, either Robin Adams was totally ignorant of the laws of the United States under which the canal is operated at a nonprofit basis and the zone is maintained much as a military

reservation to sustain the operations and defense of the canal, or did not care. In any event, the language used,"disgracefully underexploited" has a very pointed meaning, coming as it does after the expression of a fear of "a setback for the banking industry."

Mr. President, could it be that the banking industry has had its eyes on the future exploitation of the Canal Zone?

Is the real reason for the inexplicable giveaway of our taxpayers' property in the Canal Zone the opportunities for profit that the big bankers see there?

I do not know the answer, Mr President.

The American people do not know the answer.

One thing is for certain.

We Senators should know—and know for certain—before voting to approve this treaty.

EARLY STATE DEPARTMENT OPPOSITION TO TORRIJOS EVAPORATES

Mr. President, articles in the press told of strong opposition in the White House and State Department to the Torrijos regime for some time after he came to power. But later on, the policy was completely reversed, and the reason, some writers have claimed, was because of the bankers' growing interest in him.

I believe this is demonstrated sufficiently by the fact that, according to the New York Times of September 2, 1969, State Department officials said the United States cannot engage in long-term commitments on military and politically sensitive issues with the military type provisional government in power in Panama, despite pledges by Torrijos and the Junta that free elections would be held in 1970. Those officials said the United States is waiting to see if those promises would be honored.

Well, Mr. President, how well those promises by Torrijos have been honored is a matter of public record. To this day they remain promises. It is almost a full decade since the State Department had that position.

But the State Department not only did not wait for the pledges to be honored, it has almost succeeded in giving that very same regime everything they added in the Canal Zone.

What on earth changed them, Mr. President?

The Dictator Torrijos has not changed.

What did change U.S. foreign policy toward Panama, Mr President?

Could it have been something the able Senator from Idaho has labeled "International Debt, the Banks, and U.S. Foreign Policy?"

Frankly, Mr. President, this Senator from North Carolina thinks Senator Church may well have provided us with the answer to all the questions regarding the giveway of the Panama Canal Zone and the Panama Canal.

Its title alone may give us all the answers we need.

Certainly the Senate should consider all the implications of Senator Church's report as those implications apply to Panama before it votes for final approval of this treaty.

The Subtitle of an article in Financial World for March 27, 1974, "Beware the 'Gnomes' of Panama", warned, "The new Switzerland, attracting banks and individuals alike, may not be nearly as safe."

Mr. President, pressures would certainly build upon the international bankers doing hundreds of millions of dollars worth of business by way of Panama if when they found Torrijos capable of restricting their operations. Making it less safe, that is!

What they might feel compelled to do to try to safeguard their positions in that obviously profitable offshore financial center is anyone's guess.

I do not know what individual bankers might do under such pressures.

There should be no doubt, however, about the capabilities of Omar Torrijos to put pressure on the bankers.

In this Senate chamber we have day after day witnessed the results of his pressure on the entire U.S. Government.

The administration would not allow a single amendment to pass, except its own meaningless ones, so as not to offend Torrijos and his corrupt regime.

Business Week of October 3, 1977, carried an article entitled "Panama, High Economic Hopes if Ratification Comes."

That piece quotes Panama's Planning and Economic Policy Minister, Nicolas Ardito Barletta, as saying ratification of the treaties would open up what he called, "the biggest opportunity for growth and development in the history of Panama."

Business Week went on:

> Adds a U.S. banker in Panama City: "But I know of several companies that may pack up and leave if the (U.S.) Senate votes against it."

The article pointed out the sluggishness of the Panamanian economy and quoted a local accountant as saying "Nobody has wanted to commit himself until the issue was resolved. Business Week wrote,

> Doubts about the stability of the regime of General Omar Torrijos Herrera lie at the heart of that uncertainty.

Again, the magazine quoted a banker:

> But if the treaty is not ratified, warns a U.S. banker in Panama, "This will not be a safe place to do business any more."

These statements go directly to the concern of bankers and industrialists for security in their operations.

They feel it imporant to maintain the status quo, and giving the canal to Torrijos certainly would assure the continuation of his regime.

There is another significant quote from the article:

> Panama is counting on this improved financial situation to boost its international borrowing potential. Expanded lending means greater profit for the banks.

The Panama Star & Hearld for December 5, 1977, carried a story datelined Mount Pleasant, Mich., which contained these highly pertinent remarks by Panama's Ambassador to the United Nations, Jorge Illueca, who spoke at Central Michigan University:

> "The Government of General Omar Torrijos faces the danger of being overthrown if the U.S. Senate rejects the New Panama Canal Treaties", said the Panamanian Ambassador. The treaties are "an insurance policy for Torrijos' government."

Mr. President, it seems that ratification of the treaties fit into the category of an insurance policy for the big banking institutions as well.

Mr. President, another matter relating to international debt, the banks and U.S. foreign policy, has not been discussed in these debates.

That is the matter of the nonconfirmation by the Senate of the Ambassador who as conegotiator, drove the treaties through the final 6-month stage of negotiation, Mr. Sol Linowitz, of Marine Midland Bank.

The administration that now wants the Senate to rubberstamp the treaties, evidently was fearful of sending Mr. Linowitz before us to examine his credentials. Why?

Was the administration afraid the banking connections of the designee, as well as certain other connections, would mitigate against his appointment, and, perhaps, we would disapprove it? It is a fact that Mr. Linowitz did not resign as a director of Marine Midland when he went on the treaty negotiating team.

He resigned only after a lawsuit based on his conflict of interest was instituted by our colleague, the Senator from Idaho, Mr. McClure.

Mr. Linowitz's connection with a bank to which Panama owed at least $8 million, certainly would have been a highly controversial matter in his confirmation hearings.

Was the administration afraid that penetrating cross-examination of Mr. Linowitz might reveal reasons behind the Panama Canal giveaway that would make more sense than the reasons aired for public and congressional consumption?

On May 24, and October 21 1977, the American Security Council's Radio Free Americas mentioned certain connections of Mr. Linowitz that would have merited close attention by the Senate in the Ambassador's confirmation process—had there been one.

Radio Free Americas named Linowitz as lawyer for Jose Gelbard, former Minister of Economic Affairs in Argentina under Peron, who was then living in the United States.

Gelbard has since died.

Gelbard fled Argentina because of judicial procedures by the post-Peron government against him, and the United States did not honor Argentina's demand for his extradition.

According to Radio Free Americas, Gelbard was a native of Lithuania where his close friend was Abraham Simcowicz, known as Fabio Grobar in Cuba where he has been Moscow's man since 1929.

Gelbard as Peron's economic minsiter signed a credit agreement with Fidel Castro's adviser, Grobar, by which Argentina extended Cuba up to $800 million to purchase Argentine agricultural and industrial goods, including Argentine-made General Motors cars whose delivery the United States had to authorize.

Radio Free Americas has informed me that Sol Linowitz got the special permit by which this was accomplished.

Since Cuba is in arrears on the payment of this sizable credit, the interest in the Argentine Government in Gelbard was readily apparent.

Linowitz was trying to get him U.S. citizenship when he died of a heart attack.

But what Radio Free Americas calls the "Argentine Watergate" also involves a key banking figure, David Graiver, who is supposed to have died in an airplane crash near Acapulco, Mexico in 1976.

Graiver had connections with the guerrillas of Argentina, the Montoneros, and it is alleged he secretly financed them.

Mr. President, in today's Washington Post, there is an article on the release of Argentine newspaper publisher, Jacobo Timmerman, by the Argentine Government. Of interest to us is that the article mentions David Graiver as owner of 51 percent of the stock in the paper Timmerman formerly published. The following paragraphs are taken from today's Post article:

Most of the rest of La Opinion's stock—51 percent—was owned by David Graiver, whom Argentine authorties believe served secretly as investment banker for leftist groups that kidnapped wealthy executives for ransom before the military seized control of Argentina in March, 1976.

It was Timmerman's association with Graiver—who was indicted last week in New York City for violating banking laws there—that was ostensibly the reason for the publisher's arrest.

Mr. President, David Graiver's bank in New York was the American Bank & Trust Co. When it failed in 1976, at least $18 million and perhaps as much as $40 million was missing, leading some to believe that David Graiver chose to vanish, and was not really dead.

Evidently New York authorities believe that in proceeding to indict him.

American Bank & Trust Co.'s failure was the fourth largest in U.S. history. The New York Times examind the bank and its failure on September 25, 1976 in an article entitled, "Financial Intrigue, Mystery Shroud American Bank and Trust Collapse."

The Graiver-Gelbard-Grobar-Linowitz implications remain a mystery to the Senate.

Mr. President, I can but touch on these matters which many Americans feel should have been thoroughly investigated in Senate hearing on Sol Linowitz before he was permitted to undertake the treaty negotiations.

President Carter avoided such an examination, of course, by limiting the Linowitz appointment to 6 months. I believe that was a direct slap at the Senate and its right to advise and consent on the appointment of ambassadors.

Mr. President, in his introduction to his report, "International Debt, the Banks and U.S. Foreign Policy," Senator Church mentioned the proposed $10 billion Witteveen facility and the appropriations sought in the Congress for the American taxpayers' share of that amount.

I would like to call the attention of the Senate to an article in the Washington Star for February 12, 1978.

It was called "Bailing out Banks that Straitjacket the Third World," and was authored by Howard M. Wachtel and Michael Moffitt.

That article closed with this paragraph:

In opposing the Witteveen Facility, the Wall Street Journal editorialized that "American taxpayers, in other words, will be asked to cough up a few billion for the IMF to loan to the poor countries so that they can pay off the banks . . . Imagine the flap if the problem were solved honestly and directly," they ask, by calling the Witteveen Facility "The Bankers Relief Act of 1977".

Mr. President, I wonder if, indeed, the Panama Canal giveaway treaties, might be one of the principal titles in the Bankers Relief Act?

Mr. President, a signing ceremony was reported in La Estrella De Panama for March 1 of this year, whereby a $36 million loan to a Panamanian company to build an oil terminal facility was finalized. On that occasion, a Chase Manhattan Bank official made a comment very pertinent to my remarks today.

Chase Manhattan put up $15 million of that loan, Panama's Government agency, COFINA, put up $1 million, and five other banks lent the remaining $20 million. The newspaper reported:

> In his address, the Director of the Chase Manhattan Bank, Lic. Luis H. Moreno, emphasized "the strength that the businessman derives from the backing of a Government which has a conscience with regard to the best use of its resources *and which also has a very strong support from the international banking world.*" (Emphasis mine)

I consider that to be a very significant statement. That statement expresses a truth which I believe every Senator would have to admit, bears directly upon the theme of my address to the Senate and the American people today.

Why should the international banking world give "very strong support" to the regime of Omar Torrijos—a regime whose unsavory links to the underworld is clear to anyone who refuses to deceive himself about the drug trafficking of members of the Torrijos family itself.

Why should American and other capitalists support so strongly a regime that works so closely with Fidel Castro—who like his masters in Moscow, is dedicated to the demise of capitalism?

Why, Mr. President, unless there is something in it for them?

Why else would our internationally oriented big businessmen give such strong support to a regime that has the complete support of the Communist Party of Panama?

Mr. President, before voting for the new treaty, every U.S. Senator should give extremely careful attention to an official statement issued recently by the Communists of Panama. The Communist Party of Panama as we all know, is called the People's Party of Panama. On September 7, 1977, the very day of the signing of the new treaties by President Carter and Omar Torrijos, the Political Bureau of the People's Party of Panama issued an official document entitled, "Message of the People's Party of Panama in Connection with the Carter/Torrijos Treaty."

Mr. President, on March 6 I placed this entire message of the Panamanian Communist Party in the Congressional Record at page S2997. I want to bring the following words to the special attention of the U.S. Senate. I consider them to be of enormous significance:

> The People's Party urges strengthening the process of national liberation, improving the life of our people, consolidating the government headed by General Torrijos and deepening the anti-imperialist alliance.

There is more in the Communist Party's message that signifies its full support of Gen. Omar Torrijos. But what I have read is more than sufficient.

The Communists in every nation where they have not yet come to power, simply do not talk of consolidating the government. The Communists, by definition, are dedicated to the supplanting or overthrow of any government they themselves have not yet taken control of.

The Communists in any country in which they have not yet come to power speak of liberation from the control of the regime in power. Here we find the Communists of Panama speaking eloquently of "strengthening the process of national liberation" under the government headed by General Torrijos.

Where the Communists have not yet come to power in a nonsocialist country, they link the regime in power with capitalists everywhere under the synonym, imperialists.

Yet the Communists of Panama speak eloquently of "deepening the antiimperialist alliance" under the government headed by Torrijos.

Mr. President, in my opinin the sentence I have just read may well be the single most important sentence spoken on the floor of the Senate in this entire debate.

It signifies, explicitly, total support of the Torrijos regime by the Communists of Panama.

Implicitly, it signifies the Panamanian Communists either already control, or wield very great influence over, the Torrijos regime. In either case, the Senate has no business whatsoever turning the Panama Canal over to such a regime.

In my opinion, this body should vote 100 to 0 against the new treaties, if only because of this single sentence and its ominous significance to the security of the American people.

Mr. President, the treaty message of the Panamanian Communists states without equivocation:

> The People's Party urges . . . consolidating the government headed by General Torrijos.

Mr. President, passage of the treaties will most certainly consolidate the regime of General Torrijos. Freedom House has determined human rights and civil rights in Panama to be on a par with the Soviet Union and Communist Cuba. We will show no goodwill toward the perople of Panama under Torrijos by approving the new treaties.

Mr. BAKER. Mr. President, in a short time the Senate will vote on the question of whether to consent to the ratification of the Panama Canal Treaty. I am in favor of ratification, and I will vote in support of ratification, and I doubt that there is anyone in this Chamber who does not know how he will vote when the bell rings at 6 o'clock. So I will not spend this time exhorting my colleagues to vote in support of ratification. Rather, as we are on the brink of an historic undertaking, I would like to confine my comments to certain personal observations.

First, whatever the outcome of the vote, I believe the Members of this body should be commended for their mature and reasoned deliberations on the issue of the Panama Canal treaties and would like particularly to commend those on both sides of this issue who have participated day to day, who have argued forcefully and well on all aspects of the issues raised by these treaties and by doing so have elevated the stature of the U.S. Senate in the discharge of its constitutional obligations to advise and consent.

For my own part, I have attempted to insure that every Member of the minority, whether for or against the treaties, has had a full and fair opportunity to participate in the debate; to offer amend-

ments and reservations; to bring to the debate perspectives of many diverse constituencies; and to have the benefit of every piece of available information that the administration could provide that might bear on the Senate's consideration of these treaties.

I would like to particularly acknowledge the role of the distinguished majority leader in this historic debate. Throughout our consideration of these treaties, his task has been a most difficult one and he has discharged his obligations fully, faithfully, and well. The majority leader has exhibited an exquisite sense of fairness to all and we have all benefited from his leadership. I thank him and commend him for his labors on behalf of this body and our country. This debate will stand as a tribute to his leadership.

Second, I believe that restraint, Mr. President, has been the hallmark of these debates. For this I am thankful. This has not been an easy or pleasant issue for many of us in the Senate, but for all of its contention, for all of the emotions that have marked this issue, the character of the debate has been exemplary in both form and substance. No one in this Chamber needs to apologize for the conduct of the Senate or any single Senator throughout the course of these extremely difficult and important delibertions.

Third, I would observe that the treaties issue is one upon which reasonable and well-motivated men might differ for good and sound reasons. There are so many aspects of these treaties that require a subjective judgment. Neither consent nor lack of consent to ratification affords any Senator a clear and unobstructed view of future developments. In a very real sense, all of us must speculate on which of the courses of action now before us offers the United States the best opportunity for constant and unimpeded use of the Panama Canal and the better merit from a national security standpoint. Those of us who support the treaties believe that ratification offers the better chance, the better odds, but we all must humbly realize, opponents and proponents alike, that no course of action guarantees the desired results.

If it were theoretically possible to foretell with certainty, to guarantee if you will, the course of future events, Mr. President, we might have the liberty of debating a perfect treaty. But this is an impossibility and I will be the first to acknowledge that these treaties are not pefect treaties. However, it has been said that "perfection is the enemy of the merely good." I believe Mr. President, that these treaties are good. And Mr. President, I believe these treaties are far better than attempting to maintain the status quo.

The treaties represent a pragmatic blending of the legitimate aspirations, emotions, and best interests of two proud and determined nations, and are in the best interest of the United States, particularly when balanced against available alternatives. I am prayerful that the Panamanians will see these treaties, as modified by the Senate, in their best interest as well—for I believe that it would be unfortunate, indeed, to squander this momentous opportunity after having come this far and it may be a long time before we reach this point again.

Fourth, I recognize that acceptance of these treaties will be the subject of much debate in Panama, as it has been in the United States. This is as it should be. In fact, the very nature of our own

national debate on this issue says a great deal about the character of our country. It reflects our people's abiding will and determination to remain unchallengably strong and willing to protect our national interest. The American people have signaled their contempt for decisions perceived as not reflecting that will and determination.

I believe these treaties are consistent with the aspirations of the American people. It is a measure of our strength, not weakness, that the United States can deal fairly, at arms-length, and in the spirit of true partnership with a smaller, less powerful nation in a manner consistent with our own peace and security. This is a testimony to our strength and, I would suspect, a significant embarrassment to our foes.

Finally, and importantly, I would observe that while these treaties provide a viable framework for a constructive and cooperative future operation of the Panama Canal, they in no way diminish the pride that every American should feel in the achievement the Panama Canal represents. The Panama Canal, new treaty or not, stands today and for all time as an incredible physical accomplishment and a lasting monument to the thousands who have built, maintained, managed, and operated the canal for the benefit of mankind since the turn of the century. This American achievement will never be diminished in the eyes of the world.

Mr. President, I would like to read two quotes from David McCullough's "Path Between the Seas" which provide, I think, a fitting end to these remarks. The first is a paragraph that follows a description of the beginning of the difficulties that would arise between the United States and Panama over the years:

> To the average American at work on the canal, the aggrieved pride or "smoldering wrath" of the Panamanian was of only marginal concern. There would be time enough later to resolve such difficulties. For now the work was going too well, morale was too high, the end was much too plainly in view to think much about anything else.

The second, in the final section of the book, speaks for itself:

> The creation of a water passage across Panama was one of the supreme human achievements of all time, the culmination of a heroic dream of four hundred years and of more than twenty years of phenomenal effort and sacrifice. The fifty miles between the oceans were among the hardest ever won by human effort and ingenuity, and no statistics on tonnage or tolls can begin to convey the grandeur of what was accomplished. Primarily the Canal is an expression of that old and noble desire to bridge the divide, to bring people together. It is a work of civilization.

To my colleagues in the Senate, I will say that I believe that the time has come to resolve past difficulties, to bridge the divide between the United States and the Republic of Panama, and to further ennoble this great work of civilization.

Mr. MATHIAS. Mr. President, throughout this long debate on the Panama Canal treaties, two lines from Macbeth have haunted me:

> If it were done, when 'tis done, then 'twere well,
> It were done quickly.

Those lines have haunted be because, no matter what the outcome here today, we will not be done, when we are done.

The defect of our debate is that it has heen almost entirely retrospective. We should have been considering the requirements of the merchant marine of the 21st century, but instead we have

occupied ourselves rereading the fine print of the 1903 treaty, poring over musty court decisions, and wallowing in the subjective reaction of the American and Panamanian people to one another.

In the 2½ months of our deliberations, we have been so preoccupied with the past, so mired in ancient history, that we have barely glanced at the future.

We should more profitably have been considering the requirements of merchant shipping in the years ahead. For, as marine commerce is developing, it is clear that 19th century engineering will not be adeqate to the demands of 21st century shipping.

Obviously, we must either build a new canal, or rebuild the existing canal. We cannot simply stand pat, with or without new treaties.

And so, while the vote we take today may write "finis" to a chapter of our past, it will not carry us a single step into the future.

For that we must concentrate our thoughts and our creative energies on seeking the new solutions that the supertankers of our merchant fleet of the future will demand.

We are, however, left with the necessity of casting a vote on the restricted and foreshortened issue that is before us, and I shall address that question very briefly.

Today we vote on the Panama Canal Treaty which covers the period between now and the year 2000, when the joint United States/Panamanian operation of the canal will cease. I intend to vote in faver of this treaty.

The Panama Canal today operates with the cooperation of the Government of Panama and the Panamanian people. Over 70 percent of the work force in the Canal Zone is Panamanian. In the fulture, the need for Panama's cooperation may well increase. For example, to widen the present canal or to build a sea-level canal within the Republic of Panama we would certainly require Panamanian cooperation. It the supertankers and the super carriers designed for the 21st century are to transit from ocean to ocean to across the isthmus, then an alternative to the present canal will be necessary.

This sort of cooperation is needed at a time when the canal has become a nationalist issue among Panamanians. Americans, above all, should understand the aspirations of the Panamanian people. We cannot hope to have Panamanian cooperation in the future in the absence of a new relationship between Panama and the United States. Four successive U.S. Presidents have recognized this fact.

At the time of the vote on the Neutrality Treaty, I indicated that I had certain reservations about the Panama Canal Treaty. These have been dealt with through amendments or reservations to the treaty which I have supported. Yesterday, we decided that we would not be bound by article XII to build a sea-level canal only in Panama. We have also cleared up some of the financial ambiguities which were troubling me. For example, we clarified U.S. obligations regarding the $10 million surplus payments.

I have been very concerned about the possible negative effects on the Port of Baltimore resulting from higher canal tolls. I have examined this issue very carefully. I believe that the impact will

not be serious. Ultimately, if these treaties lead to a continuation of uninterrupted traffic though the canal, we will all benefit.

The Senate has devoted a great deal of attention to the issue of the Panama Canal Treaties. It is an important one, but only one of many pressing concerns facing this country. I hope that we can now turn our attention to some of the other problems; many of which relate directly to our national security.

But, before we move on to the important work ahead, I would like to note that, although many deseve credit for the role they have taken in these deliberations, none has made a greater contribution to the orderly process of debate or to bringing that debate to a timely conclusion than has my distinguished Maryland colleaguae, Senator Sarbanes.

Mr. McCLURE Mr. President, the proposed Panama Canal treaties have been debated at great length and in great detail not only in the Senate Chamber, but in almost every forum in the country.

Public interest in these treaties is higher than for any issue to come before us in recent times.

I am sure that each Member of the Senate has received a great volume of mail on this subject. I certainly have, and as I read through my mail, I was struck by intelligent and thoughtful study so many people have made. Many of those who have written me have carefully analyzed the treaties and read everything they could obtain about Panama. Frequently, they have asked probing questions and brought to my attention crucial points about the treaty.

For the first time, the debates taking place in the Senate have the been brought into people's living rooms through live radio coverage. Similarly, the letters to the editor section of Idaho newspapers reveals the careful attention given to the subject by large numbers of people. The level of public knowledge is extremely high. This presents us with a unique opportunity to bring all Americans directly into the decision-making process. The reservation I am proposing provides for a national referendum before the Panama Canal treaties can be ratified. A referendum on this issue is especially appropriate since the treaty transfers to a foreign government a valuable national asset which belongs not just to Government officials in Washington, but to every American. I think they should have a voice—direct voice—in deciding whether these treaties enhance or diminish America's just national interest.

In no way can this proposal be seen as an attempt to avoid the Senate's advise and consent responsibility. Far from being a devise by which the Senate can duck a hot issue, a national referendum will undoubtedly heighten public awareness of every action we have taken on these treaties.

Referenda are widely used at the State and local level. Recently, several Senators introduced a constitutional amendment which could establish the procedure for national referendum. The Panama Canal Treaty provides us with an excellent set of circumstances for our first referendum. It is an important issue, there is a high level of public interest, and most importantly, it is an issue which the people should have a direct role in deciding.

It is unfortunate that the people in a country noted for its repression of political discussion or dissent are permitted a vote,

while in this country, the most free in the world, a vote of the people is denied.

It is, also unfortunate that the time constraints caused by unforeseen rollcalls has made it impossible for me to offer my amendment. I ask that my proposed amendment be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

Before the period at the end of the resolution of ratification, insert a comma and the following: "And subject to the reservation that before the date of exchange of the instruments of ratification of the Treaty, the Congress shall have adopted appropriate legislation to hold a national referendum on the question 'Shall the United States transfer the Canal Zone to the Republic of Panama?', and an affirmative vote shall have occurred in such a referendum."

Mr. HUDDLESTON Mr. President, it should not be surprising that the question of ratification of the new Panama Canal treaties has generated considerable controversy among the American people. Nearly everything about this important waterway between the oceans has evoked controversy since its inception.

From the suggestions of a Spanish priest in a book published in 1552 through the seven expeditions authorized by President Ulysses S. Grant between 1870 and 1875, the ill-fated efforts of the French, which collapsed in 1888, and the remarkable triumph by the United States in 1914, about the only thing that was agreed upon by engineers, businessmen and political leaders of the time was that a passage from the Alantic to the Pacific across the isthmus between North and South American would be useful and desirable.

The location, the type of canal, the method of construction, the cost and how to combat the illnesses peculiar to the tropical climate were subjects of bitter controversy right up to the final construction phase.

Of all the locations considered from Darien near the present border of Columbia to Nicaragua, Panama was seen as the least feasible through most of the early construction. Yet, mostly through the power of one man, Ferdinand de Lesseps, the hero of Suez, the route across Panama from Colon to Panama City was to be the chosen one.

The French venture in Panama was not just a failure, it was an unmitigated disaster. Thousands of investors lost their life savings. The country was rocked by scandalous revelations of misdeeds by many of the principals in the enterprise. Ferdinand de Lesseps, himself, the most celebrated Frenchman after his success with the Suez Canal; his son, Charles; and Gustau Eiffel, builder of the Great tower in Paris that bears his name, were all convicted of bribery and fraud. Thousands workers died from tropical diseases, mostly marlaria and yellow fever.

The French effort was doomed from the beginning due to their understimation of the magnitude of the task, underfinancing, tenacious belief that it must be a sea level canal and failure to come to grips with the health hazards.

One man emerged from the French debacle who was to play a significant and somewhat suspect role in decisions by the United States to take up where the French left of in Panama. Philippe Bunau-Varilla worked tirelessly in this country on behalf of

French interests and to salvage what he could of his own substantial investment in the French company. As Envoy Extraordinary and as minister plenipotentiary of the new State of Panama, he negotiated and signed the Panama Canal Treaty of 1903 on behalf of Panama. It is possible, too, that he was the mastermind of the Panamanian revolt against Colombia that established its independence after Colombia had rejected the U.S. treaty.

Sentiment was strong in the U.S. Congress for the United States to undertake the construction of a canal between the seas after the French failure. But, the assumption was that the canal would be across Nicaragua. The chief proponent of the Nicaraguan route was Senator John Tyler Morgan of Alabama who believed such a route being closer to this country would favor shipping to and from our Gulf ports. But the shrewd and persistent lobbying efforts of Bunau-Varilla and a lawyer by the name of William Nelson Cromwell, who was employed by the French company, turned the matter around in favor of Panama, then still a part of Colombia.

The key factors in the lobbying success were the reduction in the asking price for the French holdings in Panama from the original $70 million to $40 million and the convincing of President Theodore Roosevelt that Panama offered the best chance to expedite the U.S. effort to construct a canal.

The treaty between the United States and Colombia, negotiated by Secretary of state John Hay and Dr. Tomas Herran, authorized the French company to sell its "right, privileges, properties and concessions" to the United States, and Colombia granted the United States control of an area 6 miles from Colon to Panama City, Colombian sovereignty over the zone was specifically recognized, but the United States was permitted to establish its won courts of law within the zone and to enforce its won regulations concerning the canal, ports, and the railroad. Police protection was to be supplied by Colombia with the United States empowered to help out if Colombia was unable to carry out this objective. The United States was to pay $10 million to Colombia in lump sum and an annual rent of $250,000. The franchise was for 100 years and was renewable at the option of the United States.

The Congress of Colombia rejected the Hay-Herran treaty to the consternation of President Roosevelt and in spite of thinly veiled threats from the Secretary of State and from the President himself.

The resourceful Bunau-Varilla and Cromwell moved quickly to encourage the revolt against Colombia, dealing with Dr. Manuel Amador and his associates and promising both money and military support from the United States. There was no official declaration of support from the U.S. Government, but, in fact, U.S. warships were sent to Panama ostensibly to protect the Panama railroad with orders to prohibit the landing of any troop "either government or insurgent." Thus, Colombia reluctantly accepted creation of Panama.

The United States quickly recognized the new country of Panama. Dr. Amador was named President and Envoy Extraordinary. Philippe Bunau-Varilla, the Frenchman, who had not been in Panama for 18 years, was designated as the sole negotiator for Panama on a canal treaty.

He moved swiftly and the terms of the document he devised with Secretary of State John Hay were far less favorable to Panama than the terms of the reflected treaty were to Colombia. The Canal Zone was to be 10 miles wider rather than 6; the United States was given control of sanitation, sewage, water supply and maintenance of public order in the terminal cities of Colon and Panama City.

More importantly, the United States was granted within the Canal Zone "all rights, power and authority which the United States would possess if it were the sovereign of the territory—to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." And the rights were granted "in perpetuity" rather than for 100 years as the Colombian treaty.

Also, four small islands in the Bay of Panama were granted to the United States, and we had the right to expropriate any additional land or water areas "necessary and convenient" for the construction, operation, sanitation, or defense of the canal.

The compensation for Panama was the same as offered Colombia. Additionally, the United States guaranteed the independence of Panama.

During the final days of negotiations by Bunau-Varilla and Secretary Hay, Dr. Manuel Amador and a delegation from Panama were rushing to Washington expecting to review the treaty before it was finalized. They arrived about 2 hours late.

The Panamanians protested bitterly to Bunau-Varilla about the terms of the treaty and refused to assist in its ratification in Panama. But under the threat of withdrawal of U.S. protection of the new Republic, Panama formally approved the pact on December 2, 1903.

On February 23, 1904, the U.S. Senate ratified the Hay-Bunau-Varilla treaty by a vote of 66 to 14 after much acrimonious debate led by Senator John Tyler Morgan. But, one senator summed up the lack of significant opposition from the members by conceding that the treaty "comes to us more a liberal in its concessions than anybody in this Chamber ever dreamed of having * * * in fact, it sounds very much as if we wrote it ourselves."

Thus, the United States was launched upon the most stupendous public works project in history, and it was to succeed although the obstacles were gigantic and the price in lives and dollars was horrendous.

The project took 10 more years to complete, although it was opened ahead of schedule; costs $352 million—four times as much as Suez; exacted 5,609 more lives; and required the excavation of some 262 million cubic yards of rock, dirt, and other material.

Since it opened in August 1914, it has seen steadily increasing use, with ships now transiting the canal at a rate of more than 1 per hour for every hour of every day of the year.

The question understandably then arises—why should we change a treaty which has been in force for 75 years, which specifies that it is to remain in force in perpetuity and which has apparently served United States and other interests well?

There are several answers.

One is that the 1903 treaty was born in controversy, and negotiated by a Frenchman, much to the displeasure of the Panama-

nians. While the United States did not precipitate all the events which led to the conclusion of the treaty and its somewhat pressured acceptance by Panama, it was a knowing bystander, ready and willing to benefit from transpiring developments. It acquired Canal Zone property and rights, but even according to President Roosevelt, Secretary of State Hay and the French Treaty negotiator, it did not acquire sovereignty.

Second, the accepted diplomacy of 1903—which undoubtedly made the United States moves of 1903 not uncommon or outside the then-existing norms of international life—is not the accepted diplomacy of 1978. Just as our individual daily lives are far different from those of our fathers and grandfathers in 1903, international relations, modified by communications, expanding technology and increasing interdependence—are also far different.

Third, might simply does not make right. I have no doubt that we could insist on the current treaty and use our military power to impose it, although the resources required would be great. But, the mere possession of strength and force does not inspire respect. The ability of a great nation to deal equitably and justly with smaller nations can do more to inspire respect than the unnecessary use of military force.

By far the most important answer is that there is an easier, more reliable, more assured way to protect U.S. interests in use, access, and special privileges than under the present treaty. That way is to enter into a new arrangement with the country through whose land the canal runs and a partnership with the people of that country. That is what the two treaties seek to do.

Treaties are, by their nature, the product of negotiations and compromise. They represent efforts by two sides to come to terms which each can accept, even if they cannot wholeheartedly endorse.

The treaties before us represent 14 years of work by four administrations—two Republican and two Democratic ones. They embody principles which, if one will review Eisenhower statements, the Johnson-Robles guidelines which Eisenhower and Truman publicly endorsed, and the Kissinger-Tack agreement, are remarkably consistent.

They are treaties which the Senate Select Committee on Intelligence, on which I serve, reviewed line by line to determine if there had been any blackmail or undue pressure during the negotiating process. Both members of the committee who support the treaties and members who oppose them agree there was none.

This does not mean that each and every provision is to our liking or even completely in our favor. But, it does suggest that it is the best arrangement we could now devise to protect both United States and Panamanian interests.

In the defense area, I believe United States interests are amply protected. Should there be a strategic threat, the canal would probably be vulnerable—regardless of what kind of treaty we had or if we had one at all. As Admiral Holloway noted in testimony before the Senate Foreign Relations Committee, "* * * in a strategic nuclear war, the importance of the canal in relative priority diminished to an inconsequential position."

On the conventional level or in connection with the possibility of sabotage, guerrilla warfare or terrorism, I think we have to look at

the situation first in terms of the next 22 years during which the Panama Canal Treaty provisions will govern and then in terms of the period beyond the year 2000 when we will have only the Neutrality Treaty.

During the rest of this century, the United States will retain its existing military force in Panama—at whatever troop level we deem sufficient. In short, we are there. We are there in sufficient force to protect our interest and rights under the new treaties, and we have the right to be there.

But, what we envision during that time is not a confrontation with Panama but the development of a new partnership both in the defense and operation of the canal which would enable us to work jointly for the security and efficiency of the canal.

The defense situation after the year 2000 has been widely debated. The Carter-Torrijos communique, added as an amendment which made it an integral part of the treaty states precisely, "* * * *each* of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality and, consequently, shall have the right to act against any aggression or threat directed against the canal or against peaceful transit of vessels through the canal." (Emphasis added.)

In the Foreign Relations Committee report, our interpretation of this is set out in some detail as follows:

> . . . . The first amendment relates to the right of the United States to defend the Canal. (It creates no automatic obligation to do so. See p. 74 of this report.) It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. These rights enter into force on the effective date of the treaty. They do not terminate.
>
> Second, the prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal—it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end to itself; and it would not be carried out for the purpose of taking Panamanian territory. . .

And, finally, the understanding offered by Senator Hayakawa and adopted by the Senate on March 16 further explains the U.S. right to determine when it must act to defend the canal as a unilateral right.

Furthermore, after the year 2000, only Panama will have the right to maintain troops and military sites in Panama—a protection we do not have under the existing treaty. And U.S. vessels of war or auxiliary vessels clearly have a right to go to the head of the line, a privilege accorded only to the United States and Panama. These provisions should allay the fears of those who are concerned that foreign powers might establish military bases in Panama after U.S. forces are withdrawn.

Turning to the operation of the canal, the Panama Canal Commission, a U.S. Government agency, will have responsibility for

managing the canal, setting tolls and enforcing rules of passage until the year 2000. After that time, the responsibility will shift to the Panamanians; but it will be to their advantage to keep tolls reasonable and operations efficient. Otherwise, users will look for alternative means of transporting goods which could reduce use and revenues.

At first glance, the revenues to be paid to Panama under the new treaty appear extreme. Assistance is to increase from some $2.3 million to as much as $50 to $60 million annually. Indeed, this portion of the treaties, in my judgment, is beneficial to Panama just as I believe the defense provisions are beneficial to us.

Several other factors should, however, be remembered. First, the payments are to come from canal revenues, not from the U.S. Treasury. Second, these payments, made from tolls, are not out of line with a number of agreements we have made with other countries under which we provide aid in exchange for base rights, such as we will have in Panama during the remainder of this century. Third, Panama will assume the costs of numerous services now paid for by the United States within the Canal Zone. These costs plus declining revenues in recent years resulted in operating losses of between $7 and $8 million.

Many persons are deeply concerned about the dictatorial aspects of the Panamanian Government, and I share those concerns. We cannot as a nation, however, impose governments of our preference upon other parts of the world. Dictators of both the left and the right rule in many areas. We do not like that; we do not approve of that. We can to some extent bring pressures to bear in order to try to influence developments in those nations. But, we work in this imperfect world with a number of leaders we would prefer not to because it is in our interest to do so. With the canal running through Panama, it is to our interest to try to work with the Government there with or without the new treaties.

"But General Torrijos is untrustworthy" some persons respond. Perhaps he is and perhaps he is not. But, if he is untrustworthy it would seem much more logical for him—or any other political leader—to abrogate a treaty such as the existing one which has so many provisions which irritate his people, than a treaty which resolves many of the conflicts, between his nation and ours, and, also provides Panama with many economic advantages.

Perhaps more to the point, however, is that the major changes under these treaties occur in the year 2000 and between the nations of Panama and the United States; they do not occur between Omar Torrijos and Jimmy Carter. The Question, then, is what is best for the two nations, not for any two leaders or any individuals, at that time.

There are many other issues which have been raised in this debate, but it is not my intention to go into them further. As I have said, the treaties represent negotiation and compromise, and where that has occurred, I think the pros and cons of the final provisions have been more than adequately examined.

I would close with one final note. I have been dismayed at times by the harsh and bitter tones of this debate. Emotionalism, anger, rhetoric have been used on occasion to inflame rather than inform. I have also been disturbed by those who ascribe evil motives to

those who disagree with them on this single issue—whether it be for or against the treaties.

We have many interests, many views in this Nation. Consensus building—which involves compromise and conciliation—is important to our system. We need only look to other countries to see the enormous potential for harm when consensus building breaks down and the dichotomies of the left and right become too great.

Reasonable men and women all along the political spectrum have taken differing positions on these treaties. I think we have to assume that each exercised his or her own judgment and respect that decision. If we stop to reflect for only a moment on our relations here in the Senate, we rapidly realize that our allies on agriculture might not, for example, be our allies on defense, or the coalition that works together on steel is not the one that operates on housing. We shift as interests shifts, issue to issue—and that is important.

Our Nation was built on some very basic precepts—freedom of each to pursue his own religion, freedom for each to choose his own political affiliation, freedom to assert ones own views.

We have and will disagree—that is part of the political system—but, in doing so we should remain ever alert to the importance of how we disagree and how we reconcile our disagreements as we move from one issue to another.

Mr. President, there has been no issue before the Senate which I have studied more thoroughly or carefully. I have listened to all the arguments, explored every concern, every charge made. I have concluded that the treaty of 1903 is no longer workable and that the interest of the United States will be better served by ratification of the new treaties.

Mr. STEVENS. Mr. President, I stand before this body as one who has always maintained that the United States of America and the Republic of Panama must find a new relationship through which their respective interests in the Panama Canal can be accommodated. It is not without a sense of great frustration that I now vote.

Though I favor a new relationship with Panama, it is clear to me that the treaties presented to the Senate are so ambiguous and so subject to differing interpretations by Panama and the United States that we do both countries a great disservice by ratifying them. Mr. President, We are engaged in a debate in which neither side will win. Irrespective of whether the Panama Canal Treaties are ratified, in my opinion the people of the United States and the people of Panama will be the losers. When the negotiators of these treaties and the President signed these documents they committed the United States to a horrible leagacy. We are all aware that if the Senate rejects this treaty that in the short run we will be faced with the prospect of violence in Panama. Mr. President, I maintain that if the Senate ratifies these treaties, we will be faced with the prospect of longrun violence in Pamana. Violence which would stem from the misunderstandings that will grow out of these ambiguous documents.

Mr. President, I feel like a condemned man. Irrespective of how I vote, the outcome will be most distasteful.

I have on numerous occasions attempted to amend both the Neutrality Treaty and the Panama Canal Treaty in order to elimi-

nate the ambiguities which could lead to confrontation. The proponents of the treaties have successfully thwarted all of our efforts to eliminate these ambiguities. I must cast my vote in opposition to the ratification of the Panama Canal Treaties.

Before yielding the floor, Mr. President, I would like to compliment the distinguished majority and minority leaders for the gentlemanly manner in which they have allowed this debate to take place. Throughout these difficult days, my good friends have gone to great lengths in order to assure that debate be carried out in a manner that was fair to all parties.

Mr. HASKELL. Mr. President, today marks the end of one of the most lengthy debates in the history of the U.S. Senate. Following the most extensive hearings on a treaty every held by the Foreign Relations Committee, we have been witness to 3 months of floor debate where each and every article and amendment has been thoroughly discussed.

Yet there remains a wide difference of opinion over what the Pamana Canal treaties mean to America.

To opponents they represent the latest and most evident example of American capitulation to hostile forces.

To proponents the treaties embody the best impulses in the American tradition of dealing with friendly nations and offer the best opportunity to assure continued U.S. use and access to this vital waterway. After the lengthy debate and despite volatile opposition, every major public opinion poll since last October has shown that the majority of the American people support the treaties if the U.S. right to defend the canal's neutrality is insured and American vessels are allowed priority passage in time of war.

I made my support of these treaties contingent upon acceptance of those vital amendments. They are essential to national security and have put to rest speculation that the United States would allow foreign intervention to close the canal.

Acceptance of the treaties is not a departure from the basic tenets of our foreign policy. It is simply a reaffirmation that our Nation can be a powerful force in the world without having to resort to arms to prove it.

If we are truly to be the beacon of democracy and a partner with the nations of Central and South America in keeping our hemisphere free, we must abandon notions of "gunboat diplomacy" and make our message to other nations a powerful one: The power of example.

Panamanian leftists and Communists, as well as other anti-American forces would probably like to see nothing better than our rejection of these treaties.

Their best hope for success is to keep alive the false issue of "Yankee Imperialism." A joint Panamanian-American agreement can scotch once and for all the outmoded accusations of American colonialism.

Our allies in the hemisphere are anxious that these treaties, representing U.S. commitment to cooperation with Latin America, will be ratified. Brazil, Venezuela, and other South American countries do not view the canal treaties as a sign of weakness.

Nor do our European allies view the treaties as an indication that the United States has weakened its support for NATO.

I continue to wonder at the extensive and ill-founded antagonism which has been directed at the Panamanian people. While no one in the Senate defends General Torrijos, the history of Panamanian-American relations does not invite the suspicions evident in much of the debate.

If the Panamanians are so hostile to us, why have they waited patiently through 14 years of negotiations?

If Panamanians are so bent on closing the canal why have not the 70 percent of the canal work force which is Panamanians walked off the job?

If Panama is so alined with Marxist countries, why does the government refuse to recognize the existence of the Soviet Union and Mainland China?

The only issue which divides us has been the disposition of the Panama Canal Zone. The two treaties provide a solution which is equitable to both nations and which protects America's strategic interests in the canal. The present Joint Chiefs of Staff, as well as many retired military leaders, agree that the treaties are in our best national interest.

But Panamanians have suffered many wounds to their national pride. Their sensitivity was recently demonstrated by their reaction to the DeConcini amendment. I, along with 74 other Senators, voted for that amendment because it appeared to provide further clarification involved in keeping the canal open in the future.

The interpretation of the DeConcini amendment adopted in Latin America led to widespread concern throughout that region.

When this became apparent, I expressed my conviction that it was incumbent on the Senate to dispel the fears of those countries. The Senate leadership and Senator DeConcini have now cosponsored a resolution to clarify this point and allay those fears.

It seemed senseless to me to offend Panama and South America by wrongly implying that the U.S. Senate is reasserting a policy of intervention which was repudiated 45 years ago. At the turn of the century, the United States proclaimed the right to intervene throughout Latin America in cases of chronic wrong-doing or a general loosening of the ties of civilized society. We no longer believe that, and I am pleased that the Senate contends to reaffirm America's traditional commitment to the principle of nonintervention.

Finally, let me speak once again to the critics of the treaties. Rejecting the treaties is not going to remove Soviet and Cuban troops from Africa, it will not stop the development of Russian missiles and it will not slow the buildup of Warsaw Pact forces. Defeating the treaties, however, may gratify the Kremlin by indicating that America would rather alienate our long term allies rather than cooperate with them.

I am intensely aware of and concerned about our national security.

Keeping America strong has frequently required lenghty debates and difficult decisions. The ratification of the Panama Canal Treaties has provided an opportunity for a full discussion of the national security implications of devolving our interest in the Canal Zone.

Approving the treaties will retain American use and access to the canal and accomplish through diplomacy what we might not achieve through relying on military force.

Ratification of the Panama Canal treaties represents a wise, just and courageous decision by and for the United States.

U.S. CATHOLIC CONFERENCE STATEMENT ON PANAMA CANAL TREATIES

Mr. KENNEDY. Mr. President, the General Secretary of the U.S. Catholic Conference, Bishop Thomas C. Kelly, made an important statement last week in support of the Panama Canal Treaties, which I commend and wish to bring to the attention of my Senate colleagues in connection with today's vote on the second treaty.

Bishop Kelly rightly pointed out that—

> The attachment of a reservation implying a U.S. right to intervention in the internal affairs of Panama has threatened and may indeed have eroded the respect for sovereignty, dignity, and social justice which the treaties are designed to foster.

These were the concerns which led me to oppose the original DeConcini reservation to the Panama Canal Neutrality Treaty, and to welcome the reiteration today of our country's commitment to nonintervention in the affairs of Panama.

Mr. President, I ask unanimous consent that the USCC statement be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT ON PANAMA CANAL TREATIES

Since 1975 the U.S. Catholic Conference has energetically supported efforts to negotiate new treaties which would return to Panama full and effective sovereignty over the whole of its national territory. Successful conclusion of such efforts can symbolize and initiate a new cooperative relationship between the United States and the nations of Latin America—a relationship characterized by full respect for the sovereignty of each nation, the dignity of its people, and the requirements of international social justice.

Viewing the agreements negotiated last September as a positive step toward this new relationship, USCC has supported the treaties signed by President Carter and General Torrijos. We welcomed the Senate's passage of the neutrality Treaty last month. But the attachment of a reservation implying a U.S. right to intervene in the internal affairs of Panama has threatened any may indeed have eroded the respect for sovereignty, dignity, and social justice which the treaties are designed to foster.

Our concern is still greater in view of reports that attempts may be made to attach further reservations to the basic treaty, which will be voted on April 18. Such reservations could eviscerate the substance of the treaties and lead to a major setback in the hoped-for new relationship.

The U.S. Catholic Conference therefore urges the President and the Senate to resist firmly and measures which, either explicity or implicitly, would restrict the legitimate sovereignty of the Repbulic of Panama. Moreover, in light of the present circumstances, USCC believes there is need for a statement of clarification by an appropriate party, indicating the intent of the reservation to the neutrality Treaty and making clear that its scope does not exceed the principles contained in the original treaty. Finally, the Conference urges that the U.S. Government explicitly reaffirm its intention to adhere fully in its relations with the Republic of Panama to the principles of nonintervention contained in the Charter of the Organization of American States.

It is USCC's hope at this stage of the ratification process that no effort will be spared to assure that the new treaties do signify and begin an era of justice and peace in the Western Hemisphere.

Mr. DOLE. Mr. President, we have considered a number of proposed modifications to both the Neutrality Treaty and the basic Panama Canal Treaty. Two amendments, and several reservations have been adopted: many more have been rejected at the behest of the Carter administration and the Senate leadership.

Now, as the final vote of ratification draws near, we must take a long, hard look at the final product. And we must ask ourselves, in all candor: "Is this the best example of American negotiating skill on a bilateral treaty? Is this the best we can offer the American people?"

For myself, Mr. President, I find the answer to these questions to be a clear, unequivocal "no." The reasons should be plain enough to anyone who has studied the canal treaties in detail.

IMPRECISION

Perhaps the single most adverse feature of both treaties is their imprecise, vague, ambiguous, and confusing features. Nowhere has this weakness been more apparent than in those sections dealing with future American rights to protect and defend the canal. With the leadership amendments, and the DeConcini reservations, we have made some improvements, but not nearly enough.

There are still conflicting interpretations about what the defense provisions allow us to do, and what they commit us to do. The same holds true for certain economic and transition features, as well.

All things considered, both treaties have reflected clear examples of poor draftsmanship. In sum, they represent everything a good treaty should not be.

Even the phrasing is surprisingly offensive in its style and manner. As one of my colleagues has aptly noted, those treaties read like documents of surrender drafted by a victorious Panama for a vanquished enemy, the United States. We find phrases like, "The Republic of Panama grants to the United States * * *" and "The Republic of Panama permits the authorities of the United States of America to exercise jurisdiction * * *". From a stylistic standpoint alone, these treaties are little short of an insult to the Nation that gave birth to the Panama Canal, and helped Panama achieve its own independence from Colombia.

RECOMMITMENT OF TREATY

Mr. President, I support the motion by the Senator from Michigan, Mr. Griffin, to recommit the Panama Canal Treaty to the President. Recommitment would simply represent the exercise of the Senate's coequal role in treaty-making powers granted by the United States Constitution.

The action simply involves a directive to the President, from the Senate, to resume negotiations with the Government of Panama until a treaty is agreed upon that better serves the interest of both our Nations. This would give both our Governments the opportunity to reflect upon the most troublesome aspects of this treaty, and to work out a new arrangement which clearly and unambiguously spells out the rights of both countries. I have every confidence that, once negotiations resume, Panama will better understand our concerns, needs and intentions, and that we will better understand

hers. By clearing up uncertainties, and carefully defining commitments, both Nations will benefit.

The Senator from Kansas believes his collegue from Michigan has performed a service in proposing the recommitment of this treaty, and I extend my earnest support for its approval.

If, on final vote, the treaty is approved, the American people have lost. We have lost more than a great waterway—we have lost an effort to prove that American opinion still counts for something in the White House and in the U.S. Senate.

This latest in a series of foreign policy retreats by our Government shows that we just have not listened to the American people. Nor, I suspect, have we listened to our own best judgment. The proposed Panama Canal treaties are defective in many respects, as has been pointed out repeatedly on the Senate floor.

Yet, every effort that I and other Senators have made to imporve the treaties has been beaten back by the pro-administration, proleadership contingent. I could not justify voting for treaties that so ignored the opinion and the interests of the American people, and I will cast my negative vote accordingly.

Mr. PAUL G. HATFIELD. Mr. President, I will support the final Panama Canal Treaty today, because agreement between our two nations is the best way of assuring the continued accessibility and operation of the waterway.

The United States never intended to establish a colony on the isthmus or to deny the sovereignty of the Panamanian nation. In 1904, President Theodore Roosevelt said:

> We have not the slightest intention of establishing an independent colony in the middle of the state of Panama, or exercising any greater governmental functions than are necessary to enable us conveniently and safely to construct, maintain and operate the canal under the rights given us by the treaty.

The original canal treaty may have been acceptable under the political conditions that prevailed in 1903. There has been recognition for many years of the need to negotiate a new treaty between the United States and Panama for the operation of the canal. Negotiations with Panama have been conducted under four Presidents—Johnson, Nixon, Ford, and Carter. The treaties are the logical culmination of the understanding between the United States and Panama for a new and mutually acceptable agreement for the future neutrality, accessibility, and defense of the canal.

The fundamental responsibility of the Senate during the consideration of the treaties was to protect the vital security interest of the United States by providing for the neutrality, accessibility, and defense of the canal. I believe these responsibilities are fulfilled by these treaties, with the changes adopted by the Senate.

My affirmative vote on the first treaty—the Neutrality Treaty—was absolutely contingent upon the reservation which I cosponsored to provide the United States with the right to act independently, including the use of military force, to assure the continued operation of the canal. Approval of this reservation strengthened the position of the United States and made it possible for me to support the treaty in the firm belief that this was the right decision.

The right of the United States to act independently is preserved in this second, or Panama Canal Treaty being acted upon today.

We will be able to assure that the Panama Canal shall remain open, neutral, secure, and accessible, and I believe this is an essential prerequisite to the approval of this final treaty.

Among my most serious concerns about this treaty were its financial implications—its cost to taxpayers.

Accordingly, I have worked on, and supported, measures to tighten the treaty and reduce its cost. These revisions were necessary to assure that the taxpayers of the United States were not obligated to a long-term contract to subsidize the operation of the canal, or the Panamanian Government. These reservations for the treaty provide:

That the United States is not obligated for the balance of annual contingency payments in the absence of surplus canal revenues;

That Canal Commission payments to Panama for public services will reflect actual costs as determined by an independent audit;

That authority of the United States to make decisions regarding expenses necessary for canal management, operation, and maintenance not be restricted;

That the treaties do not obligate the United States to provide any form of foreign assistance to Panama;

That funds may not be drawn from the Treasury for payment to Panama without congressional authorization; and

That the Panama Canal Commission will pay interest to the U.S. Treasury on the funds and assets invested in the canal.

These reservations establish realistic limitations on the cost of operating the canal during the 21-year interim period and provide the protection to American taxpayers that I believed was necessary.

I was also concerned about a provision of the treaty that restricted the United States from constructing another interoceanic canal in the Western Hemisphere. This restriction has been removed from the treaty and the option of building another canal is open to the United States.

I support these treaties with the belief that there is a need to establish a new relationsip with Panama—a relationship that recognizes the sovereignty of that nation, but also protects our interests and assures continued use of the canal.

Last month I met with the Secretary of Defense and the Acting Chairman of the Joint Chiefs of Staff who assured me that in the professional military opinions of the Joint Chiefs of Staff, the treaties were in our best national interests.

These treaties, as presented to the Senate, were deficient in many respects. I joined with other Members to sponsor and support amendments to provide the right to defend the canal from any threat of aggression, to assure U.S. ships priority passage during time of emergencies, to make arrangements to station troops in Panama, and, in this treaty, to greatly reduce the cost to the American taxpayers. These and other amendments substantially strengthened the treaties, but they are still not perfect instruments. It would be impossible to negotiate a treaty that would completely satisfy each of the 100 Members of the Senate and every person in the United States and Panama.

In the final analysis, I am convinced that these treaties are the most acceptable method of assuring that the Panama Canal remains open, neutral, secure, and accessible.

Mr. ROBERT C. BYRD. Mr. President, 110 years ago, the U.S. Senate made one of the most significant decisions in its history. By a single vote, the Senate failed to find President Andrew Johnson guilty of the impeachment charges brought against him.

Six Senators voted contrary to the wishes of the controlling faction of their party, and to this day they are honored for their integrity in the face of certain political doom.

Senator Edmund G. Ross of Kansas, the last genuinely uncertain vote as the rollcall began, later confessed that, after Chief Justice Salmon P. Chase called for his decision:

> I almost literally looked down into my open grave, friendships, positions, fortune—everything that makes life desirable to an ambitious man were about to be swept away by the breath of my mouth, perhaps forever.

And they were largely swept away. By that vote, Edmund Ross ended his own political career. But Edmund Ross of Kansas will live forever in the honored memory of the American people, because he voted for conscience and justice, rather than expediency or polictical self-preservation.

Contemporary popular opinion in 1868 did not rally to rescue those six Senators; on the contrary, it was enraged at their actions.

One of those Senators was Peter G. Van Winkle of my own State of West Virginia.

Van Winkle had been one of the prime movers in establishing West Virginia as a new State in 1863 and he was one of its leading citizens.

His reelection in the next campaign had been a foregone conclusion.

But when Peter Van Winkle failed to vote to find Andrew Johnson guilty, his political career was destroyed; he retired from public life under a torrent of abuse and vilification.

The West Virginia legislature officially rebuked him and condemned his vote.

A Wheeling newspaper wrote:

> It seems impossible a man with a sense of honor which we have attributed to him could have done what he has done.
>
> Mr. Van Winkle's responsibility in this matter is one we would not care to shoulder.
>
> His single vote decided. In the hands of Mr. Van Winkle's constitutents (though he may not be aware of their existence) we leave him.

In the many decades since that momentous vote was taken, history has changed the popular judgment of men concerning the trial of Andrew Johnson.

It is not that Andrew Johnson has been determined to be without fault, or that Thaddeus Stevens and Ben Wade are now considered to be without virtue.

The victory in opinion belongs not to party or faction, but to wisdom, foresight, and vision.

Johnson's supporters were striving for reconciliation, compassion, unity, and compromise, in the face of vengeance, retribution, and partisanship.

There is a profound poem by James Russell Lowell which states:

Once to every man and nation
Comes the moment to decide,
In the strife of truth and falsehood
For the good or evil side.

Mr. President, I believe that we are verging on one of those extraordinary moments in our own history.

For more than 200 years, we have been blessed with leaders who have authored chapters of history that speak well of our people. Today, we are challenged to write another.

Ours is a people of magnificent vision. We have seen the purple mountains on the horizon and looked beyond. We have gazed on the stars and then reached out to them. Our real monuments are not of marble and clay, but are of the substance of our ideals and the imagination of our ideas. Our people have not only dreamed our dreams, but with sweat, blood, fortitude, and courage, have translated those dreams into the deeds of freedom, and liberty, and justice.

There is, however, in these tumultuous days of world uncertainty, a sense of national despondency—a feeling that we are, in a manner, retreating on the battlefield of greatness and that we are being swept by an outgoing tide of events, from the principles of our historic shore. This, I believe, is the most basic concern of our people today regarding these treaties. It is a concern expressed by honorable men who oppose the treaties. They picture ratification as the gestating germ of weakness and decay.

With great respect, but in complete candor, this, I believe, is a blindman's theory, for its vision halts at the end of a cane. It is not worthy of our people's imagination.

A vote today to approve the treaty will not be a surrender to this pervasive malady which has haunted our national spirit since Vietnam. We would demonstrate strength, not weakness; confidence, not insecurity, by voting to approve the treaty.

We come now to the final moments. Through 38 days of debate, both sides have presented strong arguments. It has been an historic debate, and its impressions have been carried through the ripling waters of public opinion by the first audio broadcast from the U.S. Senate. In this country, as well as in Panama, this has been a compelling drama for many.

The world this afternoon hears the creak of a chair, the thump on a microphone, the shuffle of a piece of paper in this Chamber. Our voices and actions today echo through the streets of Panama City and other capitals of Central and South America.

Today we judge, and today we shall be judged. We have searched for truth. Both sides lay claim to the answer to the ultimate question: Are these treaties in our best national interests?

For my premise, I merely state this: The death of these treaties may leave an impression of strength, but it will be strength gilded with papier-mache. Their approval will mean strength fortified with vision and justice.

The architecture of my reasoning is simple: We are more than a hundred times the size of the Republic of Panama. We are unsurpassed in our military might.

Moreover, there is a tendency to overlook the fact that the United States will retain control of the canal for the next 22 years,

plus the defense rights thereafter as provided in the neutrality treaty. Hence, these two treaties will fully protect U.S. interests for both the near and the distant future. And, we will have accomplished this without trampling on the rights of the Panamanians.

These treaties can be a benchmark of better relations with Central and South America, or their rejection can be the beachhead of confrontation. A prudent nation should choose the former. The unexplored frontiers of economic and political cooperation that will be opened to all of Latin America by the approval of these treaties are as wide as our own vision.

We have entered a new phase in the drama of world affairs. In the coming generations, the leadership of the West and the whole world will be shared with many of the developing nations. Brazil, Venezuela, Mexico, and Argentina, as well as other countries in this hemisphere, have enormous potential as future leaders in shaping world events. Do we dare betray a lack of sensitivity to the tide of history by failing to recognize the importance of these treaties in our future relations with these emerging giants? Do we want to deny to our friends and allies from the Rio Grande to Cape Horn the acknowledgment of their dignity and national pride?

We stand at a crossroads. Ther is a fundamental question that must be answered.

When the red sunset fades over this moment in time, will we have prevailed as a nation to understand others as our history shows we have so rightly insisted on being understood?

We must not be seen throughout the world confusing compassion with weakness, and greatness with dominance. We must be seen today as a nation as great as its principles and not be seen as a nation afraid of its principles.

To vote "no" on this treaty is to deny to others the freedom of destiny we have so often, so long, and so well cherished, fought, bled, and died for.

To vote "no" on this treaty is to slam the door on our already neglected relationships with our neighbors to the south.

To vote "no" on this treaty is to give a blank check to our world adversaries who would exploit a weakness that we had perceived as a strength.

The plain fact is this: By voting "yes" on this treaty, we are not gambling away our strength; we are making a sound investment in our future.

By voting "yes," we are not losing a canal; we are building trust and confidence within the Western Hemisphere.

By voting "yes," we are not retreating from greatness; we are sending a message to the world that genuine greatness and strength do not reside in force of arms and sheer might alone.

If American history were to run its course tomorrow, no man could diminish the glory and the record that we have established as a nation. But we have even greater roles to play in the world in coming generations. But those roles will not necessarily be played wearing the masks of yesterday. We can rise to unvisited pinnacles if we have the wisdom to vote today for conscience and justice in relation to Panama as did the Rosses and Van Winkles in relation to Andrew Johnson in 1868.

Mr. President, I compliment all Senators on the high caliber of this great debate. I express my great respect to those in the opposition for the strenuous battle they have fought.

Mr. President, I offer the highest compliments to Senators CHURCH and SARBANES who have so magnificently managed the debate for the proponents of the treaties, and I offer my sincere thanks to all Senators who have supported the treaties and will vote "yes" on the final rollcall.

Finally, Mr. President, I offer my highest respect and gratitude and admiration to those courageous Senators who supported the treaties and who will soon stand for reelection. It has required genuine courage. What better words can be said of any man than these: He did his duty. These men have done their duty to their country. These men, as all Senators—regardless of the division of opinion among us— have done their duty.

Mr. President, I close with appropriate lines from James Russell Lowell's poem—"The Present Crisis":

> New occasions teach new duties; time makes
> ancient good uncouth;
> They must upward still, and onward, who
> would keep abreast of truth;
> Lo, before us gleam her camp-fires, we our-
> selves must pilgrims be,
> Launch our Mayflower, and steer boldly
> through the desperate winter sea,
> Nor attempt the future's portal with the
> past's blood-rusted key.

The VICE PRESIDENT. Under the previous order, the hour of 6 p.m. having arrived, the Senate will now proceed to vote, and the question is on agreeing to the resolution of ratification on Executive N. 95th Congress, 1st Session, Calendar No. 2, the Panama Canal treaty. The yeas and nays have not been ordered.

Mr. CHURCH. Mr. President, I ask for the yeas and nays.

The VICE PRESIDENT. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 68, nays 32, as follows:

[Rollcall Vote No. 119 Ex.]

YEAS—68

	Clark	Hayakawa
Abourezk	Cranston	Heinz
Anderson	Culver	Hodges
Baker	Danforth	Hollings
Bayh	DeConcini	Huddleston
Bellmon	Durkin	Humphrey
Bentsen	Eagleton	Inouye
Biden	Glenn	Jackson
Brooke	Gravel	Javits
Bumpers	Hart	Kennedy
Byrd, Robert C.	Haskell	Leahy
Cannon	Hatfield,	Long
Case	Mark O.	Magnuson
Chafee	Hatfield,	Mathias
Chiles	Paul G.	Matsunaga
Church	Hathaway	McGovern

McIntyre	Pearson	Sparkman
Metzenbaum	Pell	Stafford
Morgan	Percy	Stevenson
Moynihan	Proxmire	Stone
Muskie	Ribicoff	Talmadge
Nelson	Riegle	Weicker
Nunn	Sarbanes	Williams
Packwood	Sasser	

NAYS—32

	Goldwater	Schmitt
Allen	Griffin	Schweiker
Bartlett	Hansen	Scott
Burdick	Hatch	Stennis
Byrd,	Helms	Stevens
Harry F., Jr.	Johnston	Thurmond
Curtis	Laxalt	Tower
Dole	Lugar	Wallop
Domenici	McClure	Young
Eastland	Melcher	Zorinsky
Ford	Randolph	
Garn	Roth	

The VICE PRESIDENT. Two-thirds of the Senators present and voting having voted in the affirmative, the resolution of ratification, as amended, is agreed to.

The resolution of ratification, as amended, as agreed to is as follows:

Resolved (two-third of the Senators present concurring therein) That the Senate advise and consent to the ratification of the Panama Canal Treaty, together with the Annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Executive N, Ninety-Fifth Congress, first session), subject to the following—

(a) RESERVATIONS:

(1) Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and the Neutrality Treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

(2) Notwithstanding any other provisions of this Treaty, no funds may be drawn from the United States Treasury for payments under Article XIII, paragraph 4, without statutory authorization.

(3) Any accumulated unpaid balance under paragraph 4(c) of Article XIII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date.

(4) Exchange of the instruments of ratification shall not be effective earlier than March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to emplement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

(5) The instruments of ratification to be exchanged by the United States and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under paragraph 2 of Article XII.

(6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless it is otherwise provided by legislation enacted by the Congress, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the

Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretarey of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under section 62 of title 2 of the Canal Zone Code.

(b) UNDERSTANDINGS:

(1) Nothing in paragraphs 3, 4, and 5 of Article IV may be construed to limit either the provisions of paragraph 1 of Article IV providing that each party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of this Treaty.

(2) Before the first date of the three-year period beginning on the date of entry into force of this Treaty and before each three-year period following thereafter, the two parties shall agree upon the specific levels and quality of services, as are referred to in Article III, paragraph 5 of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of such canal operating areas and such housing areas referred to in Article III, paragraph 5 of the Treaty. If payments made under Article III, paragraph 5 of the Treaty for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three-years, one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, of any costs of services disputed by the two parties pursuant to the reexamination of such costs provided for in this Understanding.

(3) Nothing in paragraph 4(c) of Article XIII shall be construed to limit the authority of the United States of America through the United States Government agency called the Panama Canal Commission to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to Panama described in paragraph 4(c) of Article XIII.

(4) Any agreement concluded pursuant to article IX, paragraph 11 with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties.

(5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreeement relating to the Treaty obligates the United States or provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification exchanged with the Government of the Republic of Panama.

Mr. CHURCH. Mr. President, I move to reconsider the vote by which the resolution of ratification was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. CHURCH. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of the resolution of ratification.

The VICE PRESIDENT. Without objection, it is so ordered.

PANAMA CANAL TREATY

Mr. BIDEN. Mr. President, it was no secret to the last minute that I supported the Neutrality Treaty as modified by the Byrd-Baker leadership amendment.

Nor is it secret that I will support the Panama Canal Treaty to be voted today. I am announcing this because I would like to underscore the fact that the issue being debated in both treaties is the continued American use of the canal. It is not a vote in support of or against President Torrijos. I support both treaties because I fell that the continued American use of the canal for our strategic and economic purposes is our first priority. Whether President Torrijos stays in power until the 21st century is irrelevant to the merits of the treaties. I do not want to see the treaties rejected, emasculated, distorted, or diminished because I believe they enhance America's vital interest. Failure to ratify these treaties may indeed produce insurrection, terrorism, or even revolution in Panama. I have no fear that the United States could put down any violence that would occur. I do, however, question whether a usable canal would emerge from conflict within Panama. And a usable canal is our first priority.

If we have to send the Marines down to Panama, I wonder how many Americans—who today have not given much thought to the treaties—will question the wisdom of the Senate for not having chosen—for not having voted—for not having supported a more effective means of defending the U.S. interest. The United States obtained the Canal Zone in a manner quite appropriate to the turn of the century. The decision to build a canal was made with extraordinary foresight. The technological achievement of the canal itself was a major American engineering breakthrough.

America was first—not last.

What worked for the U.S. interest in Panama in 1925 will not work in 1995 nor in 2025. When old ways do not work, it becomes a test of American superiority, American ingenuity, and American strength to find new ways. Today the only effective way to defend American interests in the canal is through a spirit of cooperation. A unilateral decision—even for the common good—is just not going to work. A joint decision—whose common good is perceived by both sides—is one that works.

The Panamanians today are a nation. They are one of the smallest and weakest nations of the world. What test of strength is it for the United States—the strongest country in the world—to use brute force against the weakest?

On the other hand, I ask: What genuine leadership is demonstrated when a country which has the means and the will to use military force instead chooses an ingenious and peaceful means for achieving the same objective. And that objective is clearly the continued use of the canal through this and the next century.

Mr. President, I support the two Panama Canal treaties because they are a product of American strength. And I believe they are the most "advanced weapon" we could choose to protect the short- and long-term interests of the American people.

STATEMENT ON THE PANAMA CANAL TREATY

Mr. GOLDWATER. Mr. President, I believe it was a treaty poorly conceived, poorly negotiated, and consummated in a manner, in my opinion, that is not going to help Panama. It will help a lot of bankers who loaned Panama money, but it will not help them to raise the funds necessary to keep the canal open.

It flaunts the Constitution and the so-called leadership clause added to this treaty clearly does not alter the DeConcini reservation one bit. It makes a joke of this treaty.

It is my opinion that within 5 years of turning the canal over to the Republic of Panama the United States will be running the canal again or it will not be running at all. There is no question, in my mind, but that the Panamanians can operate the canal, but operating it and running it from a business standpoint are two different matters, and I doubt that the instability the Government of Panama has always shown will permit the businesslike operation of the canal. Following are a few brief opinions of mine, after having listened to, and participated in this debate for such a long time. Therefore, I ask that these opinions be printed at this point in my remarks.

The opinions follow:

OPINIONS

1. Cost to the U.S. Public.

a. Secretary of State Vance himself conceded in a statement to Congress, dated February 10th, that giving up the Panama Canal will cost U.S. taxpayers hundreds of millions of dollars. The total appropriation over 21 years will be approximately $350 million, according to Secretary Vance.

The cost of the new treaty to be funded by the Treasury includes relocation of defense installations and an early retirement program for Panama Canal enterprise employees.

b. In addition, the Carter Administration will recommend that the Treasury stop collecting annual interest payments from the Canal Company, which are currently averaging $18 to $20 million. The total loss to the Treasury from this proposal, which would not be incurred if the treaty is not ratified, has been estimated by the General Accounting Office at $505 million.

c. There also is the loss to the American public of the value of property given to Panama. The State Department's own estimate of replacement value is $9.8 billion, including the Canal itself, the Company, and military assets.

d. A separate economic and military aid package to Panama of $345 million is planned by the Administration. Although not required by the Treaty, this aid package is clearly in connection with it. If Panama, which already pays 37 percent of its total income in order to service large foreign debts, should fail to repay these loans or guarantees, the taxpayer could become liable to make good the losses.

e. Toll increases, which are needed to cover new payments to Panama required by the Treaty, may add up to $1.2 billion in costs borne by U.S. consumers and shippers during the life of the Treaty.

f. Although the Treaty calls for several new payments to Panama out of Canal operating revenues, rather than from the Treasury, it appears Congress would have to make up operating deficits should they occur. This follows from the fact that the Panama Canal Commission, which is obligated by the Treaty to make the payments, is in actual fact, an agency of the United States. Thus, the obligations of the Commission are in effect the obligations of the United States. Moreover, the United States Government is required by the Treaty to turn the Canal over to Panama debt-free in the year 2000.

2. Usurpation of Legislative Powers

The primary trouble with the State Department position is that they fail to observe the distinction between making a treaty and implementing a treaty. It really is quite simple.

The Constitution sets up the President with the Senate as the treaty-making authority. The President negotiates treaties with foreign powers and ratifies them

after receiving the advice and consent of the Senate. Congress cannot do this. Congress, as a separate entity, cannot enter into agreements with a foreign nation. Thus it takes a treaty to make an agreement with another country.

However, when that the treaty is a contract to perform a specified act, which falls within one of the press powers delegated to Congress, then it is Congress who must perform that act. In other words, a treaty which touches on legislative power needs implementing legislation to carry it out, either in the form of prior authorization or subsequent enactment of authority.

Otherwise where is the end to the treaty power? For example, Congress can declare war. Does this mean a treaty alone can put the nation in a war upon the occurrence of a specified condition, without any subsequent voice in the entire Congress? Senators who supported the War Powers Act as a means of securing a role for Congress in going to war might ponder that question.

Congress has power to provide for coinage and currency. Does this mean a treaty can declare the German mark the currency of the United States? Remember, the Administration is already seriously considering the issuance of Government Bonds in a foreign denomination.

Congress has power to regulate commerce. Does this mean a treaty can embargo all exports of tobacco? The Senators from tobacco-producing States might ask themselves whether it would be Constitutional for a treaty to by-pass any role of the House of Representatives if that treaty, in the name of international health, should outlaw the export of tobacco.

Congress has the power to establish courts and to make exceptions to the appellate jurisdiction of the Supreme Court. Does this mean a treaty alone can create international courts having jurisdiction over our citizens in certain situations, a court which is free of review of our own Supreme Court?

If a treaty can exercise concurrent powers with Congress, all of these results, which may seem absurd now, may happen in the future.

Whatever the State Department may have discovered in the way of claimed precedents, it is the Constitution that is at issue, not precedents.

And, the Constitution is clear. As Historian Arthur Bestor concluded recently in his deep study of this specific issue, the power to dispose of the territory or property belonging to the United States is "a power that the framers expected to be exercised by act of Congress, according to the legislative procedure minutely specified in the Constitution."

[From the Congressional Record—Senate, Apr. 19, 1978]

THE PANAMA CANAL TREATIES

Mr. ROBERT C. BYRD. Madam President, our work is done on the historic Panama Canal treaties. Of course, there is implementing legislation yet to come. But today we go on to other important matters.

We know that the tide of history is as swift and as sure as the coming of tomorrow.

But I feel that there must be a postscript to a day in time that may have charted the course of our relations with other nations of the Western Hemisphere for many years.

When the first word was uttered on the first day of debate on these treaties, a slim 8 percent of our Nation's population was convinced they were in our best national interests.

There was a pervasive feeling that we would be surrendering on the battlefield of greatness if we were to approve the ratification of these treaties. Their approval—in the words of political soothsayers—was not meant to be. These were the treaties that were not supposed to be approved for ratification.

Today, through the aid of the Nation's media, and especially with the help of National Public Radio which broadcast the debate, there is a greater understanding of these treaties throughout our country.

May I say with particular compliments to National Public Radio, and to the persons who made possible the transmission to the American people, in such clarity, of what was being said, and who analyzed the debate in the evenings and capulsed it in the Record, they did a masterful job.

There is no question in my mind but that the broadcast by National Public Radio resulted in a prolongation of the debate. Now, I said in my news conference this morning to news reporters that National Public Radio prolonged the debate. That was an inaccuracy. Senators actually prolonged the debate, but I do think that the broadcast of the debate resulted in its being prolonged. But I believe that may have been good. I think that the benefits, certainly, outweigh the disadvantages.

As a result of this broadcast—and it was an historic one—the first in the Senate's history and I am proud of that fact, it was possible for the people of the United States and the countries to the south and north of us to look in on the Senate, as it were, and to see the debate in their mind's eye, at least, and to formulate a clearer judgment based on the information they were receiving through National Public Radio.

Granted, as the debate went back and forth, it may have been confusing because there were rebuttals and surrebuttals, and all of that. But I think it was a great service to the Nation for the media to have done what I think was a very fair and splendid job in reporting the debate.

I say this for the print media as well as for the telecommunications and other media.

It is still possible that some Senators, Madam President, who voted for these treaties may have offered themselves as sacrifices on the altar of courage.

This is especially true of several Senators who face reelection in the months ahead. Their wisdom, I feel, will be their vindication. Their vision, I believe, will be justified by history.

Madam President, I commend those on the other side of this issue, too—especially Paul Laxalt, who led treaty opponents in an admirable way and with the utmost of dignity. After all, they helped mold and shape the treaties, and their contributions were necessary.

But again, I commend those who supported the treaty, I do not think I have ever seen a more remarkable display and demonstration of teamwork than I saw from day to day from Mr. Church and Mr. Sarbanes, who handled the issue with what I thought was a fine a grasp of every issue as I have ever seen any Senator demonstrate on the floor.

They met every issue head on. They were here, one or the other, or both practically all the time. They demonstrated a knowledge, so throrough, that I as one Senator was simply amazed.

I also thank those Senators who helped Senator Sarbanes and Senator Church, in handling floor debate, for example, Senator Hollings, Senator Leahy, Senator Moynihan, Senator Bayh, Senator Gravel, Senator Matsunaga, Senator Muskie, Senator Javits, Senator Cranston, and others who were here, always ready, always knowledgeable and effective. It was a remarkable demonstration of organized effort and teamwork.

Once more I have to salute those Senators who demonstrated courage in the face of the greatest pressures I have seen brought to bear on the Senate in a long time. This said something good about the Senate of the United States. It was a treaty that was not supposed to be approved. Yet, two-thirds plus one stood up under this kind of pressure; and among that two-thirds plus one, I believe, were 16 Senators, on both sides of the aisle, who have to run for reelection this year. That was a demonstration of intellectual integrity and courage that I think should give the people of this country great confidence and faith in this institution.

Madam President, I cannot be too laudatory nor too generous in my praise for the courageous role played in this effort by my dear friend—my counterpart across the aisle—the distinguished minority leader, Howard Baker.

He worked tirelessly with us in the long, long days during which we considered the treaties.

Always courteous, always affable, always cooperative and accommodating, his assistance was simply indispensable to our labors. I commend him, and I thank him for his understanding and for his help and for his strength in never flinching from his duty.

Finally, Madam President, there will be those who will second guess. Perhaps they read or heard this morning that General Torrijos was poised to shut down the canal if the vote had been in the negative.

While I do not agree with the prudence of his comments, I understand his feelings, and I understand the feelings of the Panamanians. Our great history—from the Revolutionary War until today—has had one central theme: We as a people must hold the reins of our own destiny.

I commend the Panamanians. They have exercised restraint through these debates. We know that for 75 years Panama—through many leaders with varying political leanings—has been faithful to a treaty that runs contrary to that country's interests.

So today, Madam President, as we close this chapter in the saga of two nations, I believe we have opened the door to unexplored frontiers of cooperation not only with Panama but also with the other Latin American nations to the south of us. In doing so, we have enhanced our image and our strength throughout the world, and we have shown that the United States is not afraid to stand by the principles it espouses.

We approved these treaties from a position of strength, not weakness, and this is the way history will record it.

REMARKS OF GENERAL TORRIJOS ON PASSAGE OF PANAMA CANAL TREATY

Mr. THURMOND. Mr. President, the arrogance and untrustworthiness of Gen. Omar Torrijos, the dictator in Panama, was once again demonstrated last night when he defied the Senate and the United States in his Panama City speech.

In effect, he told the United States he would not accept the DeConcini amendment and, if it were ever used by the United States, he would destroy the canal.

Mr. President, these remarks are more than sufficient justification for President Carter to refuse to exchange the resolutions of ratification as the Senate amendment would be meaningless in the face of such ingratitude and defiance.

As I stated yesterday in my closing remarks before the treaty vote, the acceptance by the Senate of the Panama Canal treaty means trouble ahead for this Nation. Not only will there be trouble in Panama but also serious problems in connection with our economic, financial, and defense programs.

Mr. President, I ask unanimous consent that the article appearing on the front page of the Washington Post, dated April 19, 1978, entitled "Torrijos Would Have 'Destroyed' Canal" be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

TORRIJOS WOULD HAVE "DESTROYED" CANAL

(By Marlise Simons)

PANAMA CITY.— Panamanian ruler Gen. Omar Torrijos said last night that if the U.S. Senate had not ratified the Panama Canal treaties, "We would have started another struggle for liberation" and possibly closed the canal by force.

As jubilant Panamanians celebrated and sirens and firecrackers went off in the streets of the capital after the vote in Washington, Torrijos appeared on television to declare the treaties "the greatest, the most-awaited and the most discussed triumph" of this country.

He said he accepted the final language approved by the U.S. Senate, but he devoted much of his 20-minute speech to a bitter attack on the "crude, arrogant, interventionist language" that some U.S. senators "wanted to impose on us."

The Panamanian strongman said, "Today the canal was placed within two votes of being destroyed." Had the Senate vote gone the other way, he said, "Tomorrow

we would have started our struggle for liberation and possibly tomorrow the canal would not be operating any more."

Panama's armed forces, Torrijos said, "had decided that if the treaty had been rejected or amended in an unacceptable way, then we would not negotiate anymore."

The Panamanian strongman, who had personally campaigned hard for approval of the treaties, both with his countrymen and with U.S. congressmen, warned that Panama would also destroy the canal if the United States tried to intervene under the DeConcini amendment.

Torrijos said that the Panamanian national guard, the country's chief military force, "has the capability of destroying it and we don't intend to lose that capability."

While the United States could intervene, he said, U.S. troops in sufficient numbers are "four to six hours away" and the canal could be "damaged heavily" in that period.

Torrijos, like many other Panamanians, listened to a live broadcast of the U.S. Senate roll-call vote. To stir enthusiasm for the event, the government told employees to stay at work until time for the voting, and then to gather at the Fifth of May Square to celebrate.

The meeting, attended by hundreds of people, coincided with a demonstration by students and lawyers who charged that Panama had been forced to make too many concessions to the United States.

Anti-treaty anger here in recent weeks had also turned into antigovernment demonstrations and Torrijos last night made a strong appeal for national unity.

He made two large political gestures: he announced that all political exiles—more than 100 government opponents from the left, right and center—could return unconditionally and he opened the door in rather vague language for the eventual restoration of political parties, which were abolished after the 1968 military coup that put him in power.

But in his speech and news conference, Torrijos returned several times to the "unacceptable humiliation" that he said his government and Panama had to suffer during the Senate debate.

"I think there has never been a man in Panama so maligned as I, and never been a country so disdained as this one by those conservative voices," Torrijos said.

"But we can live with this treaty . . . it ends the colonial remains in Panama," he said.

Referring to the American Canal Zone police force, which have long been an irritant to Panamanians, he said. "That daring, overbearing example of colonialism will now end."

Yesterday morning some 500 nationalist and leftist student's demonstrated angrily in front of Panama's once snow white Foreign Ministry building, now covered with anti-American and anti-treaty scrawlings. They stayed away from the American Embassy, whose drab beige facade had been spattered Monday as demonstrators hurled bottles of paint and left it covered with huge blotches of red, white and blue.

The embassy yesterday took strict security precautions. The staff worked inside with the curtains drawn, the entrance gates were locked and a metal detector was used at its front door.

In the Canal Zone, U.S. troops were put on alert but there was none of the agitation usually seen among the American Canal Zone residents when Panamanians demonstrate. Treaty opponents in the zone say they feel that they have lost their long battle, have been shortchanged by their government and press and are now tired and exasperated.

"We don't care anymore what happens," said a canal company employee who was born in the zone. "Why bother, since no one else in the States does."

Before the treaty goes into effect, the U.S. Congress must pass implementing legislation and both governments must exchange instruments of ratification. Then Panama will get sovereignty over the 533-square-mile zone. Sovereign rights "in perpetuity" were granted to the United States in 1903, for a $10 million flat payment although Panama began hotly disputing them a year later.

To a Panamanian, the new soverignty means that if he is accused of a crime in the zone, he will no longer be tried in an American court or sent to an American jail in the zone. U.S. police, courts and post offices will be phased out over a 30-month period after the treaty takes effect.

For the American residents of the Canal Zone, called zonians, it means that the world's most complete company town will be dismantling in the 30 months after the treaty takes effect. Americans in the zone will live under Panamanian law and will no longer be able to import duty free articles from the United States or go to a

movie house, bowling alley, restaurant or commissary subsidized by the U.S. government.

The ports, docks and the famous Bridge of the America's and Transisthmian Panama Railroad will become Panamanian property.

But despite the despondency among the resident Americans, the zone, which looks like a vast national park, will not look very different for years to come.

A new agency will replace the U.S. government-owned Panama Canal Co. and will run the canal with a mixed U.S.-Panamanian board. It will retain more than one-third of the zone area "for canal operations." Almost half of the zone will be kept by the U.S. military for its bases, which include housing, schools, shooting ranges, and defense sites.

The amount of real estate that will be returned to Panama before the year 2000—when the canal and its operations become fully Panamanian—is actually very little.

The most coveted portion, an unused strip, lies at the canal's Pacific entrance and with its lush vegetation and beaches would make prime residential real estate. Another area at the Atlantic entrance will be used for much needed expansion of the Colon free zone, after Hong Kong the world's largest free zone depot.

THE PANAMA CANAL TREATY

Mr. DOLE. Mr. President, as one who cast his vote against the Panama Canal Treaty yesterday, the Senator from Kansas acted in accord with his own best judgment of the national interest. That was my duty as a U.S. Senator.

Now the crucial test has been completed in the Senate, and the treaties have been forwarded to the President for final ratification. We accept the fact that the constitutional process has been carried out. We may not agree with the policy, but now that the treaty decision has been made, we accept it.

This does not mean that we should not continue to offer constructive criticism where needed. This does not mean that we in the Senate should not continue to provide policy guidance in the future with respect to Panama. But we acknowledge that the Senate's "consent" function in the constitutional treaty-making process has been carried out.

TREATY OPPONENTS MADE THEIR CASE

The Senator from Kansas, as much as anyone, can vouch for the frustrations that have been encountered in Senate efforts to improve upon the canal treaties. Many of us disagreed with the specific provisions of the treaties negotiated by the Carter administration, although we did not resist the idea of a new canal arrangement, per se. We made our case for treaty amendments as best we could. We offered them in good faith, but time and time again they were rejected out of hand. It was argued that the treaties could not withstand even "one word" of textual change by the Senate. And yet, in order to secure the required 67 votes, it eventually became necessary for the Senate leadership to accept treaty reservations and understandings. That is part of the support-building process.

FUTURE RELATIONS

It is certainly my hope that U.S. relations with Panama, and with the rest of Latin America, will grow stronger in the days ahead. In its efforts to advance the treaties, the administration repeatedly stated that ratification would open a "new era of friend-

ship" with all of Central and South America. We hope that prediction now holds true.

Unfortunately, I do not believe some of the comments made yesterday by Panamanian leaders following the Senate vote were oriented in that direction. Instead, they illustrated some of the very real concerns of Members of this body about the intentions of the Panamanian Government—concerns that were repeatedly minimized by protreaty Senators and the Senate leadership. Those who criticized treaty opponents for "jingoism" should now prevail upon the Panamanian leadership to refrain from jingoistic comments that can only strain future relations.

I can say with confidence that the objections and the reservations that some of us raised were never directed against the Panamanian people themselves. We were concerned about treaty guarantees, and also about the integrity of Panama's leadership and its pleadges to honor treaty commitments. But we never challenged the goal of maintaining our traditional good relations with the Panamanian people.

The Senator from Kansas stated repeatedly that he was less concerned about who had "sovereignty" over the Canal Zone, than about protecting the future operation and maintenance of the Panama Canal itself. The canal is vital to American defense, it is vital to American agriculture, and it is vital to our national economy as a whole. Its continued efficient operation is vital to Latin America as well, and it is therefore essential that the treaty provisions be scrupulously honored during the next 22 years, and afterwards.

SPIRIT OF COOPERATION

For my part, I look to the future in a spirit of cooperation. The treatymaking process prescribed by our Founding Fathers has been followed, and I abide by the outcome. We trust that the treaty provisions will be honored fully by both governments throughout the years to come, and that genuine friendship between the American people and the Panamanian people will continue, as firmly as ever.

APPENDIX

29-400 (pt. 3) O - 79 - 107

95TH CONGRESS } SENATE COMMITTEE
2d Session } PRINT

THE PANAMA CANAL TREATY AND THE CONGRESSIONAL POWER TO DISPOSE OF UNITED STATES PROPERTY

Mr. ALLEN, from the Subcommittee on Separation of Powers of the Committee on the Judiciary, submitted the following

REPORT

[Pursuant to S. Res. 170, sec. 3, 95th Cong., 1st sess.]

FINDING

The Subcommittee on Separation of Powers of the Committee on the Judiciary, having studied the issue of the authority of Congress to dispose of territory or property belonging to the United States as set forth in article IV, section 3, clause 2 of the Constitution, finds that the said power of Congress is exclusive and that the Constitutional prerogatives of Congress require that Congress authorize, by the enactment of appropriate legislation, any disposition of the property of the United States in the Isthmus of Panama.

RECOMMENDATION

The purpose of this report is to assist in the preservation of the separation of powers between the branches of the Federal Government and to further the constitutional prerogatives of Congress by recommending an amendment to the proposed Panama Canal Treaty (Executive N, 95–1). The amendment recommended is simple—the Panama Canal Treaty should be amended at article I thereof, or at another appropriate point, to include the following language:

> Subject to the enactment of appropriate authorizing legislation by the Congress of the United States. . . .[1]

If, for reasons of drafting preference or for reasons involving the constitutional processes of the Republic of Panama, the Senate deems it inadvisable to amend article I or any other part of the Treaty itself, then it is recommended that, in lieu of amendment, the Senate adopt,

[1] This language is identical in form to the language used at several points in the text of article V of the Treaty of 1955, a treaty by which, *inter alia*, property belonging to the United States was transferred to Panama.

prior to any final vote on a resolution of consent to ratification, the following form of reservation:

> *Resolved*, That the Senate give its advice and consent to the ratification of the Panama Canal Treaty subject to the following reservation:
>
> "That, prior to the exchange of instruments of ratification, the Congress shall have enacted legislation authorizing each disposition of the property belonging to the United States which would be obligated by the entering into force of said Treaty and related implementing executive agreements."

BACKGROUND INFORMATION

Introduction

"Wherever the real power in a government lies," said James Madison, "there is the danger of oppression." (Quoted in Hofstadter, "The American Political Tradition," p. 3 (1948).) That theme was echoed in 1957 by Mr. Justice Hugo L. Black, who said, "Ours is a government of divided authority based on the assumption that in division there is not only strength but freedom from tyranny." *Reid* v. *Covert*, 354 U.S. 1, 40 (1957). But ever increasingly, "the real power" in American government lies within the executive branch, both in the Office of the Presidency, in the National Security Council, the Department of State, the Department of Justice, the Central Intelligence Agency, and in the far reaches of the public administration. This development, long noted by individual Members of Congress and by scholars, has, in large part, occurred during the past few decades. In 1885, Woodrow Wilson could write, in his classic "Congressional Government, a Study in American Politics," that the locus of power in American government reposed in large part in the chairmen of the standing committees of Congress. Times have changed. Since that highwater mark of legislative dominance, the steady trend has been toward the concentration of power in the executive branch.

More than a decade ago, the progress of this steady growth of executive power was noted in colorful language by the Honorable Carl Vinson, chairman of the House Committee on Armed Services:

> To any student of government, it is eminently clear that the role of the Congress in determining national policy, defense or otherwise, has deteriorated over the years. More and more the role of the Congress has come to be that of a sometimes querulous but essentially kindly uncle who complains while furiously puffing on his pipe but who finally, as everyone expects, gives in and hands over the allowance, grants the permission, or raises his hand in blessing, and then returns to his rocking chair for another year of somnolence broken only by an occasional anxious glance down the avenue and a muttered doubt as to whether he had done the right thing. House Committee on Armed Services, "Authorizing Appropriations for Aircraft, Missiles, and Naval Vessels," H. Rept. No. 1400, 87th Congress, 2nd Session, at p. 7 (1962).

The manner by which the executive branch, contrary to statute and often to the Constitution, has taken over much of the substance of governance has always been a matter of grave concern to the Sub-

committee. The development of overwhelming executive power cannot be accepted with equanimity; issues of fundamental Constitutional importance are raised by it, not the least of which is the decline of the traditional doctrine of separation of powers and the intrusion of the executive and judiciary into the responsibilities of Congress. But the Congress has not been without fault in permitting this to occur. For far too long, both Houses have somnolently acquiesced in a massive transfer of the legislative power of government from the Congress, where Constitutionally it should reside, to the executive branch and to the judiciary, neither of which has Constitutional authority to exercise it.

The most frequently heard rationalization for this development has been that executive dominance was necessary if there was to be any efficiency in the operation of the government. This justification for the sake of efficiency is grounded on the assumption that, in the modern era, it is necessary to find solutions to society's problems rapidly and to apply them without delay. The processes of the legislative branch are considered too cumbersome to be tolerated and therefore must be bypassed in favor of the executive branch, where an unelected official or an entire agency can assume the power to act and to act without delay and where programs can be developed with a view to their overall impact and without regard to the opinion of voters.

Although the Subcommittee is well aware of the pressing need for improving Congress' capacity to receive, assimilate, and deal with the complex data available in modern times, such concentration of power in the executive is not necessary for the efficient operation of government. The doctrine of separation of powers need not be a roadblock to the effective operation of the American government. Even if it appears to be such a barrier at times, it represents an essential ingredient of a democratic system; Congress provides the only forum in the nation where existing and proposed public policies can be exposed to the full debate necessary for the promulgation of wiser programs. Furthermore, as Justice Louis Brandeis said more than 50 years ago:

> The doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but, by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy. *Myers* v. *United States*, 272 U.S. 52, 293 (1920).

Milton's observation that "necessity is the plea of every tyrant" is a short but complete answer to the argument that is often made that the exigencies of international relations or domestic crisis require or necessitate rapid action that can be accomplished only by the executive. This is not to say that this, or any other administration, is or has been tyrannical; but it is to say that the potential for tyranny is real and that further erosion of the principle of separation of powers, especially in the area of foreign policy, will be disastrous to the Constitutional liberties we presently enjoy within our own country.

Thus, the Constitutional prerogatives of Congress must be preserved, even at the price of possible inconvenience to the executive branch in its dealings with foreign governments. And although the

steady, and not particularly slow, increase in executive power vis-a-vis the Congress is clearly discerned throughout all governmental affairs during recent decades, the Subcommittee does find that it is a particularly alarming trend in the conduct of foreign relations. Consistent with this process of aggregation of all power in matters relating to foreign affairs, the executive branch, in proposing for the first time in our history by treaty alone to dispose of the property of the United States in the Isthmus of Panama, is seeking to arrogate to itself, under a novel theory, a power which until now has been exclusively exercised and jealously guarded by the Congress.

In analyzing the dangerous potential consequences of this latest attack on the prerogatives of Congress, the Subcommittee has been guided in its work by the words of its first chairman, Mr. Ervin:

> The history of liberty is the history of the limitation of governmental power, not the increase of it . . . Concentration of power always precedes the destruction of liberty.

The Subcommittee has also highly valued the comment of Prof. Charles E. Rice of the University of Notre Dame Law School:

> I hope that the consideration of the Panama Canal treaties, including particularly the treaty providing for transfer of United States property, will provide an occasion for the reaffirmation of the Congressional power with respect to the disposition of the territory or other property of the United States. Congress' power in this area ought to be regarded as exclusive. The American people ought to be deprived of their territory and property only by action of that governmental body most responsive to public opinion. That body is the entire Congress and most especially the House of Representatives.[2]

Issue presented—jurisdictional base

In accordance with its mandate to study the separation of powers between the executive, judicial, and legislative branches of the government provided by the Constitution and pursuant to the provisions of Section 3 of Senate Resolution 170, the Subcommittee began, on July 22, 1977, to conduct an investigation of executive branch negotiations for the disposition by treaty of United States territory and property in the Isthmus of Panama.

The Constitution provides in Article IV, Section 3, clause 2 as follows:

> Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Thus, the primary separation of powers issue studied by the Subcommittee was whether the executive branch could, without prior statutory authority and acting independently of the Congress, alienate territory or other property of the United States by concluding a treaty

[2] Statement by Prof. Charles Rice to the Subcommittee on Separation of Powers included herein at app. I.

to that effect with a foreign power—in this case, with the Republic of Panama.[3]

Hearings conducted

During the course of its investigation, the Subcommittee held seven separate hearings and received the testimony of 34 witnesses. Three volumes of testimony have been published as of the date of this report together with a printed digest of information collected by the Subcommittee staff from other sources.

Witnesses who appeared before the Subcommittee included a cross-section of authorities on all aspects of the issue under study. The Subcommittee was able to obtain the testimony of several outstanding Constitutional scholars, most notably Professor Raoul Berger and Professor Charles Rice. Additionally, representative witnesses from the legal profession, Judge Guthrie F. Crowe, George S. Leonard, and Leonard Meeker, provided useful information to the Subcommittee. Several Members of Congress contributed significantly to the Subcommittee's study. Chief among these were Senators Gravel, Hayakawa, Helms, and Thurmond, and Congressmen Flood, Crane, and Murphy. The Subcommittee also was particularly fortunate to receive the testimony of Governor Ronald Reagan, Admiral Thomas Moorer, and Admiral John McCain. The executive branch was represented before the Subcommittee by Maj. Gen. Harold R. Parfitt, Governor of the Panama Canal Zone; Lt. Gen. Dennis P. McAuliffe, Commander in Chief of the U.S. Southern Command; Herbert J. Hansell, Legal Adviser to the Secretary of State; Robert B. Beckel, Deputy Assistant Secretary of State for Congressional Affairs; Stephen A. Riesenfeld, Department of State Counsellor on International Law and professor of law at the University of California, Berkeley; Russell L. Munk, Assistant General Counsel for International Affairs at the Department of the Treasury; and Arnold Nachmanoff, Deputy Assistant Secretary of the Treasury for Developing Nations. The Subcommittee sought but was unable to obtain the testimony of Anthony Solomon, Under Secretary of the Treasury for Monetary Affairs.

The foregoing witnesses provided a vast amount of information both on the Constitutional issues associated with the proposed Panama Canal Treaty and Neutrality Treaty (Executive N, 95–1) and on the practical and potential effects of the various treaty provisions. Although incidental to its inquiry, the Subcommittee was struck by several treaty provisions which appeared defective on their face, and although these issues were not directly involved in the investigation of the Subcommittee, Chairman Allen has stated the view that the Subcommittee "performed a doubly useful function, both by reviewing the Constitutional issues associated with the treaties and by providing a forum for airing other issues which might otherwise have gone undiscussed."

Issue defined

As noted, the principal issue studied by the Subcommittee on Separation of Powers was whether the President by virtue of the treaty-

[3] The Subcommittee study also focused in part on the possible improper use of executive agreements in concluding the new proposed treaty arrangements with Panama and in circumventing the Congressional appropriations process. That aspect of the Subcommittee's investigation will be the subject of a second report.

making power exercises concurrent power with the Congress in the disposal of United States property to a foreign government. Therefore, not at issue were such questions as whether the United States is sovereign within the Panama Canal Zone or whether the proposed disposition of property is itself advisable. The Subcommittee affirms that the existence of full sovereignty of the United States in the Canal Zone is a close question, charged with emotion, but the Subcommittee further observes that the operative language of the Constitution grants to Congress power to dispose of "territory *or other* property", thus making it a moot question for the purposes of this report whether the United States is or is not sovereign in the Canal Zone and even whether or not the Zone is, in fact, unincorporated territory of the United States as the courts have consistently held; e.g., *United States* v. *Husband*, 453 F. 2d 1054 (5 Cir. 1971) cert. den. 406 U.S. 935 (1972). Similarly, the Subcommittee notes that strong arguments can and have been made regarding virtually every aspect of the contemplated disposition of the Canal Zone to the Republic of Panama, and the Subcommittee does not intend this report to imply approval or disapproval of the proposals embodied in the Panama Canal Treaty or the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Finally, inasmuch as nowhere has the claim been made that Congress does *not* have power to dispose of the territory or other property of the United States, the only issue addressed by this report is whether that power *is exclusive*.

A framework for analysis

Beginning in September, 1977, at the request of the Subcommittee, Professor Raoul Berger [4] started a review of all of the testimony previously received by the Subcommittee and undertook a detailed two-month study of all other available information which might bear on reaching a proper conclusion in resolution of the property disposal issue. Professor Berger's work assisted the Subcommittee in synthesizing the vast amount of testimony received during the conduct of hearings and contributed significantly in aiding the Subcommittee in forming a final opinion and in developing recommendations for appropriate action. The Subcommittee has been particularly disposed to rely on Professor Berger's judgment since his personal opinion generally favoring ratification of the proposed treaties tends to insure objectivity in reviewing the Constitutional issue by guaranteeing a receptive approach to the novel arguments of the Department of State favoring concurrent Presidential treaty power to dispose of property. At the outset, Professor Berger stated:

> I want to make clear that I am for the Panama Canal Treaty as a matter of personal judgment. I am not here in any way to discredit President Carter. I am here because I have an overriding commitment to the Constitution.

Starting from that commitment and, we believe, from a position of objectivity, Professor Berger summarized for the Subcommittee the history of Article IV, Section 3 and comparable proposals advanced during the deliberations of the Framers at the Constitutional Conven-

[4] Professor Berger has been the Charles Warren, Sr., Fellow of the Harvard Law School and has authored "Government by Judiciary" and "Executive Privilege."

tion. He also traced the use of Article IV, Section 3 through subsequent practice after adoption of the Constitution down until the present day. He covered extensively all case law said to be relevant to the issue and analyzed for the Subcommittee in detail the statement addressed to Senator Clark by Dean Louis H. Pollak of the University of Pennsylvania dated January 10, 1978, as well as the Opinion of the Attorney General of the United States issued on August 11, 1977, both of which documents state the position of the executive branch that the power to dispose is not exclusively in Congress.

When ultimately asked by the Subcommittee if the power given to Congress under Article IV, Section 3, clause 2 of the Constitution to dispose of territory or other property of the United States was an exclusive power not given to the President under the treaty power except pursuant to prior Congressional authorization, Professor Berger replied:

> Yes, and I would add that I base that opinion not on any claim of authority as a Constitutional scholar—although I have been studying Constitutional law a long time—but I base it on a particular, painstaking, extended study of this very problem against the background of every case that has been cited to you by the various other witnesses. It is an independent study. My study of the cases has led me to conclude that *the power is indeed exclusive in the Congress.*
>
> *Certainly the face of the Constitution itself indicates that the power is exclusive and nothing has been summoned by the Department of State or the Department of Justice, in my judgement, which vitiates that view.*

Professor Berger's thorough analysis of the Attorney General's Opinion [5] persuaded the Subcommittee that the conclusion of the Attorney General was clearly incorrect insofar as it asserted that the President could exercise by treaty concurrent power with the Congress to dispose of U.S. territory or property. Candidly, the Subcommittee is inclined to share Professor Berger's view of the Attorney General's Opinion which view he summarized somewhat subtly in this fashion:

> I approach the Attorney General's statement with something less than awe. By this I mean no disrespect to the Attorney General personally. I did not have time to find the lovely statement by Justice Jackson where he contritely rejected a formal opinion that he had signed as Attorney General, noting the possibility that he may not have had time truly to study the issue while serving in that capacity. Bearing in mind the torrent of things that have to be signed by the Attorney General, one can hardly ask him to rush out to the library as did old man Berger to read for himself *U.S.* v. *Perchman* and the other cases he cited. This is without any disrespect to the Attorney General personally. *Attorneys General have to rely on their subordinates.*

In short, Professor Berger demonstrated to the Subcommittee on a case-by-case basis the paupacy of each argument advanced by the

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[5] The Opinion of the Attorney General together with Professor Berger's analysis of it are included herein as Appendix I. Appendix I also contains the Statement of Professor Charles Wright.

Attorney General and by Dean Pollak [6] and impressed on the Subcommittee the importance of resolving the Constitutional issues presented with objectivity and without being blinded by the political expediency of the moment:

> Professor BERGER. This disregard to Constitutional requirements in the proposed Panama Canal treaties will haunt those who are closing their eyes to it down the years because it will be brought up by the people who will succeed Hansell and Erickson.[7] They will say that they have a precedent. The Senate retreated and in the future they will insist on it as a matter of executive right.

Professor Berger's analysis, then, has provided to the Subcommittee a framework in which to work toward obtaining a full understanding of the great mass of information presented to the Subcommittee on the subject at issue.

EVIDENCE STUDIED

Text of the Constitution

At hearings on "Treaties Affecting the Operations of the Panama Canal" before the House Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries, Ralph E. Erickson, former Deputy Assistant Attorney General, confronting the question whether Article IV, Section 3, clause 2, "pursuant to which Congress has the power to dispose of property belonging to the United States, is an exclusive grant of legislative power to the Congress or whether the Congress and the President and the Senate through the treaty power share that authority," generously stated that "the answer to this question is not simple nor altogether free from doubt." [8] Doubt in a Constitutional issue counsels against encroachment on a power explicitly conferred on one branch and not explicitly conferred on another; therefore, a clear case for establishment of "concurrent jurisdiction" is needed to overcome the plain language of an express grant of power to Congress alone.

To support the novel claim that the President with the advice and consent of the Senate enjoys "concurrent power" to dispose of United States property in the face of an express grant of that power in the text of the Constitution to the Congress alone, Mr. Erickson, before the House Subcommittee, and Mr. Herbert J. Hansell, Legal Adviser to the Secretary of State, before this Subcommittee, invoked a melange of dicta without ever acknowledging much stronger statements made by the courts that Congress' disposal power is exclusive. Thus, the proponents of the concurrent power theory have frequently cited as foundation for their argument the dicta in *Holden* v. *Joy*, 17 Wall. (84 U.S.) 212 (1872), but have rarely, if ever, cited the words of the Supreme Court in *Wisconsin Central R.R. Co.* v. *Price County*, 133 U.S. 496, at p. 504 (1890). In that case, the court said that Article IV, Section 3, clause 2 "implies an exclusion of all other authority over

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[6] The statement of Dean Pollak together with Professor Berger's analysis of it are included herein as Appendix II.

[7] Lawyers at the Department of State.

[8] "Treaties Affecting the Operations of the Panama Canal," Before the House Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries (92nd Congress, 2nd Session, December 2, 1971, at p. 95).

the [public] property which could interfere with this right [of Congress] or obstruct its exercise." Likewise, although the opinion of the present Attorney General has been widely disseminated, few, if any, proponents of the new theory of concurrent jurisdiction over property disposal have cited the opinion of the Attorney General in 1899 in which it was stated that,

> The power to dispose permanently of the public lands and public property in Puerto Rico rests in Congress, and in the absence of a statute conferring such power, cannot be exercised by the executive department for the government.[9]

Such statements, although not dispositive of the issue, respond to two universally recognized cardinal rules of Constitutional and statutory construction. First, there is the rule that express mention signifies implied exclusion. This rule the Supreme Court has employed again and again:

> When a statute limits a thing to be done to a particular mode, it includes the negative of any other mode.[10]

This same rule was well-known and often invoked by the founders of the United States during deliberations on the Constitution and the organization of the government; for example, Egbert Benson in the first Congress, in which sat many Framers and Ratifiers, stated unequivocally that:

> It cannot be rationally intended that all offices should be held during good behavior, because the Constitution has declared [only] one office to be held by this tenure.

Thus, the fact emphasized by Hansell and other proponents of the concurrent theory that "the property clause contains no language excluding concurrent jurisdiction of the treaty power," is of no true significance. Obviously, the Framers could not have drafted a national Constitutional document if they had been required in each instance in which power was granted to exclude expressly every other conceivable agency of the government which might exercise the power conferred. The language of the Constitution, expressly giving to Congress the power to dispose of public property, therefore, under this cardinal rule of construction, leads to the conclusion that the President and Senate were impliedly excluded from concurrent authority.

Second, there is another settled rule of construction that the specific governs the general. In *Swiss National Insurance Co.* v. *Miller*, 289 Fed. 570, at p. 574 (App. D.C. 1923), the court said:

> Where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, *standing alone*, would be broad enough to include the subject to which the more particular provision relates.

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[9] 22 Op. Atty. Gen. 544, at p. 545 (1899). See also in this connection Vol. 2 J. Story, *Commentaries on the Constitution of the United States*, Section 1328, at p. 200 (4th ed. 1873): "The power of Congress over the public territory is clearly exclusive and universal. . . ." Cf. *Osborne v. United States*, 145 F. 2d 892, 896 (9 Cir. 1944).

[10] *Botany Worsted Mills* v. *United States*, 278 U.S. 282, at p. 289 (1929); *T.I.M.E.* v. *United States*, 359 U.S. 464, 471 (1959).

In the words of the Supreme Court in *Buffum* v. *Chase National Bank*, 192 F. 2d 58, 61 (7 Cir. 1951) :

> General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.

Viewed in this light, the facts stressed by proponents of the concurrent power theory, that the Framers contemplated that a treaty could "affect" territorial rights, is far from decisive since a treaty affecting territorial rights could yet be subject to the specific and special Congressional "power to dispose".[11] In short, in terms of the present issue, the specific power of disposition of territory or other property belonging to the United States governs and limits the general treaty provision.

Under these two recognized rules of Constitutional construction, it can therefore be of no moment that, according to Herbert Hansell, "There is no restraint *expressed* in respect to dispositions" in the treaty power itself.[12] A telling flaw in the arguments of the proponents of the concurrent power theory is found in Mr. Hansell's heavy reliance on a passage from *Geofroy* v. *Riggs*, 133 U.S. 258, at p. 267 (1890) :

> The treaty power, as *expressed* in the Constitution, is in terms unlimited *except* by those restraints which are found in that instrument against the action of the . . . departments.... (Emphasis added.)

Notably, only the treaty power is "expressed"; the citation from *Geofroy* does not call for *express* restraints—the court saw it to be sufficient that restraints be *found* in the Constitution in order to limit the treaty power. It follows that the implied exclusion and limitation on the treaty power is "found" in the Constitution by virtue of the express grant of the disposal power to Congress both under the rule of express mention and under the rule that the general treaty power is limited by the specific Congressional power.

The operation of both canons of Constitutional construction is made apparent in the Supreme Court's flat statement in *Sioux Tribe of Indians* v. *United States*, 316 U.S. 317, at p. 326 (1942) :

> Since the Constitution places the authority to dispose of public lands *exclusively* in Congress, the executive's power to convey any interest in the lands must be traced to Congressional delegation of its authority. (Emphasis added.)[13]

The court, in *Sioux Tribe*, thus applies both canons of construction in determining that the grant of power to Congress impliedly excludes the power of the President and that the specific mention of the power as in the Congress governs and limits any general power of the President. To this statement based on established principles of construction, the Department of State has responded that *Sioux Tribe*

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[11] See testimony of Herbert J. Hansell at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congress, 1st Session, July 29, 1977, in Part 2, at p. 5).

[12] *Ibid.*, p. 4.

[13] See also *Turner* v. *American Baptist Missionary Union*, 24 Fed. Cas. (No. 14, 251) 344, at p. 346 (C. Ct. Mich. 1852) : "Without a law, the President is not authorized to sell the public lands . . . The [Indian] tribe in fact appropriated the above tract of 160 acres for a particular purpose, but, to effectuate that purpose, an act of Congress was passed."

"did not deal with the relation between the treaty power and the Congressional power under Article IV, Section 3, clause 2" and labeled the statement as "dicta".[14] If this same test were applied to the arguments and cases advanced by the Department of State, the entire argument of the proponents of concurrent power would collapse completely since it is an argument based only on statements by the courts uttered entirely out of the context of that relation. In the words of Professor Berger:

> The executive branch employs a double standard—what is dictum when the language is unfavorable to it becomes holy writ when the dictum reads in its favor.[15]

The Constitution, read in light of settled rules of construction, is the best evidence of its own meaning since, as will be seen, nothing has been advanced to undermine the obvious meaning of the text of the document itself. The document itself, then, under established rules of construction, does provide the best proof that the power of Congress to dispose of United States property is indeed exclusive. It remains, therefore, to meet the arguments, also based on the text of the Constitution, that other powers given to Congress are "shared" with the executive and that the placement of the disposal power in the body of the Constitution somehow implies a weakened efficacy.

Other powers in the text of the Constitution

Proponents of the concurrent power theory have advanced as a principal argument the fact that Article IV, Section 3, clause 2 uses the same terminology, "Congress shall have power", as is used in Article I, Section 8, in order to support the theory that subjects affected by treaty which are within the authority of Congress under Article I, Section 8 are concurrently under the authority of the President and Senate in the exercise of the treaty power and that, hence, by implication the power conferred by Article IV, Section 3, clause 2 is also exercised concurrently. However, even proponents of the concurrent power theory admit that some Article I powers cannot be concurrently exercised by the President and Senate by treaty.[16] The Department of State thus admits that "treaties may not impose taxes."[17]

There is nothing in the power to impose taxes which is inherently more exclusive than any other Article I, Section 8 power, such as the power to establish post offices, to provide and maintain a navy, to declare war, or to coin money, all of which manifestly cannot be exercised by treaty. The proponents of the concurrent power theory prove too much; in other words, the powers conferred on Congress by Article I, Section 8 are in the main, if not entirely, exercised by Congress *exclusively*.

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[14] Herbert J. Hansell, at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congress, 1st Session, July 29, 1977, in Part 2, at pp. 27 and 22).

[15] Raoul Berger, at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congress, 1st Session, November 3, 1977, in Part 3, at p. 347).

[16] See, for example, "Panama Canal Treaties", Report of the Committee on Foreign Relations (95th Congress, 2nd Session, February 3, 1978, at p. 66).

[17] Herbert J. Hansell, at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congress, 1st Session, July 29, 1977, in Part 2, at p. 25).

Placement in the text of the Constitution

Plowing new legal fields in old furrows, the concurrent power theorists also attempt to derive comfort from the placement of the disposal power in Article IV, a portion of the Constitution alleged to deal "with the distribution of authority between the federal and state governments." [18] These theorists have asserted that Article IV "does not purport to allocate between the branches powers exercisable by Congress or pursuant to treaty." [19] However, unmistakably, Section 3, clause 2 of Article IV *does* "allocate powers exercisable by the Congress" or else its words can have no meaning whatsoever:

> The Congress shall have power to dispose of . . . property belonging to the United States.

Does the judiciary have this power? Does the President? Clearly not, and equally clearly an allocation of power is expressly made. But the concurrent power theorists have persisted in arguing that the *placement* of the property clause in Article IV "provides *strong* evidence that the property clause does not restrict the treaty power." (Emphasis added.) [20]

The better view is that the placement of a power in one or another article of the Constitution is without significance and that the scope of a given power is seen from its own terms rather than from its placement. Thus, for example, "Congress shall have power to declare the punishment of treason" is located in Article III, the judiciary article; Congress' power to make "exceptions and regulations" respecting the Supreme Court's appellate jurisdiction is also lodged in Article III; and the provision that "Congress may determine the time of choosing the electors" is placed in the executive Article II, Section 1, clause 4. The placement argument would thus, if carried to its logical conclusion, authorize the President by treaty to declare the punishment of treason, to regulate the court's appellate jurisdiction, or to intervene in the choice of electors. These conclusions would be as illogical as is the argument itself.

It is, then, the words expressing a power that determine the allocation of the power, not the placement of the words within the Constitution. Whether located in Article I or Article IV, the words "Congress shall have power" mean "Congress shall have power", and do not mean that, "Subject to such inferences as may be drawn from placement in this text, Congress shall have power."

Closely tied to the placement argument is a similar argument which attaches significance to the close linkage between the power to dispose and the power "to make all needful rules and regulations respecting the territory or other property belonging to the United States." Mr. Hansell cited to the Subcommittee *Geofroy* v. *Riggs*, *supra*, as authority for the proposition that "the treaty power can be used to make rules and regulations governing the territory belonging to

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[18] "Treaties Affecting the Operations of the Panama Canal," Erickson at hearings before the House Subcommittee on the Panama Canal (92nd Congress, 2nd Session, December 2, 1971, at p. 97).

[19] *Ibid.*

[20] Herbert J. Hansell, at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congress, 1st Session, July 29, 1977, in Part 2, at p. 45). See also "Panama Canal Treaties", Report of the Committee on Foreign Relations (95th Congress, 2nd Session, February 3, 1978, at p. 66).

the United States, even in the District of Columbia." [21] This argument was fairly thoroughly demolished by Professor Berger in his testimony:

> *Geofroy* presented the question whether a citizen of France could take land in the District of Columbia from a citizen of the United States. Local law withheld the right, but in keeping with national solicitude for protection of citizens abroad, a treaty provided for reciprocal rights of inheritance in such circumstances for citizens of both signatories. In consequence, the treaty with France overrode the local provision; but this hardly stretches to the "making of rules and regulations" by treaty for the District of Columbia. Were this astonishing claim true, the President could by treaty take over the governance of the District of Columbia, in spite of the Article I, Section 8(17) provision that "the Congress shall have power to exercise exclusive jurisdiction in all cases whatsoever over such district." Assume notwithstanding that the treaty power does indeed comprehend the "making of rules and regulations governing the District of Columbia," does the "close" linkage of the "power to dispose" comprehend a disposition of the White House by treaty? Such arguments verge on absurdity." [22]

The close linkage argument, like the placement argument, is perhaps good evidence only of the desperation of the proponents of the concurrent power theory in their unrewarding search for supportive logic.

Intent of the Framers

From all available records, it appears that the Framers evidenced an intent to preclude the President, with the advice and consent of the Senate, from disposing of government property by treaty alone. Such records of the Constitutional Convention as are preserved indicate that the Framers were seized throughout the debates by a desire not to permit the disposition of undisputed United States territory by the President or by the Senate, and frequently during the debates various devices were discussed to prevent the Senate and the President from selling "the whole country by means of treaties".[23] Ultimately, the Framers resolved the issue by adopting Article IV, Section 3, clause 2, thus limiting the power of the President and Senate to make agreements with foreign powers regarding the territory of the United States. Apparently, this check on the treaty power was not intended to extend to the mere resolution of boundary disputes by treaties of recognition, but the records of the Convention show that it was intended to insure that territory or property actually and clearly belonging to the United States would not be handed over to a foreign power by treaty of cession except under authority of the entire Congress.

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[21] Herbert J. Hansell, at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congres, 1st Session, July 29, 1977, in Part 2, at p. 5).

[22] Raoul Berger, at hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Congress, 1st Session, November 3, 1977, in Part 3, at p. 350).

[23] Statement made by George Mason before the adoption of Article IV in the Constitutional Convention. Reported at 2 Farrand 297.

Early in the debates at the Constitutional Convention, during a discussion on whether the Senate could share in originating revenue-raising bills, George Mason, in an *in terrorem* statement, asserted that, already, "The Senate, by means of a treaty, might alienate territory without legislative sanction." [24] Soon after Mason raised this point, the Framers referred the Article IV progenitor to the Committee on Detail. (See 2 Farrand 321, 324.) This progenitor provision granted to the legislature the power to dispose of territory and would thus answer the objection raised by Mason by guaranteeing that no treaty of cession of territory could be adopted except under authority or "legislative sanction" of the whole Congress. The provision was soon thereafter called from committee, debated, and adopted. (See 2 Farrand 466.)

Later in the debates, during discussion of the treaty power, Madison moved to "except treaties of peace" from the two-thirds requirement for advice and consent. The Madison motion, for a time, was agreed to by unanimous consent. (See 2 Farrand 540.) Thereafter ensued a debate of matters centering on the advice and consent function of the Senate in considering treaties of peace. The Subcommittee is impressed by the fact that this entire ensuing discussion dealt only with treaties of peace (or treaties of recognition) and did not deal with treaties of cession. No discussion whatsoever was held regarding the proportion of votes for treaties of cession since the Framers had presumably already addressed that problem by granting to Congress in Article IV the power to authorize disposal of undisputed territory or public property. Thus, when the treaty power was under discussion, and after the temporary adoption of the Madison exception, Williamson and Spaight moved that "no treaty of peace affecting territorial rights should be made without concurrence of two-thirds of the [members of he Senate present]." [25] In short, Williamson and Spaight sought to exclude from the Madison exception regarding treaties of peace those treaties of peace which would affect territorial rights. Williamson and Spaight were seeking to recoup a part of the loss in the temporary adoption of the Madison exception by restoring the requirement of a two-thirds vote in those cases of treaties of peace in which disputed territory was at issue. In like fashion, Gerry, also speaking for a greater proportion of votes on "treaties of peace", said that here "the dearest interests will be at stake . . . In treaties of peace also there is more danger of the extremities of the continent being sacrificed than on other occasions." [26] Again, the important point to note here is that these proposals advanced during the discussion of the treaty power, and within the context of the temporarily adopted Madison exception, were designed *only* to affect the vote required in the Senate in matters involving treaties of peace. The involvement of the whole Congress was not at issue. In other words, in matters involving the settlement of boundary disputes which might arise in the case of treaties of peace when the claim of the country had not yet been made good and where title was still disputed, the Framers debated the restoration of the two-thirds vote requirement for granting advice and

[24] *Ibid.*
[25] Constitutional Convention reported at 2 Farrand 543.
[26] 2 Farrand 541.

consent to ratification. These discussions evidenced a fear that *boundary treaties* might include a provision adjusting disputed boundaries in a fashion unfavorable to the United States. But the discussion *did not* touch on the question of the power to dispose of territory already clearly the property of the United States, nor did it touch upon the power to dispose of other property in which good title was vested in the United States. Those had been resolved by Article IV. Thus, on the following day, when Sherman and Morris spoke "against leaving the rights, established by the Treaty of Peace, to the Senate, and moved to annex a 'proviso that no such rights should be ceded without the sanction of the legislature,' ", a clear reference was being made to boundary disputes [27] and again still within the framework of the Madison exception. The Sherman sugestion (it was not voted upon) referred to the rights conferred on the United States by the settlement with Great Britain. These rights were, *inter alia*, unresolved claims to territory relinquished by Great Britain in favor of the United States, which claims would for many years remain disputed by other nations and would eventually be resolved by purchase and by treaties of recognition in the nature of treaties of peace; e.g., the Treaty with Spain of 1819. Thus, the Sherman motion did not address treaties of cession or the power of the Congress to dispose of public property. The entire matter was, in any event, resolved by striking the Madison exception.[28]

Throughout this discussion of the Madison exception, the only matter under consideration was the performance of the Senate's own advice and consent function without a trace of desire to curtail the already established Congressional disposal function under Article IV. The Attorney General's reliance on the legislative history developed during the debate centering on the Madison exception is, therefore, wholly erroneous. Moreover, the Convention's overnight reversal of its adoption of the Madison exception shows how fluid were the views of the Framers and would argue against giving the remarks of Gerry and others any great weight even if these remarks had dealt with matters other than treaties of peace by which disputed territorial claims might be adjusted.

Finally, it remains to note that the decision of the Framers to deal with the Congressional disposal power in Article IV was completely logical. The Framers knew that Article IV would be concerned in large measure with the territorial arrangements between the states and the federal government within the proposed new Union. Article IV would, therefore, have seemed to the Framers to have been a sensible place for granting to Congress exclusive power to dispose of territory or property clearly belonging to the United States. For example, Article IV, Section 3 deals with the admission of new states by the Congress into the Union as well as the manner in which states can be re-aligned within the Union. Furthermore, the Section states that nothing in the Constitution "shall be so construed as to prejudice any claims of the United States or any particular State." Obviously, then, in drafting the progenitor Article IV for referral to the Committee on Detail, the Framers recognized that they were dealing with the

[27] 2 Farrand 548.
[28] 2 Farand 548–549.

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principal article of the Constitution respecting the established territorial integrity of the country. Equally obviously, they reserved for inclusion in that article the language conferring on Congress the exclusive authority to give up title to public lands vested in the United States and thus not properly subject to divestiture as merely disputed territory which might be surrendered by the mechanism of a treaty of peace. Thus, when the disposal power was referred to committee, it was submitted in the following form: The legislature shall have power "to dispose of the unappropriated lands of the United States." (See 2 Farrand 321.) This original language obviously refers to lands not held by the individual states but in which good title would vest in the United States and over which the Congress would be given exclusive authority. Since Article IV had been adopted in its present form by the time of the debate of the treaty power, the power to dispose of territory clearly belonging to the United States was not at issue since the matter had already been resolved by the adoption of Article IV.

In this connection, it is singular that, during the discussion of "the legislature shall have power to dispose of . . . the territory. . . .", no mention at all was made of any exception to the legislative power for dispositions to be made under the treaty power.[29] Also notable is the fact that, during the debate of the treaty power, discussion centered only on treaties of peace which would involve disputed claims. No mention was made of treaties of cession by which undisputed lands belonging to the United States might be conveyed to a foreign sovereign. Since territorial matters were hotly debated throughout the Convention, manifestly there was no intention that an exception would be made to permit disposition of the public lands without Congressional authority by a treaty of cession. In fact, a careful reading of the debates of the Constitutional Convention is persuasive that Article IV, Section 3, clause 2 was intended to satisfy objections that the treaty power might be used to dispose of public lands, while at the same time preserving to the executive and the Senate the power to resolve the many then-pending boundary conflicts by means of treaties of peace.

In short, where a territorial claim was vague, the President and the Senate were left free to make adjustments by means of treaties of peace or treaties of recognition, but where the claim of the United States had been perfected and it could be clearly demonstrated that the land involved was territory or other property *belonging* to the United States, then Congressional authorization would be required before alienation by any means would be permissible.

This evident intent of the Framers in adopting Article IV, Section 3, clause 2 has, until now, been consistently carried out in practice, and at no time has territory or other property clearly belonging to the United States been alienated by treaty alone, whereas on many occasions disputed claims have been adjusted by treaties of recognition or by treaties of peace, without specific Congressional authority.

Past Treaty practice

Boundary treaties or treaties of recognition.—The report of the Committe on Foreign Relations on the Panama Canal treaties rather ingenuously provides at pp. 68–69 a list of treaties alleged to transfer territory or property belonging to the United States to other nations

[29] 2 Farrand 466.

without Congressional authorization. For convenience of discussion, the list is duplicated as follows:

1. Treaty between the United States and Spain. February 22, 1819 (12 Bevans 528).
2. Treaty between the United States and Great Britain, August 9, 1842 (Webster-Ashburton Treaty) (12 Bevans 82).
3. Treaty between the United States and Great Britain, June 15, 1846 (Oregon Boundaries) (11 Bevans 95).
4. Treaty between the United States and the United Mexican States, February 1, 1933 (Rectification of the Rio Grande in El Paso-Juarez Valley) (9 Bevans 976).
5. Treaty between the United States and the United Mexican States, August 29, 1963 (Solution of the Chamizal Problem) (15 U.S.T. 21).
6. Treaty between the United States and the United Mexican States, November 23, 1970 (Maintenance of the Rio Grande and Colorado River as International Boundary) (23 U.S.T. 371).
7. Treaty between the United States and Honduras, November 22, 1971 (Swan Islands) (23 U.S.T. 2631).
8. Treaty between the United States and Japan, June 17, 1971 (Reversion of Ryukyu and Daito Islands) (23 U.S.T. 447).
9. Treaty between the United States and Panama, January 25, 1955 (Treaty of Mutual Understanding and Cooperation), Articles VI and VII (6 U.S.T. 2283).

The treaties enumerated as Items No. 1 through 5 are treaties of recognition (treaties of peace) and hence have no bearing whatsoever on the power of Congress to dispose of territory or other property belonging to the United States.

Treaty No. 6, the Treaty between the United States and the United Mexican States (Maintenance of the Rio Grande and Colorado River as International Boundary), is also a boundary treaty, but insofar as it can be said to have ceded property belonging to the United States, it was made expressly subject to "necessary legislation", and therefore if it is precedence for anything, it is precedence for the proposition that Congress must authorize the disposition of United States territory or property.

Treaty No. 7, the Treaty between the United States and Honduras (Swan Islands), was also, like treaties 1 through 5, essentially a treaty of recognition and is, therefore, not a precedent for the argument that territory belonging to the United States may be ceded by treaty alone. While it is true that very limited property transfers were permitted in this treaty, these transfers were *de minimus*, were themselves in the nature of recognition of superior title, and were made in return for recognition of good title in the United States to the most important property in the Swan Islands, a United States Weather Station.

Treaty No. 8, the Treaty between the United States and Japan (Reversion of Ryukyu and Daito Islands), equally cannot be used as precedent for a transfer of territory by treaty alone since this treaty grew out of Article III of the 1951 Treaty of Peace with Japan by which the United States received the right to exercise powers of administration in the Ryukyus but by which Japan did not renounce its right, title, and claim to the Ryukyus. No property rights as a territorial owner ever arose in the United States and hence no territory belonging to the

United States was by the later treaty ceded back to Japan. By the same token, the non-territorial property transfers effected by the Ryukyus treaty, as is noted in the Report of the Committee on Foreign Relations, were made pursuant to authority granted by Congress in the Foreign Excess Property Disposal Act of 1947 and related statutes (see particularly 40 U.S.C. Sections 511 and 512). Thus, again, if the Ryukyus treaty is precedent of any sort, it is precedent for the proposition that property disposal must be authorized by Congress.

Finally, treaty No. 9, the Treaty between the United States and Panama (Treaty of Mutual Understanding and Cooperation), Articles VI and VII, is the same treaty cited elsewhere as the best possible historical evidence for the proposition that the power of Congress to dispose of territory or other property of the United States is exclusive. We find it startling that the treaty would be cited to support the opposite contention. This treaty in its Article V, the article which makes a major property transfer from the United States to Panama, repeatedly uses the phrase, "subject to the enactment of authorizing legislation by the Congress". The Subcommittee believes that our negotiators insisted upon the use of this language so that as a matter of international law the Panamanians would be on notice of the fact that authorizing legislation was required before the transfers contemplated by Article V could be completed. This fact is astutely ignored in the Report of the Committee on Foreign Relations, which instead calls attention to Articles VI and VII which purport to transfer property to Panama without authorizing legislation. In fact, both Articles VI and VII are, oddly enough, "boundary adjustments", one boundary adjustment involving the Colon Corridor leading to the City of Colon and the other adjustment involving a single pier extending into the waters in the vicinity of the City of Colon. Neither Article VI nor Article VII deals, therefore, with anything greater than a slight adjustment in the terms of the Boundary Convention of 1914 between the United States and Panama, and certainly neither article stands as a precedent for a cession of territory or property by treaty alone. Additionally, even though only a slight amendment in a boundary convention was at issue, the Department of State specifically acknowledged in testimony before the Senate Committee on Foreign Relations that, in addition to Article V, also Articles VI and VII of the Treaty of 1955 required authorizing legislation.[30] The Treaty of 1955, therefore, contrary to the implication of the Report of the Committee on Foreign Relations, is perhaps the strongest possible historical precedent for the proposition that Congress alone can dispose of United States territory or property in Panama.

Indian Treaties.—The Committee on Foreign Relations also cites, as precedent for the novel concurrent power theory being advanced by the Administration, certain treaties by which the United States dealt with Indian tribes within its own borders. Indian treaties are not proper for study of this issue since they involve the unique relation between the United States and the Indian tribes and since the principles of Indian law have virtually no bearing on territorial or property

[30] Assistant Secretary of State Holland provided a memorandum to the Senate Committee on Foreign Relations which reads in pertinent part as follows: "Articles V, VI, and VII of the Treaty . . . transfer of certain lands and improvements to Panama—Authorizing legislation is required." Hearings on the Panama Canal Treaties before the Senate Committee on Foreign Relations (Executive F, 84th Congress, 1st Session, at pp. 60–61).

cessions to foreign sovereigns. Thus, while it is true that in our early history the United States did deal with the Indian tribes by treaty, this practice was abolished in its entirety *by the Congress* in the Indian Appropriations Act of 1872. If Indian tribes were not a special case, the Congress could hardly exercise power to abolish the President's authority to deal with them by treaty. Moreover, Indian treaties reserved to the Indians a bewildering variety of types of interest in the lands reserved. Typically, Indian treaties *reserved* only the right to the use and occupation of territory already possessed by the Indians (hence, the use of the term "reservation"). Thus, also the typical Indian treaty was not in any way a treaty of cession of territory but rather a treaty by which the use of territory was ceded from the Indians to the United States with the Indians reserving out of the grant the usufruct of a given portion. In any event, regardless of the nature of the grant from, or acknowledgement of the rights of, the Indian tribes, Indian treaties must be considered in light of the knowledge that from the very earliest days of European settlement in North America, Indians were regarded not as sovereign independent nations but rather as "wards of this nation" or "in a state of pupilage" or "dependent political communities". Thus, for example, in recognition of this dependent political status, the United States always retained, at a minimum, the right to exercise the sovereign power of eminent domain within Indian lands.[31]

The Subcommittee does not feel, therefore, that Indian treaties have any true place in this study of the limitation of the treaty power by the power of Congress to dispose of territory or other property belonging to the United States; however, since Indian treaties have been repeatedly cited as precedent for the theory of concurrent power to dispose, it is necessary to demonstrate, as a matter of example, why the two specific Indian treaties cited in the Report of the Committee on Foreign Relations do not in any way support any conclusion except that the power of Congress to dispose is exclusive.

The two treaties cited in the Report of the Committee on Foreign Relations are: (1) the Treaty with the Cherokee Nation of December 29, 1835, and (2) the Treaty with the Chippewa Indians of October 2, 1863.

The treaty with the Cherokee Nation of 1835 presumably came to the attention of the Committee on Foreign Relations in connection with its equally mistaken citation of dicta from *Holden* v. *Joy*,[32] a case which involved the same treaty. The inappositeness of the dicta from *Holden*, well as the citation of the Cherokee Treaty of 1835, is underscored by the facts. These are recited by Professor Berger as follows:

> In May, 1828, and February, 1833, "the United States agreed to possess the Cherokees of seven million acres of land west of the Mississippi." It "was the policy of the United States to induce Indians . . . to surrender their lands and possessions to the United States and emigrate and settle in the territory provided for them in the treaties," so an exchange of land was provided. But a third treaty, that of December, 1835, proved necessary, whereby the Indians ceded their lands

[31] *Cherokee Nation* v. *Southern Kansas Railway Co.*, 135 U.S. 641, 653–654 (1890).
[32] See Report of the Committee on Foreign Relations on the Panama Canal Treaties, at p. 67.

to the United States in consideration of $5,000,000 to be invested in the manner stipulated. The Indians considered that the prior treaties, confirmed by the new, did not contain a sufficient quantity of land, so the United States agreed to convey an additional tract in consideration of $500,000 to be deducted from the $5,000,000.[33] This may be viewed either as a purchase and sale or an exchange: "the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them. . . ." And the transaction was authorized by the Act of 1830, which empowered the President to set aside land west of the Mississippi for the reception of such tribes as chose to emigrate, and to "exchange" such lands with any tribe.[34] The 1830 Act served to ratify the Act of 1828, and "ratification is equivalent to original authority." [35] "It is well settled that Congress may . . . "ratify . . . acts which it might have authorized" . . . and give the force of law to official action unauthorized when taken." [36] Although the subsequent 1833 and 1835 treaties differed in some particulars from the authorization, the purpose was the same—"to induce the Indians . . . to emigrate and settle in the country long before set apart for that purpose." [37]

Thus, the Cherokee Treaty of 1835 cited in the Report of the Committee on Foreign Relations is a treaty which, if it stands for anything, stands as good precedent for the fact that public property may not be conveyed except under authority of Congress.

It remains to dispose of the second Indian treaty cited in the Report of the Committee on Foreign Relations. This treaty with the Chippewas of 1863 is again a treaty apparently called to the attention of the Committee on Foreign Relations by a casual reading of the judicial authorities, in this instance *Jones* v. *Meehan*, 175 U.S. 1 (1899), another case which has virtually nothing to do with the power of Congress to dispose. The Treaty of 1863 with the Chippewas, which is discussed in detail in *Jones* v. *Meehan*, was a typical treaty of reservation involving a grant *from the Chippewas* to the United States. The treaty had "set apart from the tract hereby ceded [by the tribe] *a reservation* of 640 acres" for an individual Indian. Thus, while this treaty is, as asserted in the Report of the Committee on Foreign Relations, "an example of a treaty with an Indian tribe",[38] it is hardly an example of a conveyance of property *belonging to the United States* to an Indian without prior authorization by act of Congress. In fact, the only conveyance by treaty to an individual Indian made in the Treaty of 1863 is a conveyance *from the Indian tribe direct to the individual Indian* and not a conveyance from the United States.

Citation of the Chippewa Treaty of 1863 as precedent for disposal of U.S. property by treaty alone is a good example of the pitfalls of attempting to resolve a major Constitutional issue by a cursory

[33] 84 U.S. at 237, 238, 241.
[34] *Id.* 245, 238–289.
[35] *Wilson* v. *Shaw*, 204 U.S. 24, 32 (1907).
[36] *Swayne & Hout, Ltd.* v. *United States*, 300 U.S. 297, 301–302 (1937).
[37] 84 U.S. at 240.
[38] Report of the Committee on Foreign Relations on the Panama Canal Treaties, at p. 68.

examination of the tortured course of the treaty relations between the United States and the Indian tribes prior to 1872. Mercifully, Congress brought the practice of dealing with the Indians by treaty to a halt in that year, and little is now gained by facile assertions that treaties with Indian tribes stand as historical precedent suggesting that the Panama Canal treaties standing alone can validly transfer to the Republic of Panama the territory or other property belonging to the United States in the Isthmus of Panama.[39]

Judicial authorities

At the outset, the Subcommittee must state candidly that its review of all of the cases cited to it by the many commentators and scholars who have studied the issue has led the Subcommittee to the conclusion that each case cited is in some fashion distinguishable from the main issue and that no case cited by either opponents or proponents of the concurrent treaty power theory answers the basic question, "Can the President, with the advice and consent of the Senate, by treaty alone, dispose of United States territory or other property?" The United States has been, in the main, an acquisitive, growing nation and, therefore, it is not surprising that no court, until now, has been presented with a case or controversy turning on the exclusivity of the power of Congress to dispose of territory or property in relation to the power of the executive, with the advice and consent of the Senate, to conclude treaties. Even if this issue were a proper issue for resolution by the courts rather than an issue to be resolved in the political process, it must be admitted that it is now a case of first impression primarily because the United States has not heretofore been overly inclined to alienate its own territory or property in favor of foreign sovereigns. Nevertheless, several cases do merit discussion either because they tend to illuminate the plenary nature of the power granted to Congress under Article IV, Section 3, clause 2, or because they have been incorrectly cited as authority for the new theory of concurrent treaty power to dispose of public property.

Cases demonstrating the exclusivity of the power of Congress to dispose of the public's property

The primary case showing the extent and exclusivity of the power of Congress to dispose of territory or other property of the United States is *Sioux Tribe of Indians* v. *United States*, 315 U.S. 317 (1942). After noting that fact, however, the Subcommittee hastens to stress that *Sioux Tribe* does not hold that the power of Congress is exclusive in the specific context of a case involving the treaty power versus the Congressional power. The information drawn from the decision in *Sioux Tribe* is nevertheless not to be considered mere dicta since the case itself did turn on the question whether the power of the President alone acting through executive agreement was concurrent with the Congressional power to dispose. Thus, the holding in the case does serve to illustrate forcefully the point that the disposal power is an exclusive power of Congress, and the court did state, rather emphatically, as part of its holding that "the Constitution places the authority to dispose of public lands *exclusively* in Congress." (See *supra* at p. 10.)

[39] *Ibid.*, p. 69.

In *Sioux Tribe*, the Supreme Court addressed the issue of whether executive orders in 1875 and 1876 reserved a compensable interest in land to the Sioux Indian Tribe. The court found "... that there was no express Constitutional or statutory authorization for the conveyance of a compensable interest ... and that no implied Congressional delegation of the power to do so can be spelled out from the evidence of Congressional and executive understanding." (*Sioux*, *supra*, at p. 331.)

The executive orders involved were found, as might be expected, to have reserved only *use* of the lands to the Sioux Tribe. The court ruled that the interest retained by the Indians under the executive orders could be terminated by the executive or by the Congress without any obligation on the part of the United States.

In the reasoning leading to its decision in that case, the court noted that a treaty or a statute could create a compensable interest in lands in the Indians if those lands were subsequently taken from them by the government. However, while the court did note that a statute would obviously be an expression of Congressional will, the court specifically did not on the other hand imply that a treaty could convey *public* land without an express or implied Congressional delegation of authority or without enactment of authorizing legislation to give effect to any proposed treaty terms suggesting a disposition of U.S. property. In fact, the court, to the contrary, implied the exact opposite.

If the lands reserved for the use of the Indians are reserved pursuant to a statute, it is obvious that Congress has given its consent to the disposal. When lands belonging to the United States are transferred by treaty or executive order, the court reasoned that delegation of Congressional authority must be found. The court stated further that such delegation of authority may be explicit or may ". . . be spelled out from long-continued Congressional acquiescence in the executive practice."

The importance of the Sioux Tribe case, as related to the disposal of property by treaty, lies in the fact that the court seems to have stated rather clearly that lawful disposal by treaty or executive order could be effected only if the court could find express or implied Congressional delegation of the exclusive authority of Congress to dispose of property or territory belonging to the United States. The Subcommittee has been unable to find any such express or implied delegation of power by the Congress insofar as it relates to the disposal of land in the Canal Zone to Panama. The Panama Canal Act of 1912 only grants to the executive branch the authority to acquire or exchange land, not the power to dispose of it.

Moreover, Congressional acquiescence with respect to past practice in the Canal Zone has permitted the executive only to make minor boundary adjustments without first obtaining express Congressional authority. In any event, the boundary adjustments made have themselves tended to be in the nature of an "exchange" as already authorized by the Panama Canal Act of 1912. The holding in *Sioux Tribe*, then, does stand as a strong support for the contention that since no express or implied authority to dispose of territory or other property in the Canal Zone can be inferred from the past enactments of the Congress or from the past practice of the executive branch in transferring property in the Canal Zone, then specific statutory authority

must now be obtained before any major property disposition to Panama can be legally accomplished.

In *Wisconsin Central R. R. Co.* v. *Price County*, *supra* at p. 8,[40] the court stated *as part of the holding in the case* that Article IV "implies an exclusion of all other authority over property", thereby like *Sioux Tribe* also demonstrating the plenary and exclusive nature of the power of Congress to dispose of public lands or property. While it is true that *Wisconsin Central* involved the disposal power in the context of Congressional power versus state power, nevertheless the case provides again strong evidence that the theory of concurrent disposal power is erroneous. *Wisconsin Central* is a characteristic of a long line of decisions which reflect the court's obvious agreement with the general principle enunciated by Justice Story:

> The power of Congress over the public territory is clearly exclusive and universal.[41]

The Subcommittee recognizes that the principle enunciated by Story has not yet been applied in a case directly on point, but the principle has nevertheless been applied repeatedly, not in dicta, but in the holdings of many cases where the exclusivity of the power of Congress was essential to decision.

Cases from which dicta is drawn to support the theory of concurrent treaty power to dispose of the public's property

Proponents of the concurrent treaty power theory have been unable to locate a single case in which the decision in the case turned on the issue of the existence of concurrent power in the President, or in the President with the Senate, to dispose of public property. Instead, we have seen cited a plethora of dicta drawn from cases not involving the treaty power versus the Congressional power to dispose and not even involving the question of the exclusivity of the Congressional disposal power in any context.

For ease of review of these sources of dicta, the following is a list of the principal cases upon which the concurrent power theorists have mistakenly relied:

Jones v. *Meehan*, 175 U.S. 1 (1899).
U.S. v. *43 Gallons of Whiskey*, 93 U.S. 188 (1876).
Holden v. *Joy*, 17 Wall. (84 U.S.) 212 (1872).
Francis v. *Francis*, 203 U.S. 233, 239 (1906).
U.S. v. *Percheman*, 32 U.S. (7 Pet.) 511, 88–89 (1833).
Foster v. *Nielson*, 27 U.S. (2 Pet.) 253 (1829).
Geofroy v. *Riggs*, 133 U.S. 258 (1890).
Missouri v. *Holland*, 252 U.S. 416 (1920).
Asakura v. *Seattle*, 265 U.S. 322 (1924).
Reid v. *Covert*, 354 U.S. 1 (1957).
Santovicenza v. *Egan*, 284 U.S. 30 (1931).
Worcester v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832).

Indian Treaty Cases.—*Jones* v. *Meehan*, *supra* at p. 19 and above, typifies a line of cases involving Indian land titles wherein a grant of

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[40] See also *Alabama* v. *Texas*, 347 U.S. 272 (1954); *Swiss National Insurance Company* v. *Miles*, 289 Fed. 571, 574 (App. D.C. 1929); *U.S.* v. *San Francisco*, 310 U.S. 29 (1940); "We have repeatedly observed that the power over public lands entrusted to Congress is without limitations."; and *Klepp* v. *New Mexico*, 426 U.S. 529, 539 (1976).

[41] J. Story, "Commentaries on the Constitution of the United States," at p. 200 (5th Ed. 1905).

title was made by the tribe to an individual as part of the terms of a treaty with the United States. A careless reading of these cases coupled with a careful extraction of dicta from them can give the erroneous impression that title to lands belonging to the United States can be transferred to an individual by treaty alone. Thus, proponents of the concurrent power theory, such as, for example, Dean Louis Pollak, have quoted the following dicta from *Jones:*

> A good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe without an act of Congress.

At first blush, this dicta would seem to indicate that title to the territory or other property *belonging to the United States* can be transferred by treaty alone. Not so. In fact, this misleading dicta has nothing whatsoever to do with the power conferred on Congress by the people through Article IV of the Constitution.

In *Jones* v. *Meehan*, the treaty in question has "set apart from the tract hereby ceded [by the tribe] a reservation of 640 acres" for an individual Indian, and the issue in the case was what kind of title the Indian took. The court itself, recognizing that Article IV was not a question in the case, quoted from an opinion of Attorney General Roger Taney:

> These reservations are excepted out of the grant made by the tribe [to the United States] and *did not therefore pass with it;* consequently, the title remains as it was before the treaty, that is to say lands reserved are still held under the original Indian title. (Emphasis added.)

The court in *Jones* thus continued to hold that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant [by the tribe to an individual] of complete title in fee simple." [42] The Subcommittee does not deem it necessary to go into the court's detailed discussion of the nature of the title reserved, e.g., was it legal or equitable, and other fine points of Indian land law arising from the fact that Indian lands were initially held in common. It should instead be sufficient to set out the court's quotation in *Jones* from *Doe* v. *Wilson*, 25 How. 457, 463–464 (1859):

> The Pottawatomie nation was the owner of the possessory right of the country ceded, and all the subjects of the nation were joint owners of it. The reservees took by the treaty, directly from the nation, the Indian title.

The fact that title "reserved" to individual Indians does not pass to the United States and thereafter back to the Indians in the many Indian treaty real property cases may be best understood from a close reading of *Francis* v. *Francis*, 203 U.S. 233, 238 (1906), which cites *Jones* for the proposition that when a treaty makes "a reservation of a specified number of sections of [Indian land], the treaty itself converts the reserved land into individual property." With this understanding, then, of Indian land law, in no fashion can *Jones* v. *Meehan* or any other treaty reservation case be properly cited as having anything whatsoever to do with the power of Congress to dispose of

[42] *Jones* v. *Meehan*, 175 U.S. 12, 21.

United States property. Not one of these cases involves conveyance of property belonging to the United States.

Holden v. *Joy* is another Indian treaty case which constitutes one of the pillars of the argument of the Administration in favor of the elusive, postulated power to convey public property by treaty alone. In truth, *Holden* does provide perhaps the best dicta which can be cited by proponents of the concurrent power theory inasmuch as it does contain strong language to the effect that a conveyance of property can be made by the President by treaty without Congressional authorization. However, even those who have relied on the case admit that the language quoted is *purely dicta* and that the statement made had no bearing in the court's decision. Moreover, the cases cited by the court in *Holden* as authority for its regrettable *ex cathedra* utterance do not in any way give it support. These cases were each abstracted for the Subcommittee by Professor Berger in an appendix to his testimony. Having examined them each in turn, the Subcommittee now shares Professor Berger's conclusion that half the cases cited by the court were "altogether irrelevant" and that the rest concerned "reserves" under which no title had passed to the United States and, hence, under which no title could be passed from the United States.[43]

In any event, there is little point in belaboring the dicta in *Holden* v. *Joy* since even the Attorney General has recognized it to be simply dicta and has stated that "the court conceded that the question was immaterial in the case because Congress had actually implemented and ratified that particular treaty." [44] In fact, when the court in *Holden*, speaking to the contention that the President and the Senate "could lawfully covenant that a patent should issue to convey lands which belong to the United States without the consent of Congress," stated that "a treaty may convey to a grantee good title to such lands without an act of Congress conferring it," it was making a statement that was wholly unnecessary to the decision reached because Congress had already authorized the conveyance involved. Unnecessary statements are rarely supported by thorough legal research, and the dicta in *Holden* is a perfect example of that fact. The Subcommittee also finds in the repeated misleading citation of *Holden* a continuation of the double standard used by proponents of disposal of public property by treaty alone in that these proponents rely entirely on dicta running in their favor to make a shaky case for concurrent power but consistently reject *as dicta* any judicial statements that the Congressional power to dispose is exclusive.[45]

Land Grant Cases.—U.S. v. *Percheman* was a case cited by the Attorney General and other Administration spokesmen to show that "the court held self-executive certain clauses of the Florida Treaty with Spain which relate to the regulation of property rights in newly acquired territory." [46] However, the so-called self-executing clauses in the Florida Treaty involved the confirmation of individual property

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[43] Statement of Raoul Berger before the Subcommittee on Separation of Powers at hearings on the Panama Canal Treaty (95th Congress, 1st Session, November 3, 1977, in Part 3, at p. 364).

[44] Statement of Attorney General Griffin Bell before the Senate Committee on Foreign Relations at hearings on the Panama Canal Treaties, on September 29, 1977, at p. 10.

[45] Again, the Subcommittee emphasizes that the statements of the court that the power to dispose is exclusive in Congress which appear in *Sioux Tribe* and in *Wisconsin Central R.R. Co.* are not dicta but are holdings essential to the decisions reached.

[46] Statement by Attorney General Griffin Bell before the Senate Committee on Foreign Relations at hearings on the Panama Canal Treaties, on September 29, 1977, at p. 10.

rights based on Spanish land grants. These property rights would have been affirmed as a matter of international law even absent the treaty clauses, and inasmuch as the property rights in question were the property rights of individuals, not the property rights of the United States, the entire case is, therefore, irrelevant to any discussion of the Article IV power of Congress. The *Percheman* case is, in fact, closely analogous to the Indian treaty cases in that it essentially involved a reserve of private individual grants pre-dating the treaty. Title did not pass to the United States and thereafter to the individuals. The fact that the Treaty with Spain of 1819 of its own force confirmed the titles of pre-treaty individual land owners of Florida territory ceded to the United States by Spain does not argue for the legality of a so-called self-executing treaty [47] granting title to land already vested in the United States to new post-treaty individual owners.

Similar to *Percheman*, and equally often cited, is *Foster* v. *Neilson*, a case which also turned on the validity of pre-treaty land grant titles. The court in *Foster* erroneously thought that the Treaty of 1819 required ratification and confirmation of the private titles "by the act of the legislature"; however, the court in *Percheman* discovered that the Spanish counterpart version of the treaty expressly dispensed with the requirement that the private titles be ratified by act of the legislature, a fact now known at the time of the decision in *Foster*.[48]

In any event, both land grant cases are so far afield and have so little to do with the Article IV power of Congress to dispose of United States lands as to warrant much less attention than that which has already been shown to them, here and elsewhere.

Other Treaty Power Cases.—The Administration witnesses dwelled on *Geofroy* v. *Riggs* as "strong authority" for the power of the President and Senate to conclude treaties regarding subject matter within the ambit of the power of the Congress. The Subcommittee has studied the case and is not impressed. While, in some vague sense, *Geofroy* might be said to represent the principle that the treaty power can extend to the peripheries of Congressional power, in fact, the case has not the slightest bearing on the effect of Article IV respecting public property because the case has nothing to do either with the disposition of public property or with the regulation of public property. To reiterate the earlier discussion of the case in this report (see *supra* at p. 10), the holding in *Geofroy* was simply that a citizen of France could take land by descent from a citizen of the United States within the District of Columbia. Therefore, the reason for the repeated citation of this case by the proponents of the concurrent power theory remains a matter essentially baffling to the Subcommittee. Oddly enough, the case does not even stand for the proposition that a treaty can supersede the provision of Article I, Section 8, clause 17, of the Constitution which confers on Congress the power of "exclusive legislation in all cases whatsoever" relating to the District of Columbia. *Geofroy* involves the Treaty with France of 1853 which gave to Frenchmen the right of inheritance only in states "whose existing laws permit it." Thus, the court held in *Geofroy* that the District of

[47] The term "self-executing treaty" is misleading and improper. Treaties have the same force and effect as statutes of Congress, and they stand or fall by the same test, the Constitution.

[48] 32 U.S. at p. 89.

Columbia was a state for the purposes of the treaty and that, although an Act of Congress of March 7, 1888, forbade the ownership of land in the District by aliens, the Act excepted the disposition of land "secured by existing treaty", an exception which the court held included realty "acquired by inheritance" and thus protected by the Treaty of 1853.[49] Thus, the treaty at issue in *Geofroy* did not itself pretend to override contrary local law and, additionally, Congress had consented to the application of the treaty terms to permit inheritance by Frenchmen by means of the express exception set forth in the Act of March 7, 1888.

To summarize, *Geofroy* v. *Riggs* has nothing to do with the power of Congress to dispose of United States territory or public property, but in the event it did, it could stand, if for anything, only for the proposition that the treaty power does not invade the power of Congress over the laws of the District of Columbia.

Finally, the Administration and others have advanced *Missouri* v. *Holland* in support of the proposition that a treaty can "empower Congress to enact legislation going beyond its specifically enumerated grants of power." [50] Without becoming unduly concerned at this gross distortion of basic Constitutional principles, perhaps it is best simply to state that *Missouri* v. *Holland* had nothing to do with the disposition or regulation of United States territory and that the case involved a treaty with Great Britain for the protection of migratory birds. The court held that "wild birds are not in the possession of anyone and possession is the beginning of ownership"; hence, neither a state nor the United States could assert any property interest in them. *Missouri* v. *Holland* can, therefore, be of no interest in any serious analysis of the Congressional power to dispose of *public property.*

Obviously Irrelevant Cases.—Without unduly lengthening this report, the Subcommittee observes simply that a mass of cases have been cited irresponsibly by Administration spokesmen in the ongoing debate of the nature of the power of the Congress to dispose of public property. However, for illustration, five examples now follow.

Asakura v. *Seattle.*—This fascinating decision turns on an ordinance of the City of Seattle restricting licenses to operate pawnshops to citizens of the United States. Its holding that citizens of Japan could not be denied the equal opportunity also to operate pawnshops does not appear to have any relevance to anything except possibly to the operation of pawnshops.[51]

Reid v. *Covert.*—This case was cited by Herbert Hansell as authority for the power to dispose of public property by treaty. The case involves a trial by court martial of the wife of an Army sergeant convicted in England by U.S. Army authorities for the murder of the sergeant. The court held that the Bill of Rights requires a jury trial after indictment. The Subcommittee does not understand why this case was cited to it.

Santovicenza v. *Egan.*—This case was also cited by Mr. Hansell in support of the power to dispose by treaty. In *Santovicenza*, an Italian died in New York, leaving no heirs or next to kin. Italy claimed the

[49] 133 U.S. at p. 272.
[50] Statement of Dean Louis Pollak included herein as Appendix II, at p. 60.
[51] This case, curiously enough, is cited by the Committee on Foreign Relations in its report on the Panama Canal Treaties, at p. 69.

property of the deceased under a "most favored nation" treaty clause. The court held that the treaty covered the disposition of the property of aliens dying within the territory of either signatory. Again, the Subcommittee is at a loss to explain why this case was ever cited even in the first instance.

Worcester v. *Georgia.*—Worcester, a white missionary, was convicted of residing within the Indian territory without a state license. The Supreme Court reversed the conviction. Astoundingly, this case has also been cited to the Subcommittee as having something to do with the power to dispose of public property; obviously, it does not.

U.S. v. *43 Gallons of Whiskey.*—Perhaps because of its intriguing style, this is also a case frequently cited by concurrent power theorists, but again its application to the issue is tangential at best. The case, as might be expected, involves 43 gallons of whiskey, and it is a case essentially irrelevant to the issue.

SUMMARY AND RECAPITULATION

The text of the Constitution itself indicates that the power of Congress to dispose of public property is an exclusive power which cannot be exercised concurrently by the President, with the advice and consent of the Senate, through the treaty-making power. Basic canons of construction dictate that express mention implies exclusivity and that the specific governs and limits the general. Construing properly the plain words of the Constitution thus leads to the final conclusion that the power of Congress to dispose is an exclusive power. This conclusion is bolstered by the history of the Constitutional Convention which shows that the issue of the treaty power versus the power to dispose was very much in the minds of the Framers. Article IV, Section 3, clause 2 was adopted to answer in part the argument advanced early during the Convention debates that the Senate with the President could alienate public lands without the consent of the Congress. Past treaty practice in dealing with Panama regarding United States property in the Panama Canal Zone also provides strong evidence that no promised disposition of public property can be legally made to Panama, or to any foreign sovereign, by a treaty except "subject to the enactment of authorizing legislation by the Congress." Other treaties which have been cited as disposing of territory without Congressional authorization are not treaties of cession but are rather treaties of recognition by which disputed claims to territory are adjusted and through which boundaries have been stabilized.

The judicial authorities are, in the main, inconclusive. However, those cases in which the extent of the power of Congress to dispose is controlling, notably *Sioux Tribe of Indians* v. *United States* and *Wisconsin Central R.R. Co.* v. *Price County*, do hold that the power of Congress is an exclusive power. These holdings are consistent with Story's remark in his famous *Commentaries on the Constitution of the United States:* "The power of Congress over the public territory is clearly exclusive and universal." [52] All other cases which have been cited by both sides provide dicta only and ought to be ignored.

[52] See *supra* at p. 24.

Inasmuch as the weight of the evidence does, therefore, indicate that Congress has exclusive power to dispose of United States property in the Isthmus of Panama, if such disposition is deemed to be desirable, then a statute authorizing it is required or else the disposition will be void. Treaties, like statutes, can be declared unconstitutional.

> Professor BERGER. In my view any attempt of disposition without getting the concurrence of the Congress, including the House, would be void.
>
> Senator HATCH. That is a strong statement.
>
> Professor BERGER. If I am right, if there is no "concurrent jurisdiction" to dispose of property in the executive branch, if that power is exclusively in Congress, then the President oversteps his bounds. That is unconstitutional, and if it is unconstitutional, it is void.[53]

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[53] Hearings before the Subcommittee on Separation of Powers on the Panama Canal Treaty (95th Congress, 1st Session, November 3, 1977, in Part 3, at page 332).

APPENDIX I

29-400 (pt. 3) O - 79 - 109

OPINION OF ATTORNEY GENERAL GRIFFIN B. BELL

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., August 11, 1977.

The Honorable the SECRETARY OF STATE.

MY DEAR MR. SECRETARY: Your letter of July 23, 1977, requests my opinion, in connection with the negotiation of a new Panama Canal treaty, on a question involving the treaty-making power of the President and its relation to the power of Congress to dispose of territory or property belonging to the United States. The question is whether a treaty may dispose of territory or property belonging to the United States absent statutory authorization.

I

The Constitution provides that the President shall have power to make treaties with the advice and consent of the Senate, if two-thirds of the Senators present concur (Article II, section 2, clause 2); and it provides further that treaties made under the authority of the United States shall be the "supreme law of the land." Article VI, clause 2.

At the same time, the Constitution gives Congress a number of specific powers that bear upon matters commonly subjected to the treaty power. I need mention but a few: pursuant to Article I, section 8, Congress has power to regulate foreign trade, to provide for the protection of rights in useful inventions, to make rules governing captures on land and water, to establish a uniform rule for naturalization, and to punish offenses against the law of nations; and, of course, pursuant to Article IV, section 3, Congress has power to dispose of territory or property belonging to the United States. Moreover, there is authority for the proposition that Congress has general power, quite apart from these specific powers, to enact legislation relating to foreign affairs. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936); *Perez* v. *Brownell*, 356 U.S. 44 (1958).

A question that arose very early in our constitutional history was whether the existence of these congressional powers limits the powers of the President and the Senate to make law by treaty.[1] If a treaty touches a matter that Congress has power to regulate, can the treaty be given the force and effect of law, in and of itself, if Congress has not enacted legislation putting it into effect? The question you raise is one aspect of that general question.

II

I shall make two observations with respect to the general issue. First, from the earliest days of the Republic the decisions of the Supreme Court have provided convincing support for the proposition that a treaty, unaided by an act of Congress, has the force and effect of law even if it touches a matter that is within the legislative jurisdiction of Congress. Indeed, the Court has held that a treaty, of its own force, may supplant prior acts of Congress to the extent that its enforcement may require that result. *Cook* v. *United States*, 288 U.S. 102 (1933).

The seminal case, *United States* v. *The Schooner Peggy*, 1 Cranch 103 (1801), was decided in an opinion by Chief Justice Marshall. During the undeclared

[1] Indeed, the question arose in connection with the debate over the very first treaty made under the Constitution, the Jay Treaty with Great Britain. The treaty provided for the creation of certain commissions and therefore required an appropriation of funds. President Washington, together with other Federalists, including Hamilton and Chief Justice Ellsworth, took the view that the treaty, of its own force, created an indispensable obligation as a matter of domestic law, and that Congress was required to appropriate the necessary funds. Jefferson, Madison, and other Republicans took the view that neither the Jay Treaty nor any other treaty could regulate matters that were within the legislative jurisdiction of Congress. See 1 *C. Butler, The Treaty-Making Power of the United States* 422 *et seq.* (1902); *S. Crandall, Treaties Their Making and Enforcement* 165 *et seq.* (2d ed. 1916); 1 *W. Willoughby, The Constitutional Law of the United States* 549 (2d ed. 1929). Jefferson reiterated the Republican view in his *Manual of Parliamentary Practice. See L. Henkin, Foreign Affairs and the Constitution* 141 *et seq.* (1972) [hereinafter cited as *Henkin*].

naval war with France, Congress enacted a statute that authorized the President to grant commissions to public vessels, with instructions that they should seize armed French vessels on the high seas, bring them to our ports, and subject them to condemnation in the courts of the United States. Act of July 9, 1798, c. LXVIII, 1 Stat. 578. In 1800 the American ship *Trumbull*, sailing under a commission issued pursuant to the statute, seized an armed French vessel, the schooner *Peggy*, and brought her to port. A proceeding was then instituted against the *Peggy;* and after a sentence of condemnation was entered in the court below, an appeal was taken to the Supreme Court.

During the pendency of the appeal President Jefferson, with the advice and consent of the Senate, concluded a treaty with France. The treaty provided, among other things, that vessels that had been seized by either nation should be "mutually restored" if they were not yet "definitively condemned."

Thus, when the case of the *Peggy* came before the Court, the question was whether the treaty controlled the disposition of the prize. If it did, the schooner was to be restored to France. If it did not, the schooner was to be condemned, under the statute; and the proceeds were to be distributed equally between the United States and the officers and men of the *Trumbull*.

The Court held that the treaty controlled. It was a law of the United States, not by virtue of any act of Congress, but by virtue of the command of the Constitution itself; and it had intervened during the appeal to change the statutory rule that had governed the decision below. Because the sentence of condemnation was not yet final, the schooner was not yet "definitively condemned," and it was therefore subject to the treaty. The schooner was to be restored to France. 1 Cranch at 109–10.

Implicit in the decision was the elementary proposition that the President, with the advice and consent of the Senate, had power to make a self-executing treaty affecting the disposition of a vessel captured at sea even though Congress had power to make rules (and had in fact made a conflicting rule) governing the same subject matter. The Court expressed no doubt whatever about the constitutionality of the treaty.

In the years that followed this decision the Supreme Court gave "self-executing" effect to numerous treaties that disposed of matters that Congress had power to regulate. See, e.g., *Hijo* v. *United States*, 194 U.S. 315, 323–24 (1904) (claims against the United States); *Cook* v. *United States*, 288 U.S. 102, 118–19 (1933) (customs inspections); *Bacardi* v. *Domenech*, 311 U.S. 150, 161 (1940) (trademarks); see generally *Henkin, supra*, note 1, at 149. Today, as a result of these and other decisions, it could not be successfully maintained, as a general proposition, that the treaty power stops where the power of Congress begins. On the contrary, the Court has said that the treaty power, operating of itself and without the aid of congressional legislation, extends to all proper subjects for negotiation between our Nation and others. *Asakura* v. *City of Seattle*, 265 U.S. 332 (1924). The lesson of history is that these "proper subjects" include many that are within the legislative jurisdiction of Congress.

My second observation is related to the first. I have suggested that the two powers—the power of Congress to legislate and the power of the President and the Senate to make "self-executing" treaties—may overlap. I do not mean to suggest that they are coextensive. They are both created by the Constitution, and they are both subject to the fundamental limitations that are imposed thereunder;[2] but the limitations that apply to the one do not necessarily apply to the other. The treaty power may extend to subjects that are beyond the legislative jurisdiction of Congress. *Missouri* v. *Holland*, 252 U.S. 416 (1920). Similarly, the President and the Senate may be powerless to accomplish by treaty what the Congress can accomplish by statute.

I shall elaborate briefly upon the latter point. Some lower courts[3] and many serious students of the law[4] have expressed the view that certain matters are

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[2] In *Reid* v. *Covert*, 354 U.S. 1 (1957), Mr. Justice Black stated the applicable rule: "The prohibitions of the Constitution were designed to apply to all branches of the National Government," including the Congress, the Executive, and the Executive and Senate combined. *Id.* at 17–18.

[3] *See, e.g., Turner* v. *American Baptist Missionary Union*, 24 F. Cas. 344 (No. 14251) (C.C. Mich. 1852).

[4] John C. Calhoun was of opinion that a treaty could not authorize a withdrawal of funds from the Treasury. 29 *Annals of Congress* 531–32 (1816). In 1949 the Secretary of State, Dean Acheson, expressed the view a treaty could not put the United States into war. Only Congress could declare war. *Hearings on the North Atlantic Treaty Before the Senate Committee on Foreign Relations*, 81st Cong., 1st Sess., pt. 1, at 11 (1949). *See generally Henkin, supra*, note 1, at 159.

subject to regulation by Congress only; and that a treaty, if it purports to deal with such a matter, can be given effect only to the extent that it may be authorized or implemented by statute. The two matters that are frequently mentioned in this regard are the raising of revenue and the appropriation of funds. The Constitution provides that "all" bills for raising revenue "shall" originate in the House (Article I, section 7, clause 1), and, further, that "no" money shall be drawn from the Treasury except in consequence of "appropriations" made by law (Article I, section 9, clause 7). In the face of these provisions the opinion expressed by some is that a treaty purporting to require the establishment or alteration of a revenue measure, or a treaty purporting to require an appropriation of funds, could not be effective, as a matter of domestic law, in the absence of statutory authorization or implementation. I find it unnecessary to deal with that issue in order to answer the question you have put to me.

I now turn to the question at hand.

III

The point of departure is the broad principle that was laid down in *Geofroy* v. *Riggs*, 133 U.S. 258 (1890), and was repeated in *Asakura* v. *City of Seattle*, 265 U.S. 332 (1924), to which I have alluded above: the treaty power extends to all proper subjects for negotiation between our Nation and others; and when a treaty purports to do so, it acts *ex proprio vigore*, without the aid of legislation, and is effective for all purposes, provided it does nothing that is forbidden by the Constitution.

Does the Constitution forbid the President and the Senate to make self-executing treaties disposing of territory or property belonging to the United States? I have taken note of the opinion, held by some, that the Constitution entrusts certain matters to Congress alone. In my opinion, however, the disposition of territory or property belonging to the United States is not such a matter. In my view, territory or property belonging to the United States may be disposed of by action of the President and the Senate under the treaty clause.

There are at least four considerations that support this conclusion, and I shall discuss them briefly below.

First, the fact that the Constitution gives Congress power to dispose of territory or property belonging to the United States does not suggest that the President and the Senate have no power to do so under the treaty clause. This was the implicit teaching of Marshall's decision in the *Peggy* and of the cases that followed. The existence of power in Congress does not imply an absence of power under the treaty clause. On the contrary, the one proposition of which we can be certain is that many of the powers that are given to Congress are shared by the President and the Senate when they act, under the treaty clause, to conclude and effectuate bona fide international agreements.

I think it follows that if one were to hold that the power to dispose of territory or property belonging to the United States resides in Congress alone and is distinguishable in that respect from the numerous powers that are shared, one would be obliged to find some basis for the distinction either in the text of the Constitution or in the history of the relevant provisions. I find none.

The language of Article IV, insofar as it confers upon Congress the power of disposition, is identical to the language of Article I, which confers upon Congress numerous powers that may be exercised by the President and the Senate through self-executing treaties. Article IV says that Congress "shall have power" to dispose of territory or property belonging to the United States, just as Article I says that Congress "shall have power" to regulate foreign commerce, to make rules governing captures on land and water, and so forth. Article IV goes on to say that Congress shall have power to make "all" needful rules and regulations respecting territory or property. As in the case of Article I, however, Article IV does not say that the powers it confers—the power to dispose of territory or property, and the power to make rules and regulations respecting it—shall reside in Congress alone.

The record of the proceedings during the Constitutional Convention supports the interpretation that is suggested by the language of the Constitution itself. The territory and property clause of Article IV was adopted during a general discussion of the role that the central government should play in connection with the territorial claims that had been asserted by the several States with respect to the western lands. In the course of the discussion there was no suggestion whatever that the purpose or effect of the clause was to give Congress exclusive power to authorize or implement international agreements disposing

of territory or property. See 2 *M. Farrand, The Records of the Federal Convention of 1787* 457–59, 461–66 (rev'd ed. 1937) [hereinafter cited as *Farrand*].

The history of the treaty clause is even more conclusive. During the course of the convention several proposals were put forth. One would have required every treaty to be approved by both Houses of Congress. 2 *Farrand, supra*, at 532, 538. That proposal was rejected. Another would have required the Senate to concur in treaties, but would have exempted peace treaties from that requirement, except for peace treaties depriving the United States of territory or territorial rights. 2 *Farrand, supra*, at 533–34, 543. That proposal was rejected as well. In its place, the convention adopted a proposal that required the Senate to concur in *all* treaties.

It may be possible to interpret these actions in a different way, but the simplest and, for me, the most persuasive interpretation is this: the delegates to the convention assumed (1) that the treaty power could and would extend to questions of territory, and (2) that treaties, including treaties affecting rights in territory, could be effective in the absence of action by both Houses.[5]

This brings me to the third consideration that supports my basic conclusion. To the extent that the Supreme Court has spoken to the question, the Court has said that the President, with the concurrence of the Senate, may conclude a treaty disposing of territory or property belonging to the United States, and that such a treaty may convey good title to the territory or property in question.

No act of Congress is required. *United States* v. *Brooks*, 10 How. 442 (1850); *Doe* v. *Wilson*, 23 How. 457 (1859); *Holden* v. *Joy*, 17 Wall. 211 (1872); *Best* v. *Polk*, 18 Wall. 112 (1873); *Francis* v. *Francis*, 203 U.S. 233 (1906). The dictum in *Holden* v. *Joy* is one of the clearest statements of this principle: "[I]t is insisted that the President and Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey a good title to such lands without an act of Congress conferring it. * * * [17 Wall. at 247]."

I do not hold that these cases provide a sufficient answer to the question you have raised. They all involved Indian treaties and questions of "title" to real property. I do think, however, that the principle for which they stand is one of general application; that it bears upon your question; and that it supports the conclusion I have reached. These cases, when viewed in light of the textual and historical considerations I have already mentioned, provide substantial support for the proposition that a treaty disposing of territory or property belonging to the United States may be self-executing. I find no cases to the contrary.

Finally, my conclusion is supported by historical practice. While I do not suggest that the commands of the Constitution may be attenuated by persistent practices not in conformity with them, I must observe that as a matter of historical fact the President and the Senate have made self-executing treaties disposing of territory or property belonging to or claimed by the United States.

I shall mention one rather clear example of the practice. Under the Florida Treaty with Spain (1819) the United States ceded all its territory beyond the Sabine River in Texas to Spain in return for the cession of the Spanish territories of East and West Florida. 8 Stat. 252, T.S. No. 327. While there had been some dispute over some of the relevant boundaries, the congressional debates, as well as President Monroe's annual message to Congress, make it clear that many considered the action to be an outright cession of American territory in exchange for Spanish territory. 36 *Annals of Congress* 1719–38, 1743–__; 2 *J. Richardson, Messages and Papers of the Presidents* 33 (1896). No statute authorizing the American cession was ever enacted.[6]

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[5] I should note that this very point was considered in the State conventions that were called to ratify the new Constitution. The objection was made that the treaty clause gave the President and the Senate power to alienate territory. The Virginia and North Carolina conventions proposed a remedial amendment that would have required every treaty ceding or compromising rights or claims of the United States in territory to be approved by three-fourths of the members of both Houses of Congress. 2 *Documentary History of the Constitution* 271, 382 (in *U.S. Cong. Doc. Ser.*, No. 4185); *see generally S. Crandall, Treaties Their Making and Enforcement* 220–21 (2d ed. 1916).

[6] The self-executing effect of the *Spanish* cession was the subject of two decisions by the Supreme Court. *Foster* v. *Neilson*, 2 Pet. 253 (1829); *United States* v. *Arredondo* 6 Pet. 691 (1832). Congress did enact legislation authorizing the President to take possession of the Spanish cessions and to provide rules for their government. Act of March 3, 1819, c. XCIII, 3 Stat. 523, Act of March 3, 1821, c. XXXIX, 3 Stat. 637.

There have been a number of other treaties that have been self-executing insofar as they have disposed of territory or property belonging to the United States or have compromised a claim of the United States to property or territory claimed by a foreign power.[7] I do not believe that the validity of these treaties could be questioned today.

IV

In stating my opinion with respect to the question we have raised, I have taken note of general principles that bear upon the relation between congressional power and the power of the President and the Senate under the treaty clause; but I have no occasion to express an opinion with respect to any other questions that may arise in that context, and I express none.

Sincerely,

GRIFFIN B. BELL,
Attorney General.

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[7] *See, e.g.*, United States-Great Britain Treaty of 1842 (Webster-Ashburton), 8 Stat. 572, T.S. No. 119; United States-Great Britain Treaty in Regard to Limits Westward of the Rocky Mountains of 1846 (Oregon Treaty), 9 Stat. 869, T.S. No. 120.

Statement By Professor Raoul Berger Before the Senate Subcommitte on Separation of Powers, Hearings on the Panama Canal Treaties, Washington, D.C., November 3, 1977

You have invited me to comment on the relation between the Article IV, Section 3(2) power of Congress to dispose of property of the United States and the treaty power, in light of the statements respecting the relation by Herbert J. Hansell, Legal Advisor, Department of State,[2] and Ralph E. Erickson, Deputy Assistant Attorney General.[2] Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress be diminished. I have long held the conviction that all agents of the United States, be they Justices, members of Congress, or the President, must respect these boundaries. No agent of the people may overlap the bounds of delegated power. That is the essence of constitutional government and of our democratic system.

Long experience has led me to be skeptical of arguments by representatives of the Executive branch when they testify with respect to a dispute between Congress and the President, for they are then merely attorneys for a client, the President. It was for this reason that Justice Jackson dismissed his own prior statements in the capacity of Attorney General as mere advocacy, saying, a "judge cannot accept self-serving press statements for one of the interested parties as authority in answering a constitutional question, even if the advocate was himself."[3] The Hansell-Erickson testimony did not serve to diminish my skepticism.

The effect of these hearings ranges beyond the Panama treaty. The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for "concurrent jurisdiction" of the President in the disposition of United States property. Acquiescence in such claims spells progressive attrition of Congressional powers; it emboldens the Executive to make ever more extravagant claims. I would remind you that Congressional acquiescence encourages solo Presidential adventures such as plunged us into the Korean and Vietnam wars. Congressional apathy fostered the expansion of executive secrecy. Then as now the State Department invoked flimsy "precedents," for example, the pursuit of cattle rustlers across the Mexican border, to justify presidential launching of a full scale war.[4] If Congress slumbers in the face of such claims it may awaken like Samson shorn of his locks.

Earlier judicial statements that this or the other executive practice has been sealed by long-continued Congressional acquiescence[5] need to be reexamined in light of more recent judicial opinions, more conformable to the Constitution, that Congress may not abdicate its powers,[6] and a fortiori, it cannot lose them by disuse,[7] that usurpation cannot be legitimated by repetition.[8] Senatorial in-

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[1] Hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Cong. 1st Sess.) Part II, p. 3 (July 29, 1977), hereafter cited as Hansell.

[2] Hearings before the House Subcommittee on the Panama Canal on "Treaties Affecting the Operations of the Panama Canal," (92 Cong. 2d Sess.) p. 95 (December 2, 1971), hereafter cited as Erickson.

[3] *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 647 (1952), concurring opinion.

[4] R. Berger, "Executive Privilege: A Constitutional Myth," 75–88 (1974).

[5] Congress "uniformly and repeatedly acquiesced in the practice." "It may be argued that while the facts and rulings prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice." *United States* v. *Midwest Oil Co.* 236 U.S. 459, 471 (1915). But as Justice Frankfurter later declared, "Deeply embedded traditional ways of conducting a government cannot supplant the Constitution or legislation . . ." Youngstown Sheet, supra, n. 3 at 610, concurring opinion.

[6] *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 421 (1935).

[7] *United States* v. *Morton Salt Co.*, 338 U.S. 632, 647 (1950).

[8] "That an unconstitutional action has been taken before surely does not render that same action less unconstitutional at a later date." *Powell* v. *McCormack*, 395 U.S. 486, 546–547 (1969). *Zweibon* v. *Mitchell*, 516 F.2d 594, 616 (D.C. Cir. 1975): "there can be no doubt that an unconstitutional practice, no matter how inveterate, cannot be condoned by the judiciary." *United States* v. *Morton Salt Co.*, 338, U.S. 632, 647 (1950): "nonexistent powers can [not] be prescribed by an unchallenged exercise . . ."

sistence on respect for constitutional boundaries will warn the Executive against encroachments on Congress' powers; it will alert foreign nations to the fact that treaties for the cession of United States property must be subject to the consent of the full Congress.

Mr. Erickson, addressing himself to the question whether Article IV, Section 2 (3), "pursuant to which Congress has the power to dispose of property of the United States is an exclusive grant of legislative power to the Congress or whether the Congress and the President and the Senate, through the treaty power, share that authority," handsomely states that "the answer to this question is not simple and altogether free from doubt." [9] That doubt counsels against encroachments on a power explicitly conferred on Congress; a clear case for establishment of "concurrent jurisdiction" is needed in the teeth of that express grant.

In support of the claim that the President and Senate enjoy "concurrent power" to dispose of United States property, Messrs. Hansell and Erickson invoke a melange of dicta, without weighing even stronger statements that Congress' disposal power is "exclusive." Thus the Supreme Court declared that Article IV "implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise." [10] Echoing such judicial statements, an opinion of the Attorney General stated in 1899 that "The power to dispose permanently of the public lands and public property in Puerto Rico rests in Congress, and in the absence of a statute conferring such power, cannot be exercised by the Executive Department of the Government." [11]

Such statements respond to two cardinal rules of construction. First there is the rule that express mention signifies implied exclusion, which the Supreme Court has employed again and again: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." [12] The rule was invoked by the Founders; for example, Egbert Benson said in the First Congress, in which sat many Framers and Ratifiers, that "it cannot be rationally intended that all offices should be held during good behaviour, because the Constitution has declared (only) one office to be held by this tenure." [13] The fact, emphasized by Hansell, that "The property clause contains no language excluding concurrent jurisdiction of the treaty power" is therefore of no moment. Having given Congress the power to dispose of public property, it follows that the President and Senate were "impliedly excluded" therefrom. Second there is the settled rule that the specific governs the general: where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates." [14]

In terms of the present issue, the specific power of disposition governs the general treaty provision.

Under these rules it is of no avail that, according to Hansell, "there is no restraint expressed in respect to dispositions" in the treaty power itself. For this Mr. Hansell relies on *Geofroy* v. *Riggs:* "The treaty power, as expressed in the

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[9] Erickson 97.

[10] *Wisconsin Cent. R.R. Co.* v. *Price County*, 133 U.S. 496, 504 (1890); see also *Swiss Nat. Ins. Co.* v. *Miles*, 289 Fed. 571, 574 (App. D.C. 1923).

[11] 22 Op. Atty. Gen., 544, 545 (1899). 2 J. Story, "Commentaries on the Construction of the United States," Section 1328. p. 200 (4th ed. 1873): "The power of Congress over the public territory is clearly exclusive and universal * * *" Cf. *Osborne* v. *United States*, 145, F. 2d 892, 896 (9th Cir. 1944).

[12] *Botany Worsted Mills* v. *United States*, 278 U.S. 282, 289 (1929); *T.I.M.E.* v. *United States*, 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carrier Act when the very sections which established that right in Part I [for railroads] were wholly omitted in the Motor Carrier Act."

[13] 1 Annals of Cong. 505 (2d ed. 1836) (print bearing running head "History of Congress"); and see Alexander White, id. 517.

[14] *Swiss Nat. Ins. Co.* v. *Miller*, 289 Fed. 570. 574, (App. D.C. 1923). *Ginsberg & Son* v. *Popkin*, 285 U.S. 204, 208 (1932): "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Buffum* v. *Chase Nat. Bank*, 192 F. 2d 58, 61 (7th Cir. 1951). In this light, the fact, stressed by Hansell, that the Framers contemplated that a treaty could affect "territorial" rights, Hansel 5, is not decisive, for the treaty would yet be subject to the special Congress "power to dispose." There is no evidence in the records of the Convention that the Framers intended in any way to curtail that power, or to give the President a share in it. Were the matter less clear, we should yet "prefer a construction which leaves to each element of the statute a function in some way different from the others" to one which causes one section to overlap another. *United States* v. *Dinerstein*, 362 F. 2d 852, 855–856 (2d Cir. 1966).

Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the * * * departments * * *."[15]

Only the treaty power is "expressed"; Geofroy does not call for express restraints—it suffices that they can be found in the Constitution. The "implied exclusion" is "found" in the Constitution by virtue of the express grant of disposal power to Congress under the rule of express mention, and of the fact that the general treaty power is limited by the special Congressional power of disposition. These principles are reflected in the Supreme Court's statement in *Sioux Tribe of Indians* v. *United States:* "Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in the lands must be traced to Congressional delegation of its authority."[16]

To this the State Department responds that *Sioux Tribe* "did not deal with the relation between the treaty power and the Congressional power under Article IV, Section 3, cl. 2;" Hansell labeled it "dicta."[17] By this test the Hansell-Erickson collection of dicta falls to the ground, for almost all were not uttered in the context of that relation.

The executive branch employs a double standard—what is dictum when the language is unfavorable to it becomes Holy Writ when the dictum reads in its favor. Erickson, for example, tells us that: "Jones against Meehan is cited as an example by reason of the quote and the language there, which it seems to me is of significance, irrespective of the particular facts involved."[18]

Messrs. Erickson and Hansell can not have it both ways. In truth, dicta carry little weight when a particular issue has not been decided. Chief Justice Marshall dismissed his own dicta in *Marbury* v. *Madison* when they were pressed upon him in *Cohens* v. *Virginia*, 19 U.S. 264, 399 (1821), on the ground that dicta do not receive the careful consideration accorded to the question "actually before the court." The statements here quoted respecting "exclusivity" carry weight because they reflect traditional canons of construction. The foregoing considerations should suffice to dispose of a number of other Hansell-Erickson arguments for "concurrent jurisdiction," but I shall consider them for the sake of completeness.

To escape from the exclusivity of Congress' disposal power Mr. Erickson argues, "To begin with, Article IV, Section 3, clause 2, uses the same terminology, "Congress shall have power," as Article I, Section 8, which in our opinion, permits treaty provisions relating to such matters to be self-executing [i.e., without Congressional action], at least to the extent that the inherent character of the power or other constitutional provisions do not make the power exclusive to Congress."[19]

Erickson's qualification is a concession that some Article I powers can not be concurrently exercised by the President. The Department of State Concedes that "treaties may [not] impose taxes."[20] Why is that power more "inherently" exclusive than such other Article I, Section 8 powers as the power to establish post offices, to provide and maintain a navy, to declare war, to coin money, etc., all of which manifestly can not be exercised by treaty. Erickson proves too much.

Second, he urges, "Article IV, Section 3, clause 2, is included in a portion of the Constitution which deals with the distribution of authority between the Federal and State governments. It does not purport to allocate powers exercisable by Congress or pursuant to treaty."[21]

But Section 3 (2) unmistakably does "allocate powers exercisable by Congress": "The Congress shall have power to dispose of . . . property belonging to the United States." Hansell argues that the placement of the property article in clause 4 . . . provides strong evidence that the property clause does not restrict the treaty power."[22] That the "placement of a power in one or another Article is without significance for its scope is readily demonstrable: (a) "Congress shall have power to declare the punishment of treason" is located in the

[15] Hansell 4; 133 U.S. 258, 267 (1890), emphasis added. One might with equal force argue that no limitation on Congress' "power to dispose" is "expressed" in Article IV.

[16] 316 U.S. 317, 326 (1942). *Turner* v. *American Baptist Missionary Union*, 24 Fed. Cas. (No. 14. 251) 344, 346 (C. Ct. Mich. 1852): "Without a law the president is not authorized to sell the public lands * * * The [Indian] treaty, in fact appropriated the above tract of 160 acres for a particular purpose, but, to effectuate that purpose, an act of congress was passed."

[17] Hansell 27, 22.

[18] Erickson 105.

[19] Id. 97.

[20] Hansell 25.

[21] Erickson 97.

[22] Hansell 4–5, emphasis added.

Judiciary Article III; (b) Congress' powers to make "exceptions and regulations" respecting the Supreme Court's appellate jurisdiction is lodged in Article III, Section 2; (c) The provision that "Congress may determine the time of choosing the electors" is placed in the Executive Article II, Section 1(4). Does this authorize the President by treaty to declare the punishment of treason, to regulate the Court's appellate jurisdiction, or to interpose in the choice of electors? Whether located in Article I or Article IV, "Congress shall have power" means one and the same thing—the power resides in Congress, not in the President. It needs constantly to be borne in mind that the President has circumvented Senate participation in treaty-making by affixing the label "Executive Agreements" to treaties, without constitutional warrant,[23] so that claims made on behalf of the Senate and the President can be turned to his own advantage.

Mr. Hansell also attaches significance to the close linkage between the Article IV "power to dispose" and "the power to make all needful rules and regulations" respecting the Territory or other property belonging to the United States, and cites *Geofroy* v. *Riggs* for the proposition that "the treaty power can be used to make rules and regulations governing the territory belonging to the United States, even in the District of Columbia."[24] *Geofroy* presented the question whether a citizen of France could take land in the District of Columbia by descent from a citizen of the United States. Local law withheld the right, but in keeping with national solicitude for protection of citizens abroad, a treaty provided for reciprocal rights of inheritance in such circumstances for citzens of both signatories. In consequence the treaty overrode the local provision; but this hardly stretches to the "making of rules and regulations" by treaty for the District of Columbia. Were this true, the President could by treaty take over the governance of the District of Columbia, in spite of the Article I, Section 8 (17) provision that "The Congress shall have power to exercise exclusive jurisdiction in all cases whatever over such district." Assume notwithstanding that the treaty power does indeed comprehend the "making of rules and regulations governing the . . . District of Columbia," does the "close" linkage with the "power to dispose" comprehend a disposition of the White House by treaty? Such arguments verge on absurdity.

Messrs. Hansell and Erickson have cited a string of cases in support of "The power to dispose of public land . . . by treaty."[25] Some, such as *Holden* v. *Joy*, 84 U.S. 211 (1872), and *Jones* v. *Meehan*, 175 U.S. 1 (1899), have frequently been cited in your hearings. Let me begin with Hansell's citation of *Missouri* v. *Holland*, 252 U.S. 416 (1920), for it quickly illustrates how far-fetched are the State Department's interpretations. *Missouri* v. *Holland* arose out of a State challenge to the treaty with Great Britain for the protection of migratory birds which annually traversed parts of the United States and of Canada. Justice Holmes, addressing the argument that the treaty infringed powers reserved to the States by the Tenth Amendment, stated, "Wild birds are not in the possession of any one, and possession is the beginning of ownership. The whole foundation of the State's rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State, and in a week a thousand miles away."[26]

Consequently the State could assert no "title" in migratory birds. By the same token, the United States could lay no claims to "ownership" of the birds, and *Missouri* v. *Holland* is therefore wholly irrelevant to the power by treaty to dispose of property belonging to the United States.

Holden v. *Joy* and *Jones* v. *Meehan* will repay close analysis because they involve Indian treaties which constitute one of the pillars of the argument, to quote Erickson, that "the United States can convey its title by way of self-executing treaty and that no implementing legislation is necessary."[27] To begin with *Jones*, both Hansell and Erickson quote: "It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States."[28] The treaty had "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres * * *" for an individual Indian; and the issue was what kind of

[23] Berger, supra n. 4 at 140–162.
[24] Hanell 5.
[25] Id. Erickson 97.
[26] 252 U.S. at 434.
[27] Erickson 97.
[28] Hansell 6; Erickson 97.

title did he take. The Court quoted from an opinion of Attorney General Roger Taney, destined before long to succeed Chief Justice Marshall: "these reservations are excepted out of the grant made by the treaty, and did not therefore pass with it; consequently the title remains as it was before the treaty; that is to say, the lands reserved are still held under the original Indian title." [29]

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple." [30] That explanation presumably responded to the fact that tribal lands were generally held in common; individual titles were all but unknown, so that such title had to be secured through the machinery of the treaty. But that is far from a disposition of government land because, as Taney explained, the "reserved" title remained in the Indians. Many, if not most, of the cases of Indian treaties involve just such "reserve" provisions.[31]

The quotation from *Holden* v. *Joy*, Erickson acknowledges, is dictum; notwithstanding Hansell relies on it as "a clear statement of the law": [32]

It is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political.[33]

What bearing the last clause has on Congress' "power to dispose" of public lands escapes me; this Delphic utterance surely does not overcome the clear terms of Article IV. As to the "many authorities," the Court's citation could hardly be farther afield. To avoid cluttering this statement with a minute analysis of each case cited by the Court for the assertion that "a treaty may convey to a grantee a good title . . . without an act of Congress," I have abstracted them in an appendix attached hereto, so that you may see for yourself that half of the cases thus cited are altogether irrelevant, and that the rest concern "reserves" under which, as Taney observed, no title had passed to the United States but remained in the given Indians. In considering such dicta, it is well to bear in mind Chief Justice Taney's statement that the Court's opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported.[34]

By that standard the Holden dictum is no authority at all.

The inappositeness of *Holden* is underscored by the facts. In May, 1828, and February, 1833, "the United States agreed to possess the Cherokees of seven million acres of land west of the Mississippi." It "was the policy of the United States to induce Indians * * * to surrender their lands and possessions to the United States and emigrate and settle in the territory provided for them in the treaties," so an exchange of land was provided. But a third treaty, that of December, 1835, proved necessary, whereby the Indians ceded their lands to the United States in consideration of $5,000,000 to be invested in the manner stipulated. The Indians considered that the prior treaties, confirmed by the new, did not contain a sufficient quantity of land, so the United States agreed to convey an additional tract in consideration of $500,000 to be deducted from the $5,000,000.[35] This may be viewed either as a purchase and sale or an exchange: "the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them. * * *" And the transaction was authorized by the Act of 1830, which empowered the President to set aside land west of the Mississippi for the reception of such tribes as chose to emigrate, and to "exchange" such lands with any tribe.[36] The 1830 act served to ratify the Act of 1828, and "ratification is equivalent to original authority" [37]: "It is well settled that Congress may * * * 'ratify * * * acts which it might have authorized' * * * and give the force of law to official action unauthorized when taken." [38] Although the subsequent 1833 and 1835 treaties differed in some particulars from the authorization, the purpose was the same—"to induce the Indians * * * to emigrate and

[29] 175 U.S. at 12, emphasis added.
[30] Id. 21.
[31] See infra Appendix.
[32] Erickson 97; Hansell 22.
[33] Quoted by Hansell 5–6; 84 U.S. at 247.
[34] *The Passenger Cases*, 48 U.S. (7 How.) 283, 470 (1849), dissenting opinion.
[35] 84 U.S. at 237, 238, 241.
[36] Id. 245, 238–239.
[37] *Wilson* v. *Shaw*, 204 U.S. 24, 32 (1907).
[38] *Swayne & Hoyt, Ltd.* v. *United States*, 300 U.S. 297, 301–302 (1937).

settle in the country long before set apart for that purpose." [39] When, therefore, the Court, speaking to the contention that the President and the Senate "could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress," stated that "a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it," it was making a statement that was unnecessary to the decision, because Congress had authorized the conveyance.

As to other treaties, Hansell tells us, "the precedents look two ways." Some have been "contingent upon congressional authorization." The "precedents supporting the power to dispose of property by treaty alone," he states, "can be found in the boundary treaties with neighboring powers, especially in the treaties between the United States and Great Britain of 1842 and 1846 for the location of our northeast and northwest boundaries. * * *" [40] Settlement of boundary disputes are not really cessions of United States property. The Oregon boundary dispute proceeded from an inflated claim: "Fifty-Four Forty or Fight"; the British, on the other hand, claimed land down to the forty second parallel. Only when the dispute was settled by treaty—at 49 degrees—could either party confidently assert that it had title.[41] Consequently, as Samuel Crandall, a respected commentator, stated, "A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition." [42]

Among other examples of alleged treaty transfers of property, Hansell instances the return to Japan of the Ryukyu Islands.[43] By Article III of the 1951 Treaty of Peace with Japan, the United States received the right to exercise "all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of those islands. * * *" While Japan renounced, in Article II, "all right, title and claim" to various territories, it made no similar renunciation with respect to the Ryukyus.[44] Quoting the Legal Advisor of the State Department, that "sovereignty over the Ryukyu Islands * * * remains in Japan * * *", a District Court stated that "Sovereignty over a territory may be transferred by an agreement of cession," but it concluded that there had been no cession.[45] The Fourth Circuit Court of Appeals quoted a statement by Ambassador John Foster Dulles, a delegate to the Japanese Peace Conference, that the aim was "to permit Japan to retain residual sovereignty," and held that the treaty did not make "the island a part of the United States, and it remains a foreign country for purposes of" the Federal Tort Claims Act.[46]

"In the history of transfers of property to Panama," Hansell tells us, "we have had a mixed practice." [47] By the 1903 Panama Convention, Panama granted to the United States "all the rights, power and authority within the Zone . . . which the United States would possess *if* it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority . . ." [48] The words "*if* it were sovereign" signal an intent to stop short of a cession of sovereignty. That is confirmed by an Opinion of the Attorney General. Considering the Tariff Act levy of duties on articles imported "into the United States or into any of its possessions," he stated that "the Canal Zone is not one of the possessions of the United States within the meaning of that term as used by Congress in the tariff act, but rather is a place subject to the use, occupation, and control of the United States for a particular purpose." [49] In *Luckenbach S.S. Co.* v. *United States*, Chief Justice Taft stated, "Whether the grant in the treaty amounts to a complete cession of territory and domination to the United States or is so limited as to leave titular sovereignty in the Republic of Panama, is a question which has been the subject of diverging opinions," which he found it unnecessary to decide,[50] and is therefore still open. Instead he relied on a "long continued course of legislation and administrative action [that] has operated to require that the ports in the Canal Zone are to be regarded as foreign ports within the meaning" of the Act governing the transport of "mail between the United States and any foreign port," [51] itself a hint that the Panama Treaty is no more a cession than the Japanese Treaty respecting the Ryukyus.

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[39] 84 U.S. at 240.
[40] Hansell 6.
[41] S. E. Morison, "Oxford History of the American People" 538, 546–547 (1965).
[42] S. Crandall, "Treaties, Their Making and Enforcement" 226 (2d ed. 1916).
[43] Hansell 6.
[44] 3 U.S.T. 3169, 3172, 3173.
[45] *United States* v. *Ushi Shiroma*, 123 F. Supp. 145, 149, 148 (D. Hawaii, 1954).
[46] *Burna* v. *United States*, 240 F. 2d 720, 721 (4th Cir. 1957).
[47] Hansell 7.
[48] Quoted Hearings, supra n. 1, Part I, p. 5, emphasis added.
[49] 27 Op. Atty. Gen. 594, 595 (1909).
[50] 280 U.S. 173, 177–178 (1930).
[51] Id. 178.

It does not follow, however, that the interests of the United States do not constitute "property of the United States." The grant of "use and occupation . . . in perpetuity" constitutes "property" no less than the familiar lease of reality for 99 years. Then there are the installations that cost billions of dollars. Disposition of these no less requires the consent of Congress than does that of territory. In 1942, the President by Executive Agreement promised to transfer certain installations to Panama subject, however, to Congressional approval.[52] A similar provision is to be found in the Treaty of 1955.[53] These are executive constructions that speak against Messrs. Hansell and Erickson.

In sum, Messrs. Hansell and Erickson have failed to make out a case for "concurrent jurisdiction" with Congress in the disposition of United States property. If the President is to fly in the face of the express "power of Congress to dispose" it must be on a sounder basis than the arguments they have advanced. In my judgement, the Panama Treaty should contain a provision making it subject to approval of the Congress.

APPENDIX

I

Holden v. *Joy*: Its citations for treaty power to dispose of property.

A. "RESERVE" CASES (TITLE REMAINS IN INDIANS)

(1) *United States* v. *Brooks*, 51 U.S. (10 How.) 442 (1850). Indian cession to United States; supplement to treaty provided that Grappe's representatives "shall have their right to the said four leagues of land reserved to them * * *" (450, 451). Held: treaty "gave to the Grappes a fee simple title to all the rights the [Indians] had in these lands * * *" (460).

(2) *Doe* v. *Wilson*, 64 U.S. (23 How.) 457 (1859). Indian treaty ceded land to United States, making reservations to individual Indians. "As to these, the Indian title remained as it stood before the treaty was made; and to complete the title to the reserved lands, the United States agreed that they would issue patents to the respective owners." (461-462).

(3) *Crews* v. *Burcham*, 66 U.S. (1 Black) 352 (1861). Cession by Indians with reserves (355). "The main and controlling questions involved in this case were before this court in the case of *Doe* v. *Wilson*, 23 How. 457 * * *" (356).

(4) *Mitchel* v. *United States*, 34 U.S. (9 Pet.) 711 (1835). Prior to the Spanish cession of Florida to the United States, the Indians had made a cession to Spain, "reserving to themselves full right and property" in certain lands. (749). Held: "by the treaty with Spain the United States acquired no lands in Florida to which any person had lawfully obtained" title. (734, 756). Issue: title of purchaser from Indians to reserved lands.

(5) *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1866). Treaty exchange of lands; Indians reserved lands for each individual (739, 741). Issue: was such land taxable by Kansas.

B. IRRELEVANT CASES

(1) *Meigs* v. *McClung*, 13 U.S. (9 Cranch) 11 (1815). Held: land claimed from defendants did not lie within territory ceded to the United States by the Indians. (17).

(2) *Wilson* v. *Wall*, 73 U.S. (6 Wall.) 83 (1967). Treaty provided that certain Indians would be entitled to 640 acres for self, and additional acres, roughly speaking, for each child. (84). Issue: whether an Indian held land governed by the latter clause in trust for his children. (86). Court said "Congress has no constitutional power to settle the rights under treaties except in cases purely political," (89) the clause quoted in *Holden* v. *Joy*. The reason, it explained, was that "The Construction of them is the peculiar province of the judiciary * * *" id. In other words, interpretations of treaties is for the courts.

(3) *American Insurance Co.* v. *Canter*, 26 U.S. (1 Pet.) 511 (1828). Insurer brought a libel in the District Court, South Carolina, to obtain restitution of 356 bales of cotton carried by ship that was wrecked on the Florida coast. A Florida territorial court had earlier awarded 76% salvage to salvers, who sold the Canter. (540). Issue: did the territorial court have jurisdiction. No mention of grant by United States.

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[52] "When the authority of the Congress . . . shall have been obtained therefore . . ." Agreement of May 18, 1942, 59 Stat. (Pt. 2) 1289.

[53] Agreement of January 25, 1955, 6 U.S.T. 2273, 2278.

(4) *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832). Worcester, a white missionary was convicted of residing within Indian territory without a State license. The treaty with the Indians placed them under the protection of the United States, gave it the sole right of "managing all their affairs." Held: the Georgia act can have no force in the Indian territory. (561).

(5) *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253 (1829). Re grants made in the ceded territory by Spain prior to January 24, 1815, the article provides "that those grants shall be ratified and confirmed like Indian "reserves * * * the ratification and confirmation which are promised must be by the Act of the Legislature," i.e. Congress. (314–315).

II

Some additional Hansell citations for power to dispose by treaty.

(1) *Reid* v. *Covert*, 354 U.S. 1 (1957). Military Code provided for trial by court martial of "all persons . . . accompanying the armed forces" of the United States in foreign countries. Wife of Army Sergeant convicted by court martial in England of his murder. Held: Bill of Rights requires jury trial after indictment.

(2) *Asakura v. Seattle*, 265 U.S. 322 (1924). Seattle ordinance restricted pawnship license to United States citizen. (339–340). Japanese attacks as violation of treaty provision: citizens or subjects of each signatory "shall have liberty * * * to carry on trade, wholesale and retail * * * upon the same terms as native citizens or subjects * * *" (340). Held: can't deny the Japanese equal opportunity. (342).

(3) *Santovicenza* v. *Egan*, 284 U.S. 30 (1931). Italian subject dies in New York. leaving no heirs or next of kin. (351). Italian consul claims under "most favored nation" treaty clause. Held: The treaty-making power is broad enough" to cover "the disposition of the property of aliens dying within the territory of the respective parties * * *" Any "conflicting law of the State must yield." (40).

III

Some additional Erickson citations for self-executing treaty conveyances.

(1) *Francis* v. *Francis*, 203 U.S. 233 (1906). Indian treaty ceded land to United States, but reserved certain tracts for use of named persons. (237). Quotes *Jones* v. *Meehan*; when treaty makes "a reservation of a specified number of sections of land * * * the treaty itself converts the reserved sections into individual property * * *" (238). It was in these circumstances that the Court said, "a title in fee may pass by treaty without the aid of an act of Congress, and without a patent," (241–242) the reason being that title to the reserved land remained in the Indians.

(2) *Best* v. *Polk*, 85 U.S. (18 Wall.) 112 (1873). By Indian treaty "reservations of a limited quantity [of land] were conceded to them. (113). One section "had been located to an Indian." (113, 116). Thereafter, the United States issued a patent to James Brown. Held (117), "the Indian reservee was held to have a preference over the subsequent patentee."

ADDENDUM TO STATEMENT BY RAOUL BERGER BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS OF THE COMMITTEE ON THE JUDICIARY, NOVEMBER 3, 1977

The statement by Attorney General Griffin B. Bell (hereafter cited as A. G.) before the Senate Foreign Relations Committee, September 29, 1977, reached me on Saturday afternoon, October 29, 1977, too late for inclusion of my comments in the body of my statement. Only three points made by the Attorney General seem to me to call for additional comment, and of these I shall speak in turn.

I

The Percheman Case

The Attorney General cites *United States* v. *Percheman*, 32 U.S. (7 Pet.) 511, 88–89 (1833) to prove that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory." A. G. at p. 10. At the cited pages it appears that Article 8 of the treaty provided, "all the grants of land made before the 24th of January, 1818, by his Catholic Majesty * * * in the said territory ceded by his

Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands * * *"

This Article, Chief Justice Marshall remarked, "must be intended to stipulate expressly for that security of private property which the laws and usages of nations would, without express stipulation, have conferred * * * Without it (Article 8), the title of individuals would remain as valid under the new government as they were under the old * * * the security of (pre-existing) private property was intended by the parties * * *"

In short, the treaty provided that prior Spanish grants to private persons should be ratified and confirmed, a provision far removed from presidential "regulation" of public territory. Moreover, *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253, 314–315 (1829), a case cited by the Attorney General (A. G. at p. 3), held with respect to the self-same provision that "the ratification and confirmation which are promised must be by the Act of the Legislature," i.e. Congress. The citation to *Percheman* illustrates why I approach an Attorney General's statement with something less than awe.

II

Remarks in the Legislative History of the Constitution

(1) The Attorney General asserts that "(the members of the Convention were fully aware of the possibility that a treaty might dispose of the territory or property of the United States." (A. G. at p. 5). He begins with the remark of George Mason in the Constitutional Convention: "The Senate by means of a treaty might alienate territory etc. without legislative sanction." A. G. at p. 6; 2 Farrand 297. This was during a debate on a resolution that "Each House shall possess the right of originating bills," when Mason seconded Strong's motion to "except bills for raising money for the purposes of revenue, or for appropriating the same." The Senate, said Mason, "could already sell the whole Country by means of Treaties," plainly an extravagant overstatement, made at a time when the treaty was not under discussion. His "alienate territory" remark may merely represent a strategic retreat from his untenable "sell the whole country" remark.

There follow a group of utterances that have reference to boundary disputes, i.e. conflicting claims to ownership to be settled by treaties of peace.

(2) When the treaty power was under discussion, Williamson and Spaight moved "that no Treaty of Peace affecting territorial rights should be made without concurrence of two thirds of the [members of the Senate present]." A.G. at p. 6; 2 Farrand 543. Similarly, Gerry, speaking for a greater proportion of votes on "treaties of peace", said that here, "the dearest interests will be at stake, as the fisheries, territories, etc. In treaties of peace also there is more danger to the extremities of the Continent of being sacrificed than on any other occasion." A.G. at p. 6; 2 Farrand 541. The "extremities of the Continent" has reference to boundary disputes which do not really involve territory owned by the United States.

(3) "Sherman and Morris proposed but did not formally move," the Attorney General states, "the following proviso, 'But no treaty (of peace) shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the United States may be contracted * * *'"

A.G. at p. 6; 4 Farrand 58. Farrand adds that "The subject was then debated, but the motion does not appear to have been made." Id. Why was the motion not made after debate? Presumably, the matter was postponed for consideration when Article IV, Section 3(2) would come up for discussion. During this subsequent discussion of "The Legislature shall have power to dispose of * * * the territory * * *", it is singular that no mention was made of an exception for disposition under the treaty power. 2 Farrand 466. Non-mention is the more remarkable because such an exception would carve out an area of undefined magnitude from the power conferred, a matter which would affront the democratically minded who placed their faith in the House. It seems more reasonable to infer from the history that Article IV, Section 3(2) was designed to set at rest the fears that territory might be ceded without the concurrence of the House.

(4) The Attorney General cites an amendment proposed by the Virginia Ratification Convention as exhibiting the "awareness of the Founding Fathers that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States": "No commercial treaty shall be ratified without the concurrence of the members of the Senate [not merely of those present]; and no treaty ceding, contracting * * * the territorial rights or claims of the United

States * * * shall be made, but in cases of extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both Houses respectively."

A.G. at p. 7; 3 Elliot, Debates on the Federal Constitution 660. The Attorney General's reading paradoxically transforms Virginia's anxiety to have greater safeguards, i.e. three-fourths of both Houses rather than the bare majority that satisfies Article IV, into an argument for excluding the House altogether. Like the earlier remarks, the Virginia proposal testifies to the importance that the Founders attached to the disposition of territory—no cession except "in cases of extreme necessity"—and it counsels against reading the equivocal "treaty-making" to encroach upon the "power to dispose" that requires the vote of both Houses, not merely the Senate. In any event, it may be asked, should the post-Convention view of one State be permitted to override the plain terms of Article IV.

(5) Hugh Williamson, a delegate to the Convention, wrote to Madison some nine months after its close, to recall to him, "a Proviso in the new System which was inserted for the express purpose of preventing a majority of the Senate * * * from giving up the Mississippi. It is provided that two-thirds of the members present in the Senate shall be required in making treaties * * *."

A.G. at p. 7–8; 3 Farrand 306–307. The Mississippi presented a gnawing boundary question which threatened the expansion of the West and was only settled by the Louisiana Purchase. Boundary treaties do not really involve the disposition of territory or property of the United States but the adjustment of conflicting claims, even when some believe their claims to be more valid than those of the opposing party.

To my mind, the history is at best inconclusive; the remarks quoted by the Attorney General are confined to adjustment of boundary disputes, with one exception, by treaties of peace. Treaties of peace present special problems, and such citations do not add up to general concurrent jurisdiction over the disposition of government territory or property. To go beyond such territorial adjustments collides with the rationale of *Pierson* v. *Ray*, 386 U.S. 547, 554–555 (1967). With respect to the common law immunity of judges from suit for acts performed in their official capacity, the Court declared, "We do not believe that this settled principle was abolished by Section 1983, which makes liable 'every person' who under color of law deprives another of his civil rights * * * we presume that Congress would have specifically so provided had it wished to abolish the doctrine."

Thus, the all-inclusive "every person" was held not to curtail an existing common law immunity in the absence of a specific provision. The more equivocal treaty-making power demands an even more exacting standard. Before it be concluded that it in any way diminishes the explicit grant to Congress of "power to dispose" of territory, a clearly expressed intention to do so is required. That requirement is not satisfied by the random remarks collected by the Attorney General.

The Attorney General concedes that, "the specific power granted to the House of Representatives and Congress in fiscal matters (Article I, Section 7, clause 1 and Article I, Section 9, clause 7, money bills and appropriations power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the pursestrings."

A.G. at p. 4–5. Now, sections nine and seven are couched in quite dissimilar terms. One, Section 9(7), is framed in terms of flat prohibition: "No money shall be withdrawn from the Treasury but in consequence of appropriations made by law * * *." Section 7(1), on the other hand, merely provides that "All bills for raising revenue shall originate in the House." Yet, the Attorney General reads Section 7(1) to preclude the President and Senate from "bypass-[ing] the power of Congress and in particular of the House of Representatives over the pursestrings." What is there that distinguishes "All bills * * * shall originate in the House" from "The Congress shall have power to dispose * * *."? The impalpability of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes." Nothing in this Article I, Section 8(1) "The Congress shall have power to lay and collect taxes" distinguishes it from the Article IV "The Congress shall have power to dispose * * *".

If the President may not by treaty "bypass" the power of the House to originate revenue-raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the territory and property of the United States.

STATEMENT OF CHARLES E. RICE, PROFESSOR OF LAW, UNIVERSITY OF NOTRE DAME LAW SCHOOL, BEFORE THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, NOVEMBER 3, 1977

It is clear that the property ceded by the United States in the Panama Canal Treaty is "Territory or other Property belonging to the United States," within the meaning of Art. IV, Sec. 3, cl. 2, of the Constitution.

Article 2 of the 1903 treaty between the United States and the Republic of Panama "grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal." Article 3 of that treaty "grants to the United States all the rights, power, and authority within the zone mentioned and described in article 2 of this agreement, . . . which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters were located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

It is interesting to compare the language of the 1903 treaty with the earlier treaty of 1846 between the United States and the Republic of New Granada, the predecessor in ownership of the Isthmus of Panama to Colombia and the Republic of Panama. In Article 35 of that treaty the United States undertook to guarantee "the rights of sovereignty and property" of the Republic of New Granada over the Isthmus. [9 Stat. 881; see Moore, a Digest of International Law (1906), Vol. III, 5–6] The 1903 treaty, by contrast, is strong in the affirmation of sovereign authority in the United States.

In *Wilson* v. *Shaw*, 204 U.S. 24, 27 S. Ct. 233, 235 (1907), the Supreme Court declared, "It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to his nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate." As the Fifth Circuit Court of Appeals held in *United States* v. *Husband R. (Roach)* [453 F.2d 1054, 1057, 1059 (5th Cir., 1971), cert. den. 406 U.S. 935 (1972)], "The Canal Zone is an unincorporated territory of the United States" to which applies the power of Congress to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." Congress, said the court, has "plenary power over the Canal Zone."

The controlling question, however, is whether the grant of power to Congress to dispose of the territory and property of the United States is exclusive or concurrent.

If the grant is concurrent, that is, if it may be exercised by the Executive as well as Congress, then it would be proper for the Executive to make a self-executing treaty disposing of such property without the necessity of implementing legislation by Congress. If, however, the grant of such power is exclusively to Congress, the treaty would not be self-executing and such implementing legislation would be necessary.

The power of disposition provided in Article IV, Sec. 3, clause 2, does not explicitly exclude concurrent power of disposition in the Executive. Also, Article IV generally deals with the relations between the states and the government of the United States. In this respect, the Supreme Court has consistently ruled that the Congressional power is controlling over state legislation. [See Annotation, 49 L. Ed., 1239, 1248] In sustaining the Wild Free-Roaming Horses and Burros Act, the Supreme Court stated in 1976 that "we have repeatedly observed that "[t]he power over the public lands thus entrusted to Congress is without limitations." *United States* v. *San Francisco*, 310 U.S. at 29. [*Kleppe* v. *New Mexico*, 426 U.S. 529, 539 (1976)]

In *Wisconsin Railroad Co.* v. *Price County*, [133 U.S. 496, 504 (1890)], the Supreme Court said, "The Constitution vests in Congress the power to 'dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.' And this implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise." And in *Utah Power and Light Co.* v. *United States* [243

U.S. 389, 404 (1916)], the Court said: "Not only does the Constitution (Art. IV, Sec. 3, cl. 2) commit to Congress the power "to dispose of and make all needful rules and regulations respecting" the lands of the United States, but the settled course of legislation, congressional and state, and repeated decisions of this court have gone upon the theory that the power of Congress (to dispose of United States property) is exclusive and that only through its exercise in some form can rights in lands belonging to the United States be acquired."

There is no Supreme Court decision clearly deciding whether a treaty disposing of property must be submitted to the entire Congress for approvel. Nor is there any definitive Supreme Court ruling as to whether the power to dispose of territory and property, in Art. IV, Sec. 3, cl. 2, is exclusive in Congress or concurrent with the Executive.

Nor do the debates in the Constitutional Convention and the actions of the state ratifying conventions provide any clear guidance on these points. There was some incidental discussion but nothing conclusive. George Mason, in arguing that the House of Representatives alone should have the right of originating revenue bills, argued rhetorically that the Senate "could already sell the whole country by means of Treaties" and that "the Senate by means of treaty might alienate territory, etc., without legislative sanction." [Farrand, Records of the Federal Convention, II, 297] However, it is interesting that such an enormous power in one house of Congress excited little agitation among the delegates. There is no clear indication as to the Convention's mind on the relation between the treaty power and Congress' power to dispose of property.

Attorney General Griffin B. Bell, in his statement before the Senate Foreign Relations Committee on September 29, 1977, emphasized that the Ratifying Convention of Virginia proposed the following amendment to the Constitution: "7th. That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, on their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both houses respectively." Elliot, "Debates on the Federal Constitution," Vol. 3, p. 660.

Attorney General Bell argues from this that the Founding Fathers were aware "that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States." But this conclusion is unwarranted. The same amendment was proposed by the North Carolina Convention [United States: Formation of the Union (Govt. Printing Office, 1927), 1048] The proposals are fully consistent with the interpretation that the assent of Congress is required to a treaty alienating United States territory. The first clause of the proposed amendment asks merely that commercial treaties be ratified by two-thirds of all the Senators rather than by two-thirds of the Senators present. The following restriction, that treaties ceding United States territory shall require ratification by three-fourths of all the members of both Houses is fully consistent with an interpretation that any treaty alienating United States territory already required consent of both houses. What the Virginia and North Carolina conventions sought to do was to fasten on those treaties a requirement for a virtually prohibitive majority, three-fourths of all the members of both houses. One cannot draw from this the conclusion that, because those proposed amendments were not adopted, therefore the House of Representatives is entirely excluded from the process of alienating United States territory by treaty.

The treaty power is very broad but it is not unlimited. "There is nothing in 'the treaty power' which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution." [*Reid* v. *Covert*, 354 U.S. 1, 16 (1957)]

In *Holden* v. *Joy*, the Supreme Court noted "there are many authorities where it is held that a treaty may convey to a grantee a good title to [lands belonging to the United States] without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political." [*Holden* v. *Joy*, 17 Wall. (84 U.S.) 211, 247 (1872)] The authorities cited by the Court for this proposition are distinguishable. More importantly, this statement of the Court was only a dictum as the Court said, "it is not necessary to decide the question in this case, as the treaty in question

has been fully carried into effect, and the provisions have been repeatedly recognized by Congress as valid." [*Ibid.*]

In *Asakura* v. *Seattle*, 256 U.S. 332, 341 (1924), the Supreme Court said, "The treaty-making power of the United States is not limited by any express provision of the Constitution, and, though it does not extend 'so far as to authorize what the Consitution forbids,' it does extend to all proper subjects of negotiation between our government and other nations." The Court also noted that the treaty in that case "operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts." But the treaty involved in Asakura was one recognizing the right of Japanese subjects to "carry on trade" in the United States. It did not involve in any way the power to dispose of United States property granted to Congress in Art. IV, Sec. 3, cl. 2, of the Constitution.

In *Geofroy* v. *Riggs*, 133 U.S. 258 (1890), a convention with France guaranteed the right of French citizens to inherit property in the United States. The Court held that the convention prevailed over the contrary law of Maryland so as to authorize the inheritance by a French citizen of property in the District of Columbia. "The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. *Fort Leavenworth Railroad Co.*, v. *Lowe*, 114 U.S. 525, 541. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country. *Ware* v. *Hylton*, 3 Dall. 199; *Chirac* v. *Chirac*, 2 Wheat. 259; *Havenstein* v. *Lynham*, 100 U.S. 483; 8 Opinions Attys. Gen. 417; *The People* v. *Gerke*, 5 California, 381."

However, while the convention was in effect, Congress adopted the Maryland law as the law of District of Columbia, but suspended that law insofar as it conflicted with the convention. This amounted to a clear adoption by Congress of the terms of the convention. More significantly, the Geofroy case did not involve the transfer of any property owned by the United States. The dictum in the Geofroy case is very broad but its generalizations should be limited to the facts of that case.

While judicial decisions do not comprehensively define Congress' property disposal power in relation to the treaty power, there are several instances where the accepted practice among the Congress, Executive and the Judiciary, has supported the conclusion that Congress' power is exclusive.

Many treaties and executive agreements with Indian tribes have involved the transfer of real property. But even where the treaty or executive agreement conveyed to the Indians the land in fee simple, which is the maximum interest which has been conveyed to Indian tribes, it appears that such land was held by the Indians subject to the power of the United States to exercise eminent domain. In *Cherokee Nation* v. *Southern Kansas R. Co.*, (135 U.S. 641 (1890)), the Supreme Court noted:

"The fact that the Cherokee Nation holds these lands in fee simple under patents from the United States, is of no consequence in the present discussion; for the United States may exercise the right of eminent domain, even within the limits of the several states, for purposes necessary to the execution of the powers granted to the general government by the Constitution.

* * * * * * *

"The lands in the Cherokee territory, like the lands held by private owners everywhere within the geographical limits of the United States, are held subject to the authority of the general government to take them for such objects as are germane to the execution of the powers granted to it; provided only, that they are not taken without just compensation being made to the owner. [135 U.S. at 656–57]"

In *Sioux Tribe of Indians* v. *United States* [316 U.S. 317 (1942)], the Supreme Court ruled that the Sioux did not obtain a compensable interest in lands granted to them by executive order so as to entitle them to payment where the lands were restored to the public domain by a later executive order. The Court was of the opinion that "executive order reservations" did not grant a compensable

interest to the Indians. Such an interest was granted only in reservations made by "treaty or statute." In the latter cases, the power of the Executive depended on congressional approval: "Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in these lands must be traced to Congressional delegation of its authority." [316 U.S. at 326]

The Indian treaties cannot be regarded as authority for the conveyance of United States property to a foreign power by treaty without Congressional authorization. Even where those treaties or agreements conveyed a fee simple interest, that interest remained subject to the United States power of eminent domain. And even the conveyance of that interest, according to the Sioux case, required a Congressional delegation of authority to the Executive. It follows that the complete and total surrender of sovereignty involved in the Panama Canal Treaty should require Congressional action even more strongly than the Indian treaties.

Another illuminating type of case from past experience is the sort of treaty involving settlement of boundary claims. For example, the Webster-Ashburton Treaty of 1842, ceded land to Great Britain which had been under dispute. [8 Stat. 572] Congress implemented the treaty by appropriating money to carry out the terms. [See Ch. 89, 5 Stat. 623] The 1846 Oregon Treaty also involved the cession to Great Britain of United States claims to land then in dispute. [9 Stat. 869] Congress implemented the treaty by passing an act to organize the government of the Oregon Territory. [9 Stat. 323]

The Alaska Treaty of 1903 [32 Stat. 1961] established a tribunal to settle boundary disputes with Great Britain. The tribunal awarded some of the disputed territory to the United States and some to Great Britain. [See Bemis, *A Diplomatic History of the United States* (1965), 427] Congress implemented the treaty by appropriating funds to carry it out in 1903. [32 Stat. 1083]

The Chamizal Convention with Mexico in 1963 provided for the transfer of certain lands to Mexico. The convention provided: "After this convention has entered into force and the necessary legislation has been enacted for carrying it out, the two Governments shall * * * determine the period of time appropriate for the Government of the United States to complete the following: (a) The acquisition, in conformity with its laws, of the lands to be transferred to Mexico." [15 U.S. T. 2]

Congress thereafter enacted legislation to authorize the Secretary of State "to acquire by donation, purchase, or condemnation, all lands required for transfer to Mexico as provided in said convention" and "to convey or exchange to Mexico properties acquired." [78 Stat. 184]

The major point to be made about boundary dispute treaties is that they are different from the Panama Canal Treaty which does not involve disputed land. Where there is a colorable claim to full ownership and sovereignty presented by both parties to a settlement treaty, it cannot be said to involve an unambiguous transfer of "Territory or other Property belonging to the United States", within the meaning af Art. IV, Sec. 3, cl. 2. Those boundary settlement treaties, even were they found to be lacking in Congressional approval, are not controlling on the Panama Canal Treaty issue.

The Lend-Lease program, instituted in 1940, involved the transfer of United States property to Great Britain. However, Attorney General Robert Jackson, in his opinion to the President, found that there was "ample statutory authority" for the disposal. It was therefore unnecessary to rely on Presidential authority alone. [39 Op. A.G. 484, 488 August 27, 1940]

In 1972, a treaty went into effect for the transfer by the United States to Japan of all rights and interests it had received to the Ryukyu and Daito Islands by the 1951 Treaty of Peace with Japan. However, as Secretary of State Rogers pointed out in testimony before the Senate Foreign Relations Committee, the Japanese retained under the 1951 Treaty of Peace "residual sovereignty." Moreover, the transfer pursuant to that treaty seems to have been authorized by the Japan-United States Friendship Act of 1975. [22 U.S.C. 2901 (a) (2)]

In 1897, Attorney General John W. Griggs issued an opinion on the alienation by the President or Secretary of War of United States property in Puerto Rico to a private person. The Attorney General said, "there is no legislation by Congress made for or properly applicable to the public domain in Puerto Rico. The power to dispose permanently of the public lands and public property in Puerto Rico rests in Congress, and in the absence of a statute conferring such power,

cannot be exercised by the Executive department of the government." [22 Op. Att'y. Gen. 544, 545 (1899)]

With respect to the Panama Canal Zone itself, the 1942 Congressional proceedings involving an executive agreement transferring land and property in the Canal Zone to Panama are instructive. The transfer was effected by executive agreement which was then submitted to both houses for approval. It was objected by some Senators that it should have been done by treaty. Senator Connally, Chairman of the Senate Foreign Relations Committee, responded to these objections:

Those who are opposing the measure object because the matter is brought before the Senate in the form of a joint resolution. They say it should be in the form of a treaty.

Mr. President, I am and have been and in the future shall continue to be ardent in my maintenance of the integrity and the rights of the Senate of the United States in all its proper functions as a branch of the Government; but the matter covered by the joint resolution has to be passed by the Congress sooner or later in some form, for the simple reason that under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. So, if we had a formal treaty before us and if it should be ratified, it still would be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land; because "the Congress" means both bodies. The House of Representatives has a right to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise. [88 Cong. Rec. 9267]

In the House of Representatives, the Committee on Foreign Affairs stated in its report: "Congressional approval of the Executive commitments to Panama is sought in the form of legislation because there is involved (a) a disposition of property of the United States and (b) an appropriation of funds, both requiring an exercise of the legislative power, independently of the treaty-making power." [House Report No. 78–271, p. 6]

There is abundant authority that Congress' power under Art. IV, Sec. 3, cl. 2; is "without limitations" in contexts other than the present sort of treaty controversy. [Annotation, 496, Ed. 2d 1239, 1246] Nor is there any sufficient reason for treating that Congressional power as less extensive in the treaty context. Art. IV, Sec. 3, cl. 2, represents a decision by the Constitutional Convention and the States to protect the property of the United States by ensuring that the disposition would be the prerogative of the United States government and not of the individual states. Moreover, the specific grant of that power only to Congress was not accidental. As the most broadly representative branch of government, it is appropriate that Congress is the only body to alienate from the American people that which is theirs. The treaty power does not confer on the President and two-thirds of the Senate a power to change the constitutional distribution of powers in any respect. Such power is not necessary to the orderly conduct of foreign relations. And its recognition would undermine public confidence in the representative character of the United States Government.

It must be remembered that Senate ratification of a treaty requires approval of "two-thirds of the Senators present." Executive agreements, which are very similar in power to treaties, [See *United States* v. *Belmont*, 301 U.S. 324 (1937); *United States* v. *Pink*, 315 U.S. 203 (1942)] do not require any Congressional consent at all.

I hope that the consideration of the Panama Canal treaties, including particularly the treaty providing for transfer of United States property, will provide an occasion for the reaffirmation of the Congressional power with respect to the disposition of the territory or other property of the United States. Congress' power in this area ought to be regarded as exclusive. The American people ought to be deprived of their territory and property only by action of that governmental body most responsive to public opinion. That body is the entire Congress and most especially the House of Representatives.

APPENDIX II

Can the United States Cede to Panama, by Treaty, United States Rights in the Territory and Installations of the Canal Zone?

On November 4, 1977, Senator Allen placed in the Congressional Record a statement by Raoul Berger, former Charles Warren Fellow at Harvard University, made in hearings on the Panama Canal Treaties held by the Senate Subcommittee on Separation of Powers. The thrust of Mr. Berger's statement was that cession to the Republic of Panama of such title as the United States possesses in (1) territory in the Canal Zone, and (2) United States installations in the Zone, cannot constitutionally be effectuated by treaty, but only by statute, for the reason that the disposition of territory and other property of the United States is vested by Article IV, § 3(2) of the Constitution exclusively in Congress. Mr. Berger is a constitutional lawyer and historian of great distinction, whose scholarly work has enriched our understanding of many aspects of the Constitution, and so it is appropriate to pay close attention to his views on major constitutional questions. Nonetheless, careful examination of the arguments advanced by Mr. Berger persuades me that in this instance he is in error. It is my submission that the proposed treaties with Panama, if consented to by the constitutionally required two-thirds of the Senate and duly ratified by the executive branch, will of their own force accomplish the cession to Panama of the territory and the installations in question:

A

THE DEVELOPMENT OF TREATY PRACTICE AND TREATY DOCTRINE

1. Broadly stated, Mr. Berger's thesis is that the treaty power, which the Constitution vests in the President and the Senate, but does not define, cannot be read as giving to the President and the Senate powers concurrent with the powers specifically delegated to Congress by Article I, § 8, Article IV, § 3(2), and other provisions of the Constitution.

2. The thesis is not a new one. It was strongly advanced in 1975, in opposition to the Jay Treaty; and it was strongly resisted by no less a constitutional authority than John Marshall—the Virginia legislator who was later to be a Congressman, then Secretary of State, and finally Chief Justice. Beveridge, in his authoritative biography of Marshall, sums up the argument:

> Among the many objections to the treaty, the principal one . . . was that it violated the Constitution. The treaty regulated commerce; the Constitution gave that power to Congress, which included the House of Representatives; yet the House had not been consulted. . . .

> . . . Marshall's position was that a "treaty is as completely a valid and obligatory contract when negotiated by the President and ratified by him, with the assent and advice of the Senate, as if sanctioned by the House of Representatives also, under a constitution requiring such sanction"; and he admitted only that the powers of the House in reference to a treaty were limited to granting or refusing appropriations to carry it into effect.[1]

3. Marshall's position anticipated the pattern which has in fact characterized the utilization of the treaty power. As Secretary of State (former Congressman, former Senator and former Vice President) John C. Calhoun observed in 1844, "From the beginning and throughout the whole existence of the Federal Government it has been exercised constantly on commerce, navigation and other delegated powers." *Q. Wright, The Control of American Foreign Relations* (1922) 344. Moreover, such treaty provisions have routinely been treated as self-executing except where, as Professor Louis Henkin has put it in his definitive work, "the treaty-makers voluntarily left some subjects to regulation by Congress (e.g., international tariffs and trade). . . ." *Henkin, Foreign Affairs and the Constitution* (1972) 149. Although the treaty-makers have generally supposed the treaty power to be concurrent with that of Congress with respect to commercial regulations, the disposition of American territory and other government property, and most of the other powers expressly lodged in Congress by the Constitution (and have routinely been sustained in the supposition), they have customarily felt obliged to seek statutory implementation of treaties touching the area of Congressional authority with respect to which Marshall felt action by the House of Representatives was constitutionally indispensable—namely, "granting . . . appropriations."

The reason for acknowledging an exclusivity in Congress with respect to the appropriations power, but not with respect to most of its other powers (the regulation of commerce, the disposition of the property of the United States, etc.) arises from the text of the Constitution. Most legislative powers are merely couched in the familiar phrase, "Congress shall have power . . ."—a phrase which, syntactically, does not preclude concurrent authority in the President and Senate as treaty-makers. But the spending power, although couched in the same general form, is also subject to an express constitutional limitation—"No money shall be drawn from the Treasury, but in Consequence of Appropriations Made by Law . . ." [Article I, § 9(7)]—a limitation which arguably requires statutory implementation of a treaty commitment to make expenditures.[2]

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[1] II *A. Beveridge, The Life of John Marshall* (1916) 133-36. For tactical purposes, Marshall seems also to have argued that the Jay Treaty was so drawn as to leave to the House of Representatives leeway to determine whether to implement the commercial aspects of the Treaty; but this tactical concession respecting the form of a particular treaty was not at odds with Marshall's constitutional definition of the potential scope of the treaty power. *Ibid.*

[2] I say "arguably" because no such restraint on the treaty power was intimated by the Supreme Court in its classic exposition of the scope of the power in *Geofroy v. Riggs*, 133 U.S. 258, 267 (1890), quoted in the text *infra*, at note 6. Textual analysis akin to that dealing with the appropriations power provides an arguable basis for concluding that treaties cannot, without statutory implementation, levy taxes, since the Constitution specifies that "all Bills for raising Revenue shall originate in the House of Representatives." Article I, § 7(1). Congress' power to declare war may also be another power not shared by the treaty-makers. See the quotation from Calhoun in the text, *infra*, at n. 3.

4. The thesis which John Marshall steadfastly resisted in 1795 was adopted by Marshall's great rival, Thomas Jefferson, in his *Manual of Parliamentary Practice.* Jefferson—who as Secretary of State, Vice President and President "was no friend of the Treaty Power," [Henkin, *supra* at 142]—set forth four propositions, the second and fourth of which were as follows: "2, by the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated. . . . 4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives." *Ibid.* Marshall was not the only one of Jefferson's great contemporaries who was unpersuaded by Jefferson's narrow view of the treaty power. Justice Story noted that "The power 'to make treaties' is by the Constitution general; and of course it embraces all sorts of treaties, for peace or war; for commerce or territory; for alliance or succours; for indemnity for injuries or payments of debts; for the recognition and enforcement of principles of public law; and for any other purposes, which the policy or interests of independent sovereigns may dictate in their intercourse with each other." III *J. Story, Commentaries on the Constitution of the United States* (1833) 355.

Story acknowledged that the treaty power was not unlimited; "A treaty to change the organization of the government, or annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy, what it was designed merely to fulfill, the will of the people. Whether there are any other restrictions, necessarily growing out of the structure of the government, will remain to be considered, whenever the exigency shall arise." *Id.* at 356. And then, in a footnote, Story dispatched Jefferson's constitutional doubtings: "Mr. Jefferson seems at one time to have thought that the Constitution only meant to authorize the president and senate to carry into effect, by way of treaty, *any power they might constitutionally exercise.* At the same time, he admits, that he was sensible of the weak points of this position. 4 Jefferson's Corresp. 498. What are such powers given to the president and senate? Could they make appointments by treaty?" [3]

5. Marshall and Story were early expositors of what—Jefferson and a few others apart—has always been the orthodox view that the President and the Senate, in making treaties, can regulate almost every subject matter also entrusted to the legislative authority of Congress. But it fell to Calhoun—speaking as a Congressman, a quarter-century before he became Secretary of State—to explain, with more precision than either of the great Justices achieved, the scope of the treaty power and the constraints which other parts of the Constitution impose upon its exercise [29 *Annals of Congress* 530–31 (Jan. 9, 1816)]:

> The grant of the power to make treaties is couched in the most general terms. The words of the Constitution are that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds

[3] *Ibid.* at n. 2 (emphasis in original). That Story and Marshall were well aware that the treaty power includes authority to cede American territory is evident from the exchange of letters between Governor Edward Everett and Story set forth in Appendix A. *infra.*

of the Senate concur. In a subsequent part of the Constitution, treaties are declared to be the supreme law of the land. Whatever limits are imposed in those general terms ought to be the results of the construction of the instrument. There appeared to him but two restrictions on its exercise; the one derived from the nature of our Government, and the other from that of the power itself. Most certainly all grants of power under the Constitution must be controlled by that instrument; for, having their existence from it, they must of necessity assume that form which the Constitution has imposed. This is acknowledged to be true of the legislative power, and it is doubtless equally so of the power to make treaties. The limits of the former are exactly marked; it was necessary to prevent collision with similar coexisting State powers. This country is divided into many distinct sovereignties. Exact enumeration here is necessary to prevent the most dangerous consequences. The enumeration of legislative powers in the Constitution has relation then, not to the treaty-power, but to the powers of the State. In our relation to the rest of the world the case is reversed. Here the States disappear. Divided within, we present the exterior of undivided sovereignty. The wisdom of the Constitution appears conspicuous. When enumeration was needed, there we find the powers enumerated and exactly defined; when not, we do not find what would be vain and pernicious. Whatever, then, concerns our foreign relations; whatever requires the consent of another nation, belongs to the treaty power; can only be regulated by it; and it is competent to regulate all such subjects; provided, and here are its true limits, such regulations are not inconsistent with the Constitution. If so they are void. No treaty can alter the fabric of our Government, nor can it do that which the Constitution has expressly forbad to be done; nor can it do that differently which is directed to be done in a given mode, and all other modes prohibited. For instance, the Constitution of the United States says, no money "shall be drawn out of the Treasury but by an appropriation made by law." Of course no subsidy can be granted without an act of law and a treaty of alliance could not involve the country in war without the consent of this House. . . .

6. As Professor Henkin recently observed, Jefferson's conception of the treaty power "would outlaw treaties on matters as to which Congress could legislate domestically" and thus "would virtually wipe out the Treaty Power." *Henkin*, *supra* at 149. But Jefferson's conception, as Professor Quincy Wright stated over half a century ago, was "both erroneous and incomplete." *Wright*, *supra* at 123. It is a conception which, as Professor Henkin has noted, "[e]ven in Jefferson's day . . . was hardly accepted by all; it has now been long dead. Treaties have dealt with many matters that were also subject to legislation. . . . The House of Representatives has frequently bristled, but its exclusion from the treaty process was the clear constitutional plan. . . ." *Henkin*, *supra* at 149. In short, Calhoun has won the day.

7. Among the many legislative powers which can also be exercised by treaty is the particular power which Mr. Berger would deny to the

treaty-makers—the power to dispose of American territory and other property. The matter was clearly put over sixty years ago by Dr. Samuel Crandall in his illuminating comparative study of the treaty power:

> In respect of territory not within the boundaries of a State, the central government exercises, subject to the express prohibitions of the Constitution applicable thereto, all the powers of government enjoyed by both the central and State governments over territory within the limits of a State. Accordingly, the power to cede such territory, if it exists as a power of government, resides in the organs of the central government. That the consent of the inhabitants of the territory to be ceded is essential to give validity to the transfer cannot be maintained. The power to cede outlying territory is no less essential to the full exercise of the treaty-making power of the United States, which "extends to all the proper subjects of negotiation between our government and the governments of other nations," than is the power to acquire. Various treaties have been concluded by which the United States has relinquished extraterritorial rights theretofore enjoyed in other countries.[4]

B.

JUDICIAL RECOGNITION THAT THERE IS A TREATY POWER TO DISPOSE OF AMERICAN TERRITORY WHICH IS INDEPENDENT OF THE CONCURRENT CONGRESSIONAL POWER

1. Dr. Crandall, as Mr. Berger has observed, is "a respected commentator." Text of Berger Statement, at note 42. But the decisive question is whether Dr. Crandall's view of the treaty power—incompatible with Jefferson's, but consonant with that of Marshall, Story, and Calhoun (and Professors Wright and Henkin)—is in accord with the views expressed by the Supreme Court. The answer is in the affirmative.

2. "It is settled," said the unanimous Court in *Jones* v. *Meehan*, 175 U.S. 1, 16 (1899), "that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States." This proposition, validating the power to alienate American territory by treaty, was central to the disposition of *Jones* v. *Meehan*. The principal issue before the Court was whether the Treaty with the Chippewas of 1863 conveyed full title to Chief Moose Dung of "six hundred and forty acres near the mouth of Thief River." The Court's holding was that:

> The title to the strip of land in controversy having been granted by the United States to the elder chief Moose Dung by the treaty itself, and having descended, upon his death, by the laws, customs and usages of the tribe, to his eldest son and successor as chief, Moose Dung the younger, passed by the lease executed by the latter in 1891 to the plaintiffs for the

[4] *S. Crandall, Treaties, Their Making and Enforcement* (2nd ed., 1916) 226—227. For concrete examples, see *id.* at 227—28.

> term of that lease; and their rights under that lease could not be divested by any subsequent action of the lessor, or of Congress, or of the Executive Departments. The construction of treaties is the peculiar province of the judiciary; and except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself.[5]

3. The Court's holding in *Jones* v. *Meehan* is consistent not only with its earlier pronouncement in *Holden* v. *Joy*, 84 U.S. 211, 247 (1872) ("On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands [lands which belonged to the United States] without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political"), but with its classic formulation of the scope of the treaty power in *Geofroy* v. *Riggs:*

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government and that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. *Fort Leavenworth Railroad Co.* v. *Lowe*, 114 U.S. 525, 541. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country.[6]

4. Whether, as the Court said, the Constitution precludes treaty cession of territory within a state without the state's consent, may be debatable, for the Constitution does not in terms so confine the treaty power (or the concurrent legislative power to dispose of federal territory). Nonetheless the dictum is one which conforms at least in spirit to the Constitution's insistence that new states not be created out of the territory of existing states without the consent of the state or states affected. Article I, § 3(1). And considerations of prudence would seem to support such a constraint on the exercise of the treaty power. (See the Court's discussion, in *Fort Leavenworth Railroad Co.* v. *Lowe* [cited in *Geofroy* v. *Riggs*], of the procedures followed in fashioning the Webster-Ashburton Treaty [the Washington Treaty of 1842], settling the long-vexed questions surrounding the United States-Canadian boundary: Justice Field noted that "it was deemed necessary on the part of our government to secure the cooperation and concurrence of

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[5] Mr. Berger discusses *Jones* v. *Meehan* in the light of an opinion rendered by Attorney General Taney before he became Chief Justice; the Taney opinion, dealing with an earlier transaction, was discussed by the Court and rejected as not controlling. See 174 U.S. at 12–18. See also *Percheman* v. *United States*, 32 U.S. (7 Pet.) 511 (1833), in which Marshall held that the Treaty with Spain of 1819 had of its own force confirmed the titles of pre-treaty owners of Florida land ceded to the United States by the Treaty; *Percheman* held that the interpretation of the 1819 Treaty approved in *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253 (1829) (a case relied on by Mr. Berger [Addendum to Statement, Part I]), was in error.

[6] 133 U.S. 258, 267 (1890). *Geofroy* v. *Riggs* is a particularly strong illustration of the capacity of treaties to regulate matters delegated to Congress: That case applied a treaty to rights of inheritance in the District of Columbia, notwithstanding that Article I, § 8(17) confers on Congress the power of "exclusive legislation in all cases whatsoever" relating to the District.

Maine, so far as such settlement might involve a cession of her sovereignty and jurisdiction as well as title to territory claimed by her, and of Massachusetts, so far as it might involve a cession of title to lands held by her").[7] In any event, it is plain that no consent, whether of the inhabitants or of Congress, is necessary where, as in the proposed Panama treaties, the land to be ceded by treaty is not located in a state.[8]

C

THE DISCUSSION IN THE CONSTITUTIONAL CONVENTION CONFIRMS THE SETTLED UNDERSTANDING OF OUR TREATY-MAKERS AND OF THE SUPREME COURT THAT AMERICAN TERRITORY MAY BE CEDED BY TREATY

1. The discussion of the treaty power in the Constitutional Convention plainly discloses the awareness of the framers that treaties might frequently be a mechanism for the cession of territory. Indeed, as Mr. Berger's Addendum shows, this awareness manifested itself more than once in proposals to surround the treaty-making process with special safeguards when it involved the cession of territory.

2. One such proposal would have stipulated "that no Treaty shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the United States may be contracted. . . ." IV *Farrand, The Records of the Federal Convention of 1787* (1937 ed.) 58. This proposal, advanced on September 7, 1787—very late in the Convention's deliberations—"was then debated, but the motion does not appear to have been made."

3. The lapsed motion of September 7 evidently reflected concern at the great power proposed to be lodged in two-thirds of the Senate. But there were counter-concerns—some members of the Convention were troubled at permitting one-third-plus-one of the Senate to block treaty ratification. Thus, on September 8, Rufus King "moved to strike out the 'exception of Treaties of peace' from the general clause requiring two-thirds of the Senate for making Treaties," and James Wilson then urged that "the requisition of two-thirds . . . be truck out altogether." And at this point, "A reconsideration of the whole clause was agreed to." II *Farrand* 547–48.

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[7] 114 U.S. 525 541 (1885). See also the following in *The Writings and Speeches of Daniel Webster* (1903): vol. IX at 78 *et seq.*, vol. XI at 270 *et seq.*, and vol. XII at 21 *et seq.* Set forth below, in Appendix A of this memorandum, is an exchange of letters between Story and Massachusetts Governor Edward Everett which evidences Story's and Marshall's shared recognition of the capacity of a treaty to effectuate a cession of territory. (For having drawn my attention to the Everett-Story exchange, I am particularly indebted to Professor Stefan A. Riesenfeld, currently Counsellor to the Legal Adviser of the Department of State).

[8] With all respect, I submit that the two Supreme Court cases relied on by Mr. Berger to support the asserted exclusivity of legislative (as opposed to treaty) power to dispose of American territory, in no way undercut the doctrines so plainly announced in *Holden* v. *Joy, Jones* v. *Meehan, and Geofroy* v. *Riggs*. (1) The Court's opinion in *Sioux Tribe* v. *United States* 316 U.S. 317 (1942), does refer, at pp. 324 and 326, to the "exclusive" Congressional power to dispose of United States territory, but the question which the Court there answered in the negative was whether the President, acting solely on his own authority, could "convey to the Tribe the same kind of interest in the lands affected *as it had acquired in the lands covered by the Fort Laramie Treaty*. . . ." (Id. at 324 (emphasis added). Thus, *Sioux Tribe* v. *United States* properly held presidential power over federal lands to be subordinate to Congressional power, and did so against an historical background clearly illustrating that treaties are as effective as statutes to transfer title to federal lands. (2) *Wisconsin Central R.R. Co.* v. *Price County*, 133 U.S. 496 (1890), also relied on by Mr. Berger, holds state authority over federal lands to be subordinate to Congressional authority: when one bears in mind that the opinion was published in the same volume of the United States Reports as *Geofroy* v. *Riggs*, and indeed was written by the same Justice (Justice Field), it is quite clear that the Court's insistence on the paramountcy of Congressional power was directed solely at the rival power before the Court—state power—and not at the concurrent treaty power, which is, like Congressional power, part of "the Supreme Law of the Land." Article VI § 2.

4. In the course of the ensuing debate, Roger Sherman stated that he "was agst leaving the rights, established by the Treaty of Peace, to the Senate, & moved to annex a 'proviso [sic] that no such rights shd be ceded without the sanction of the Legislature." According to Madison's notes, "Mr Govr. Morris seconded the idea of Mr. Sherman." Nonetheless, the proposal of September 8, like the proposal of September 7, does not appear to have ever been put to a vote.

5. Mr. Berger, in his Addendum, mentions the September 7 proposal and speculates on the inference to be drawn from the failure of the Convention to pursue the matter:

> Why was the motion not made after debate? Presumably, the matter was postponed for consideration [when Article IV,] Section 3(2) would come up for discussion. During this subsequent discussion of "The Legislature shall have power to dispose of . . . the territory . . .", it is singular that no mention was made of an exception for disposition under the treaty power. II *Farrand* 466. Non-mention is the more remarkable because such an exception would carve out an area of undefined magnitude from the power conferred, a matter which would affront the democratically minded who placed their faith in the House. It seems more reasonable to infer from the history that Article IV, Section 3(2) was designed to set at rest the fears that territory might be ceded without the concurrence of the House.

6. Mr. Berger's inference might be thought to have some modest plausibility if the discussion of Article IV, § 3(2), to which Mr. Berger refers (the discussion summarized at II *Farrand* 466), had in fact been "subsequent" to the discussion of the treaty power. But is was not. The discussion of Article IV § 3(2) referred to by Mr. Berger took place on August 30, a little over a week prior to the debate on the treaty power adverted to above.

CONCLUSION

As noted earlier in this memorandum, the thesis put forward by Mr. Berger is essentially the narrow Jeffersonian conception of the treaty power which would "outlaw treaties on matters as to which Congress could legislate domestically"—a conception which "has now been long dead." *Henkin*, *supra*, at 149. In a sense, then, it seems anomalous to be reexamining this ground in 1978. And the anomaly is only underscored by the fact that, in our own time, the major constitutional debate about the scope of the treaty power has been of a wholly different nature: Can the treaty-makers, through the exercise of their authority to act on all matters of international concern, empower Congress to enact legislation going beyond its specifically enumerated grants of power? Yes, the Supreme Court held, in *Missouri* v. *Holland*.[9]

Is the treaty power then wholly unrestrained, provided it is exercised in an area of international concern? No, the Supreme Court announced, in *Reid* v. *Covert*:[10] the treaty-makers, like all other departments of government, are restrained by those prohibitions—most notably, those

[9] 252 U.S. 416 (1920).
[10] 354 U.S. 1 (1957).

embodied in the Bill of Rights—to which all actions taken under the authority of the United States must conform. In sum, since 1920, when *Missouri* v. *Holland* was decided, the active questions as to the scope of the treaty power have grown out of the perception that the treaty power is, at least in theory, broader than the power of Congress to enact domestic legislation. Those questions are no longer as significant as they once were—in part because of the limitations on the treaty power announced in *Reid* v. *Covert*, and in part because the domestic legislative authority of Congress is now acknowledged to be far broader than was perceived half a century ago. In any event, the proposition that the treaty power is infinitely narrower than the Congressional power—the clear implication of the Jeffersonian conception which Mr. Berger has now revived—is a constitutional anachronism.[11]

If the proposed treaties with Panama are approved by a two-thirds vote of the Senate, and duly ratified, they will, in my judgment, of their own force effectuate the cession to Panama of American title to the land and installations of the Canal Zone.

LOUIS H. POLLAK.[12]

January 19, 1978.

APPENDIX A

EXCHANGE OF LETTERS BETWEEN GOVERNOR EDWARD EVERETT AND MR. JUSTICE JOSEPH STORY, TAKEN FROM II, "W. W. STORY, LIFE AND LETTERS OF JOSEPH STORY" [1851], PP. 286–89;

To Hon. JOSEPH STORY.

BOSTON, *April 14, 1838.*

MY DEAR SIR: The legislature has adopted some resolves relative to the Northeastern Boundary of the United States, which have been presented to me for my official signature. One of them is in the following terms:

"*Resolved*, That no power delegated by the Constitution to the government of the United States authorizes them to cede to a foreign nation any territory lying within the limits of either of the States in the Union."

I beg leave to ask your opinion, (to be given confidentially or otherwise as you may deem proper,) whether you consider the principle asserted in this resolve, as a well-settled doctrine of Constitutional Law. I have carefully read what is said of the treaty-making power in your Commentaries, Volume iii. p. 354, et seq. At the close of § 1502, you name certain restrictions on the treaty-making power, which must be assumed; but that of ceding a part of a State is not one of them. You add, however, the remark, "Whether there are any other restrictions

[11] Mr. Berger's concerns about the aggrandizement of executive authority—concerns rooted in the traumas of Vietnam and Watergate—do not advance analysis of the scope of the treaty power. Treaties are made by the President, but subject to the consent of two-thirds of the Senate—hardly a recipe for unrestrained Presidential power. Arguably, such concerns are pertinent when a President proposes to take major international initiatives on his own account by executive agreement with a foreign power. *Cf.* 39 Op. Atty. Gen. 484 (1941). They are not pertinent—indeed, they may properly be termed impertinent—when a President, acting in meticulous conformity with the procedures specified in the Constitution, has asked the Senate to fulfill the partnership role in the making of treaties which the Constitution expressly contemplates.

[12] Dean of the University of Pennsylvania Law School; Albert M. Greenfield University Professor of Human Relations, History and Law.

necessarily growing out of the structure of the government will remain to be considered whenever the exigency shall arise."

The restriction in question (if it exist) must be one of this character, and I should prefer to follow your wise counsel, and let it remain to be considered, when the exigency arises. The present controversy does not appear to me to create such an exigency, for it is a question not of ceding an admitted portion of the territory of Maine, but of ascertaining the boundary between the British territory and ours. The resolve of the legislature, however, raises the abstract question, and I wish your advice, whether I can safely affirm it.

I am, dear Sir, with the highest respect, And Sincere attachment,

Faithfully yours,

EDWARD EVERETT.

I would observe, that it is my present inclination, if I do not sign the Resolves, to let them pass *sub silentio*, as they are only expressions of the opinions of the legislature.

CAMBRIDGE, *April 17, 1838.*

To His Excellency EDWARD EVERETT.

MY DEAR SIR: In reply to your favor of the 14th inst. which I received by yesterday's mail, I beg to say, that I consider the Resolve referred to as very objectionable as a matter of Constitutional Law. I cannot admit it to be universally true, that the Constitution of the United States does not authorize the government of the United States "to cede to a foreign nation any territory within the limits of the States of the Union." If the proposition is true, then in case of a war, it would be incompetent for the government by a treaty to cede any territory conquered during the war, and which might be indispensable to purchase peace. So a cession could not be made, even with the assent of the State within which the territory was situated; for neither the State nor the United States could alone cede it, and then both could not. Yet the cession might be of a nature calculated for the safety of both nations, and might be an equivalent for a like cession on the other side.

I remember to have had some conversation with Mr. Chief Justice Marshall, some years ago, when the subject was under discussion, with reference to the contested boundary in Maine. He was unequivocally of opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases; yet he did not doubt it must be construed to extend to some.

It appears to me that our legislature have very unnecessarily, and (as I think also) against our true public policy with reference to the contested boundary of Maine, stated this proposition. It may embarrass the government in its negotiations; and it is wholly gratuitous—since, in a case of contested boundary, there is no pretence to say that an ascertainment of the true boundary involves the question of cession.

I always look with alarm and regret upon all attempts of our legislatures to settle constitutional questions in the heat of controversy, and under the impulses of party. Nor do I think that Massachusetts ought to commit herself upon any doctrine of this sort, at this time. I doubt its soundness; but I do not at all doubt its inexpediency. The time

may arrive when our very existence and salvation as a nation, may depend upon the exercise of this very power. If the national government does not possess it, it is to all intents and purposes an extinguished right of sovereignty, for the States do not possess or retain it.

I see no objection to your leaving the resolve to its constitutional operation, *sub silentio*, if you think it best not to return it to the legislature with objections. I think the doubt of a constitutional point furnishes of itself a sufficient ground for rejecting a resolve embodying a positive declaration of it, unless there be an absolute necessity for some declaration on the subject.

What I have written I must ask you to consider as confidential, though I do not mean by this to say that I should object to its being seen by any of our confidential friends, such as Mr. Webster, if you should wish to consult him.

Believe me, with the highest respect,

Truly yours,

JOSEPH STORY.

MEMORANDUM

Re Panama Canal Treaty: Dean Louis Pollak's Reply.

To: Senator Dick Clark.

From: Raoul Berger.

FEBRUARY 1978.

Dean Louis Pollak has favored me with a copy of his critique of my statement before the Subcommittee on the Separation of Powers addressed to you under date of January 19, 1978. I am honored by his expressions of esteem, and his sentiments are warmly reciprocated. High regard for his attainments, however, may not inhibit the expression of scholarly differences on a great constitutional issue; it requires careful study of the alleged infirmities that have persuaded him that I am in error.

At the outset I must disclaim the version of the issue that he attributes to me, namely that the Panama cession "cannot be effectuated by treaty, but only by statute." My objection is to a "self-executing" treaty because Article IV of the Constitution requires Congress' consent to the disposition.

The starting point of analysis must be the Constitution itself, not what others have said about it. A great British scholar, W. S. McKechnie, faced by contrary opinion of respected scholars, stated, "the truth of historical questions does not depend on the counting of votes or the weight of authority" but rather on the historical record.[1] So too, in the construction of the Constitution, the document is always here to speak for itself. On this score I cannot improve upon John C. Calhoun, then a Congressman, whose remarks in the House respecting the treaty power are quoted *in extenso* by Dean Pollak, stating that Calhoun explained "with more precision than either [Marshal or Story] achieved, the scope of the treaty power and the constraints which other parts of the Constitution impose upon its exercise." Said Calhoun: "Whatever limits are imposed in those general terms ought to be the results of the construction of the instrument." The treaty

[1] W. S. McKechnie, Magna Carta 135 (1905).

power, Calhoun continued, is competent "to regulate all subjects" that require "the consent of another nation,"

> provided, and here are its true limits, such regulations are not inconsistent with the Constitution. If so they are void. No treaty can . . . *do that differently which is directed to be done in a particular given mode.* (Emphasis added.)

Quoted Pollak 7–8. In terms of the present issue, a treaty may not "dispose" of the Panama Canal without the consent of Congress because Article IV confers that power on Congress.

Here Calhoun applies a rule of construction—the specific governs the general—upon which the administration has refrained from comment, and which remains unmentioned by Dean Pollak: "A broad statutory provision will not apply to a matter specifically dealt with in another part of the same act." [2] Then there is the complementary rule—express mention implies exclusion of the unmentioned—or as held by the Supreme Court, "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." [3] Although the exclusion of the treaty power was not before the Court, it tacitly ratified the application of the foregoing rules when it stated that Article IV "*implies an exclusion* of all other authority over the property which could interfere with this right . . . ." [4] From the beginning such rules of construction were respected; Justice Story recommended the "excellent summary of the rules for construing statutes" in Bacon's Abridgment.[5] If there is any doubt as to the legislative intent—Deputy Assistant Attorney General Ralph E. Erickson testified in 1971 (before Panama became a political issue) that the issue "is not altogether free from doubt" [6]—such rules serve as a guide to construction. Such "doubt" counsels against invasion of a power explicitly conferred on Congress; a clear case for the "concurrent power" is needed in the teeth of the express grant.

The treaty power is given to the President "with the advice and consent of the Senate." Without question the House is thereby excluded from participation in treaty making. By parity of reasoning, the "Congress shall have power to dispose" equally bars its exercise by the President and Senate. It is no adequate answer to say, as does Dean Pollak, that the "Congress shall have power" phrase "syntatically, does not preclude concurrent jurisdiction in the President and Senate as treaty makers," (Pollak 4), for grammatical syntax must yield to established canons of construction which show that Article IV "implies an exclusion of all other authority." One who disputes the results to which traditional canons lead has the burden of proof to show they are inapplicable.

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[2] *Le Page* v. *United States*, 146 F. 2d 536, 538 (8th Cir. 1945); see also *Ginsberg & Son* v. *Popkin*, 285 U.S. 204, 208 (1932); *Swiss Natl. Ins. Co.* v. *Miller*, 289 Fed. 570, 574 (D.C. Cir. 1923).

[3] *Botany Worsted Mills* v. *United States*, 278 U.S. 282, 289 (1929) (emphasis added). *T.I.M.E.* v. *United States*, 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carriers Act when the very sections which established that right in Part I [for railroads] were wholly omitted in the Motor Carrier Act."

[4] *Wisconsin Cent. R.R. Co.* v. *Price County*, 133 U.S. 496, 504 (1890) (emphasis added); *Sioux Tribe of Indians* v. *United States*, 316 U.S. 317, 326 (1942); *Swiss Natl. Ins. Co.* v. *Miller*, 289 Fed. 571, 574 (D.C. Cir. 1923).

[5] 1 J. Story, Commentaries on the Constitution of the United States 305 n.2 (5th ed. 1905).

[6] Hearings before the House Subcommittee on the Panama Canal on "Treaties Affecting the Operation of the Panama Canal (92d Cong. 2d Sess.) p. 95 (December 2, 1971).

Dean Pollak leads off with an appeal to John Marshall's remarks as a young Congressman on the Jay Treaty. In considering these and other treaty remarks, it is constantly necessary to distinguish between the treaty making process and any subsequent exercise of power by the House. That distinction was clearly drawn by Marshall. Washington had submitted the treaty for ratification to the Senate along with some instructions to the Minister who had negotiated it; but he refused them to the House on the ground that it had no right to participate in treaty making.[7] Among the objections by the House, to quote Albert Beveridge's "Life of John Marshall," invoked by Dean Pollak, were that though the "treaty regulated commerce . . . the House had not been consulted," that though "the raising and expending of public money must originate in the House," it had been ignored. The question raised, said Beveridge, was "whether a commercial treaty, or an international compact requiring an appropriation of money . . . could be made without the concurrence of the House as well as the Senate." To this Marshall replied that it was " 'more in the spirit of the Constitution' for the National House to refuse support after ratification than to have a treaty 'stifled in embryo' by the House passing on it before ratification." [8] Exclusion of the House from treaty making did not mean for Marshall that the House would be denied its function after ratification. Dean Pollak reads this as a "tactical concession" that was "not at odds with Marshall's constitutional definition of the potential scope of the treaty power." (Pollak 3n). If this was merely a "tactical concession" then his entire statement was a political "tactic", for Marshall gave no clue as to when he spoke as politician and when as constitutional sage.

Attorney General Griffin B. Bell conceded in his statement before the Senate Foreign Relations Committee, September 29, 1977, pp. 4–5, that the Senate and President may not "bypass the power of Congress and in particular the House of Representatives" in the "raising of revenue or expenditure of funds." What distinguishes "all bills . . . shall originate in the House" from "The Congress shall have power to dispose?" The thinness of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes." [9] Nothing in the Article I, § 8(1) "The Congress shall have power to lay and collect taxes" distinguishes it from the Article IV "The Congress shall have power to dispose."

JUDICIAL DECISIONS

Boundary Dispute Cases

The "boundary dispute" case invoked by the administration are tacitly abandoned by Dean Pollak, presumably because, as he quotes Justice Story,

> in the case of a contested boundary, there is no pretence to say that an ascertainment of the true boundary involves the question of cession. (Pollak, Appendix A, p. 3).

This was the ground upon which I dismissed those cases.

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[7] *Berger, Executive Privilege* v. *Congressional Inquiry*, 12 U.C.L.A. L. Rev. 1044, 1085–86 (1965).

[8] 2 A. Beveridge, Life of John Marshall 133–135 (1916).

[9] Hearings on the Panama Canal Treaty before the Senate Committee on Separation of Powers (95th Cong. 1st Sess.) Part II, p. 25 (July 9, 1977).

But Dean Pollak's reference to Story was for the purpose of showing his awareness "that the treaty power includes authority to cede American Territory. . . ." Governor Edward Everett of Massachusetts had written Story with respect to the Northeastern boundary, that in his words presented "a question not of ceding an admitted portion of Maine, but of ascertaining the boundary between the British territory and ours." (Pollak, Appendix, p. 1) As we have seen, Story concurred in this view. Everett sought Story's advice regarding a resolution by the Massachusetts legislature "That no power delegated by the Constitution *to the government* of the United States authorizes them to cede to any foreign nation any territory lying within the limits of either of the States of the Union." Id., (emphasis added). Of course, Story rejected this drastic restriction, and added that Marshall "was unequivocally of opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases . . ." Id. 3. Presumably what Marshall had in mind were the boundary disputes that called for settlement in his time. I would not deny that the President and Senate may enter into a treaty for the cession of territory; what is disputed is whether such a treaty may be "self-executing," without the subsequent consent of Congress under Article IV. Nor can Story's letter be read to repudiate the statement in his commentaries that "The power of Congress over the public territory is clearly exclusive and universal." [10]

Indian Treaty Cases

(1) Dean Pollak follows the administration view of *Jones* v. *Meehan*, 175 U.S. 1, 10 (1899), quoting "that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress." (Pollak 10). But there the grant was made by the tribe, not the United States. The treaty had "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres" for an individual Indian, and the issue was what kind of title did he take. The Court, as I showed, quoted from an opinion of Attorney General Roger Taney:

> these reservations are *excepted* out of the grant made by the treaty, and *did not therefore pass with it;* consequently the title remains as it was before the treaty, that is to say, lands reserved are still held under the original Indian title.

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of complete title in fee simple." [11] Dean Pollak states that "the Taney opinion . . . was discussed by the Court and rejected as not controlling." (Pollak 11n.). Only a not relevant portion of the opinion was held not controlling, the Taney clause immediately following the above quotation: "and therefor 'the Indian occupants *cannot convey them to individuals*, and no valid cession can be made of their interest but to the United States.'" (emphasis added).

Within a year of Taney's opinion, said the Court, Congress in a new Act "omitted the prohibition, contained in former statutes, of purchase or lease from 'any Indian'" and adopted an "altered form."

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[10] Supra n. 5, 2 Story at p. 200.
[11] *Jones* v. *Meehan*, 175 U.S. 1, 12, 21 (emphasis added).

Hence the Court concluded that "Congress did not intend that there should thenceforth be a general restriction upon the *alienation* by individual Indians of sections of land *reserved to them* respectively by a treaty with the United States. 175 U.S. at 12–13 (emphasis added.) In short, only that portion of Taney's opinion that denied to individual Indians the right to alienate their property was deemed "not controlling," because superseded by an Act of Congress; the power of Indian tribes to "reserve" portions of ceded property to individual Indians was left untouched.

It is not necessary to go into the Court's discussion of the nature of the reserved title, e.g. was it legal or equitable, arising from the fact that Indian lands were held in common; there were no individual titles. Suffice it to set out the Court's quotation from *Doe* v. *Wilson*, 25 How. 457, 463–464 (1859):

> The Pottawatomie nation was the owner of the possessory right of the country ceded, and all the subjects of the nation were joint owners of it. The reserves took by the treaty, directly from the nation, the Indian title. 175 U.S. at 15.

The continued validity of Taney's statement that title "reserved" to individual Indians does not pass to the United States may be gathered from *Francis* v. *Francis*, 203 U.S. 233, 238 (1906), which cites *Jones* v. *Meehan* for the proposition that when a treaty makes "a reservation of a specified number of sections of land . . . the treaty itself converts the reserved land into individual property."

(2) Apparently Dean Pollak concurs with my reading of *Percheman* v. *United States*, 32 U.S. (7 Pet. O 51 (1833)). *Percheman* was cited by Attorney General Bell to show that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory." [12] Those were property rights of individuals, not of the United States, and therefore irrelevant to Article IV. The treaty secured to private individuals grants that theretofore had been made to them by the Spanish King, being akin to "reserves" of the Indian treaties. Dean Pollak agrees that "Marshall held that the Treaty of Spain of 1819 had of its own force confirmed the titles of *pre-treaty owners* of Florida land ceded to the United States by the treaty." (Pollak 12n.; emphasis added).

But Dean Pollak states that "*Percheman* held that the interpretation of the 1819 treaty approved in *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253 (1829) (a case relied on by Mr. Berger . . .) was in error." Id. I cited *Foster* for the statement that "the ratification and confirmation which are promised must be by the act of the Legislature," i.e. Congress. *Percheman* held that no ratification was required because the Court discovered that the Spanish counterpart version of the treaty dispensed with all ratification, a fact not known to the *Foster* Court. 32 U.S. at 89. This does not repudiate the *Foster* holding that if ratification is required, it falls to Congress.

(3) There is no need to belabor Dean Pollak's mention of *Holden* v. *Joy*, 84 U.S. 211, 247 (1872), for Attorney General Bell granted that at best it was a "strong dictum," noting that "The Court conceded that

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[12] Statement before the Senate Foreign Relations Committee, September 29, 1977, p. 10.

the question was immaterial in the case because Congress had actually implemented and ratified that particular treaty." [13] Although Dean Pollak relies on dicta running in his favor, he rejects as dicta judicial statements that the Congressional power to dispose" is "exclusive." (Pollak 14). In fact the latter are not dicta, but were essential to decision as I shall prove by Dean Pollak. He recognizes that *Sioux Tribe* v. *United States*, 316 U.S. 317 (1942), "properly held presidential power over federal lands to be subordinate to the Congressional power," consequently the Court's reference to Congress "exclusive" power was immediately relevant to decision, not dictum. So too, *Wisconsin Central R.R. Co.* v. *Price*, 133 U.S. 496, 504 (1890), which stated that Article IV "implies an exclusion of all other authority over the property . . ." held, according to Dean Pollak, "state authority over federal lands to be subordinate to Congressional authority," again relevant to decision. Such holdings were earlier expressed by Justice Story as a general principle: "The power of Congress over the public territory is clearly exclusive and universal. . . ." [14] True, that principle has yet to be applied to the treaty power (as is equally true of Dean Pollak's citations), but it derives not from dicta but from statements essential to decision, whereas *Holden* v. *Joy* concededly is pure dictum. For this reason, I consider the cases I cite as more worthy of credence than the dictum of *Holden* v. *Joy*.

(4) Repeatedly Dean Pollak dwells on the "classic exposition," the "classic formulation of the [treaty] power in *Geofroy* v. *Riggs*, 133 U.S. 258, 267 (1890)." (Pollak 4n., 12). That case had not the slightest bearing on the effect of Article IV for it had nothing to do with either the disposition or regulation of government property. Under a treaty providing for reciprocal rights of inheritance by citizens of the respective countries, it was held that a Frenchman could take land by descent in the District of Columbia. In Dean Pollak's view, "*Geofroy* v. *Riggs* is a particular illustration of the capacity of treaties to regulate matters delegated to Congress: That case applied to rights of inheritance in the District of Columbia, notwithstanding that Article I, § 8(17) confers the power of 'exclusive legislation in all cases whatsoever' relating to the District." (Pollak 12n.). That still does not stretch to "regulation" by treaty of United States property and therefore in nowise diminishes Congress' power to dispose of it. Moreover, the treaty of 1853 conferred the right only in States "whose existing laws permit it" (the Court held the District a State for purposes of the treaty), and though the Act of March 7, 1887, forbade ownership of land in the District to aliens, it excepted the disposition of lands "secured by existing treaties" to them,[15] which the Court held included realty "acquired by inheritance." 133 U.S. at 272. Thus the treaty did not pretend to override local law to the contrary, and Congress had consented to application of the treaty to inheritance by Frenchmen.

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[13] Id. 9.

[14] Supra n. 5 at 200.

[15] 133 U.S. at 267–271. The 1887 Act prohibited alien ownership of land in the District of Columbia *"Provided*, That the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries." 24 Stat. 476. Like Dean Pollak, I had mistakenly assumed that "local law withheld the right." My statement before the Senate Subcommittee on the Separation of Powers, November 13, 1977, p. 8.

(5) Finally, Dean Pollak summons *Missouri* v. *Holland*, 252 U.S. 416 (1920), for the proposition that the treaty makers can "empower Congress to enact legislation going beyond its specifically enumerated grants of power." (Pollak 18). That, with all due respect, is a startling proposition. For the Founders, in the words of George Nicholas in the Virginia Ratification Convention, held that no treaty can be "inconsistent with the delegated powers," [16] let alone confer additional, undelegated powers. Lee assured that Convention that "When a question arises with respect to the legality of any power, exercised or assumed by Congress [the question will be] . . . is it enumerated in the Constitution? . . . It is otherwise arbitrary and unconstitutional." [17] The reservation of undelegated powers to the people by the Tenth Amendment was not made subject to treaty; additional power requires a grant from the people by amendment. Madison, chief architect of the Constitution, said, "Had the power of making treaties, for example, been omitted, however necessary it might have been, the defect could only have been lamented, or supplied by an amendment to the Constitution." [18]

For present purposes it suffices that *Missouri* v. *Holland* had nothing to do with the disposition or regulation of United States property. It arose out of a State challenge to a treaty with Great Britain for the protection of migratory birds which annually traversed parts of United States and Canada. Justice Holmes stated that "The whole question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment." Since, he held, "Wild birds are not in the possession of any one; and possession is the beginning of ownership," [19] the State could assert no property interest, and by the same reasoning, neither could the United States. *Missouri* v. *Holland* is therefore wholly irrelevant to the power by treaty to dispose of property of the United States.

THE LEGISLATIVE HISTORY

Here I ruefully confess error in one particular, though it does not vitiate my basic analysis. Dean Pollak correctly charges me with an erroneous inference drawn from the Morris-Sherman remarks, which were not in fact "subsequent" to the discussion of the treaty power." (Pollak 16–17). I myself had caught the error and confessed it before the House Committee on Merchant Marine on January 18, 1978, a copy of which statement is attached hereto. As I there explained (p. 11):

> When [the Attorney General's statement before the Foreign Relations Committee] reached me late of a Saturday afternoon, as appears in my own Senate statement, I had only about two days to prepare my comments before having them typed and forwarded to the Senate Committee. Pressure of time conduces to oversights, and I was mistaken respecting a time sequence and in following the Attorney General's erroneous identification of a motion made by Williamson and

[16] 3 J. Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution 507 (2d ed. 1836).
[17] Id. 186. For additional citations, see *R. Berger, Congress* v. *The Supreme Court* 13–15 (1969).
[18] 2 Annals of Congress 1900–1901 (February 2, 1791).
[19] 252 U.S. at 433–434.

> Spaight with one he attributed to Sherman and Morris. Leisure for reflection and further research has since enabled me to correct such inaccuracies and to sharpen my analysis.

Such oversights are regrettable, even though induced by undue pressure of time and accentuated by lack of secretarial service and a corps of research assistance such as the administration can devote to the task.

The Attorney General was guilty of a similar oversight in emphasizing a remark on the treaty power by George Mason during a debate on whether the Senate could share in originating revenue bills.[20] For Mason spoke *before* the Article IV progenitor had been proposed and referred to the Committee on Detail, and of course before the resultant "disposition" provision was debated. 2 M. Farrand, Records of the Federal Convention of 1787, 297, 321, 324, 466 (1911). Manifestly Mason's earlier remark hardly expressed the view that the treaty power overrode the as yet unborn "power to dispose."

There is no need to repeat the fresh analysis based on more thorough research that is set forth at pages 12–17 of my attached statement before the House Committee on Merchant Marine. Throughout, all that was under discussion was the performance of the Senate's own "advice and consent" function, whether it should turn on more or less than a two-thirds vote, without a hint of desire to curtail the House function under Article IV. It was one thing to insist that the Senate, in the performance of its own function, must act by a two thirds vote, and something else again to court the wrath of those who placed their faith in the more democratic House and were already displeased by the exclusion of the House from treaty making, by further reducing its role under Article IV. There is not, I repeat, the slightest hint in the history of an intention to do so. More is required to deprive the Article IV language of its clear meaning.

It remains to comment on Dean Pollak's rejection of my reminder that what the President seeks today with the "advice and consent" of the Senate he may next time seek to accomplish singlehandedly by executive agreement. (Pollak 19n.) Doubtless you are familiar with the rapid proliferation of executive agreements in recent years, a label pasted on a treaty to avoid the necessity of submission to the Senate.[21] When Senator J. William Fulbright was chairman of the Foreign Relations Committee, he complained that the State Department submitted treaties for "the most trivial matters" but declined to submit them for agreements respecting Spanish bases and the like. As he ironically told Secretary of State Rogers, "something as important as stationing troops and the payment of millions of dollars is proper for an executive agreement." [22]

Dean Pollak dismisses my concerns "about the aggrandizement of executive authority" as

> not pertinent—indeed, they may properly be termed impertinent—when a President, acting in meticulous conformity with

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[20] Supra n. 12 at 6.

[21] Professor Philip Kurland asked, "Should the Constitution really be read to mean that by calling an agreement an executive agreement rather than a treaty, the obligation to secure Senate approval is dissolved." Kurland, The Impotence of Reticence, 1968 Duke L. J. 619,626.

[22] These and other citations are set out in R. Berger, Executive Privilege: A Constitutional Myth 142 (1974). A detailed discussion of executive agreements will be found at pp 140–162.

> the procedure specified in the Constitution, has asked the Senate to fulfill the partnership role in the making of treaties which the President expressly contemplates. (Pollak 19n)

Since fulfillment of that "partnership role" (for which I broke more than one lance) was many times frustrated by attaching the "executive agreement" label to treaties, I may be pardoned for being skeptical about the rake's reform. Permit me to close with the words of Alexander Hamilton, the great proponent of expansive presidential power:

> An agent cannot new model his own commission. A treaty cannot transfer the legislative power to the executive department.[23]

RAOUL BERGER.

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[23] "Letters of Camillus," 6 A. Hamilton, Works 166 (Lodge ed. 1904).

APPENDIX III

Statement by Raoul Berger Before the Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries of the House of Representatives

Hearings on the Panama Canal Treaties, Washington, D.C., January 18, 1978

You have invited me to comment on the relation between the Article IV, § 3(2) power of Congress to dispose of property of the United States and the treaty power. Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress be diminished. I have long held the conviction that all agents of the United States, be they Justices, Members of Congress, or the President, must respect those boundaries. No agent of the people may overleap the bounds of delegated power, or encroach on power granted to another. That is the essence of constitutional government and of our democratic system.

The effect of these hearings ranges beyond the Panama Treaty, for the Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for "concurrent jurisdiction" of the President in the disposition of United States property. For it needs constantly to be remembered that a succession of Presidents have circumvented Senate participation in treaties of gravest import by resort to Executive Agreements. Acquiescence in such claims spells progressive attrition of Congressional powers. Your insistence on respect for constitutional boundaries will warn the Executive against encroachments on the powers of Congress; it will alert foreign nations to the fact that treaties for the cession of United States property must be subject to the consent of the House as well as the Senate.

The President, "by and with the advice and consent of the Senate", may make treaties. But Article IV, § 3(2) provides that "the Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." How are the two provisions to be accommodated? For present purposes the question whether the United States has "sovereignty" over the Panama Canal need not detain us because, in my judgment, the grant of "use and occupation . . . in perpetuity" constitutes "property" no less than the familiar lease of realty for 99 years. Then there are the installations that cost billions of dollars. Disposition of these no less requires the consent of Congress than does that of territory. In 1942, the President, by Executive Agreement, promised to return certain installations to Panama subject, however,

to Congressional approval.[1] A similar provision is to be found in the Treaty of 1955.[2] These executive constructions are confirmed by established canons of interpretation.

> First, there is the settled rule that where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, *standing alone*, would be broad enough to include the subject to which the more particular provision relates.[3]

In other words, "a broad statutory provision will not apply to a matter specifically dealt with in another part of the same act." [4] Restated in terms of the present issue, the specific power of disposition, in which the House of Representatives must concur, governs the general provision authorizing the President and the Senate to make treaties.

Second, there is the canon that express mention signifies implied exclusion, which the Supreme Court has employed again and again: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." [5] The grant of the disposition power to Congress, in other words, excludes its exercise by Senate and President. The rule was invoked by the Founders; for example, Egbert Benson said in the First Congress, in which sat many Framers and Ratifiers, that "it cannot be rationally intended that all offices should be held during good behavior, because the Constitution has declared [only] one office to be held by this tenure." [6] Under these rules it is of no moment that Article IV contains no express exclusion of "concurrent jurisdiction" under the treaty power. Having given Congress the power to dispose of public property, it follows that the President and Senate were impliedly excluded therefrom. Although this particular exclusion was not before the Court, it tacitly ratified the application of the foregoing rules of construction when it stated that Article IV "*implies an exclusion of all other authority* over the property which could interfere with this right . . ." [7]

Attorney-General Griffin B. Bell conceded in his statement before the Senate Foreign Relations Committee, September 25, 1977 (hereafter cited as A.G.), that

> the specific powers granted to the House of Representatives and Congress in fiscal matters (Article I, section 7, clause 1 and Article I, section 9, clause 7, money bills and appropria-

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[1] Agreement of May 18, 1942, 59 Stat. (Pt. 2) 1289: "When the authority of Congress . . . shall have been obtained therefore. . . ."

[2] Agreement of January 25, 1955, 6 U.S.T. 2273, 2278.

[3] *Swiss Nat. Ins. Co.* v. *Miller*, 289 Fed. 570, 574 (App. D.C. 1923) emphasis added; *Ginsberg & Son* v. *Popkin*, 285 U.S. 204, 208 (1932). We should "prefer a construction which leaves to each element of the statute a function in some way different from the others" to one which causes one section to overlap with another. *United States* v. *Dinerstein*, 362 F. 2d 852, 855–856 (2d Cir. 1966).

[4] *Le Page* v. *United States*, 146 F.2d 536, 538 (8th Cir. 1945).

[5] *Botany Worsted Mills* v. *United States*, 278 U.S. 282, 289 (1929); *T.I.M.E.* v. *United States* 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carrier Act when the very sections which established that right in Part I [for railroads] were wholly omitted in the Motor Carrier Act."

[6] 1 Annals of Cong. 505 (2d ed. 1836; print bearing running head "History of Congress"); see also Alexander White, id. 517. So too, John Dickinson stated in the Constitutional Convention that "the terms 'ex post facto' related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases. . . ." 2 Farrand 448–449.

[7] *Wisconsin Cent. R.R. Co.* v. *Price County*, 133 U.S. 496, 504 (1890) emphasis added; *Sioux Tribe of Indians* v. *United States*, 316 U.S. 317, 326 (1942); see also *Swiss Nat. Ins. Co.* v. *Miles*, 289 Fed. 571, 574 (App. D.C. 1923).

> tions power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the purse strings.

A.G. 4–5. Now sections 9 and 7 are couched in quite dissimilar terms. Section 9(7) is framed in terms of flat prohibition: "No money shall be withdrawn from the Treasury but in consequence of appropriations made by law. . . ." Section 7(1), however, merely provides that "All bills for raising revenue shall originate in the House." Yet the Attorney General reads § 7 to preclude the President and Senate from "bypass[ing] the power of Congress and in particular of the House of Representatives over the purse strings." What is there that distinguishes "All bills . . . shall originate in the House" from "The Congress shall have power to dispose . . ."? The impalpability of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes." [8] Nothing in the Article I, § 8(1) "The Congress shall have power to lay and collect taxes" distinguishes it from the Article IV "The Congress shall have power to dispose."

If the President may not by treaty "bypass" the power of the House to originate revenue-raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the property of the United States.

In their testimony before the Congress, Herbert J. Hansell, Legal Advisor, Department of State,[9] and Ralph E. Erickson, Deputy Assistant Attorney General,[10] cited a string of cases in support of "The power to dispose of public land . . . by treaty." [11] For the most part they fall under boundary treaties or treaties with Indian tribes which, as will appear, turn on circumstances peculiar to themselves. Preliminarily consider Hansell's citation of *Missouri* v. *Holand*, 252 U.S. 416 (1920). It arose out of a State challenge to the treaty with Great Britain for the protection of migratory birds which annually traversed parts of the United States and Canada. Justice Holmes, addressing the argument that the treaty infringed powers reserved to the States by the Tenth Amendment, stated:

> Wild birds are not in the possession of any one, and possession is the beginning of ownership. The whole foundation of the States' rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State, and in a week a thousand miles away.[12]

Consequently, the State could assert no "title" in migratory birds. By the same token, the United States also could not lay claim to "ownership" of the birds, the *Missouri* v. *Holland* is therefore wholly irrelevant to the power by treaty to dispose of property belonging to the United States.

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[8] Hearings on the Panama Canal Treaty before the Senate Committee on Separation of Powers (95th Cong., 1st Sess.), Part II, p. 25 (July 29, 1977), hereafter cited as Hansell.
[9] Supra, note 8.
[10] Hearings before the House Subcommittee on the Panama Canal on "Treaties Affecting the Operations of the Panama Canal," (92nd Cong., 2d Sess.) p. 95 (December 2, 1971) hereafter cited as Erickson.
[11] Hansell 5; Erickson 97.
[12] 252 U.S. at 434.

The Indian treaty cases constitute one of the pillars of the argument for "concurrent power"; and Attorney General Griffin B. Bell referred to them as

> a substantial body of Supreme Court decisions dealing with Indian tribes which holds that a treaty may dispose of property belonging to the United States without implementing legislation under Article IV, section 3, clause 2.[13]

To begin with *Jones* v. *Meehan*, 175 U.S. 1 (1889), both Hansell and Erickson quote, "It is well settled that a god title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States."[14] This was because the treaty merely *reserved* certain individual tracts from the cession to the United States. It "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres" for an individual Indian, and the issue was what kind of title did he take. The Court quoted from an opinion of Attorney General Taney, destined before long to succeed Chief Justice Marshall:

> these reservations are *expected* out of the grant made by the treaty, and *did not therefore pass with it;* consequently the *title remains as it was* before the treaty; that is to say, the lands reserved are still held under the original Indian Title.[15]

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of complete title in fee simply."[16] That explanation presumably responded to the fact that tribal lands were generally held in common; individual titles were all but unknown, so that such title had to be secured to an individual through the machinery of the treaty. But that is far from a disposition of government land because, as Taney explained, the "reserved" title remained in the Indians. Many, if not most, of the Indian treaty cases involve just such "reserve" provisions.

We might dismiss *Holden* v. *Joy*, 84 U.S. 211 (1872) because, as Attorney General Bell noted, "The Court conceded that the question was immaterial in the case at bar because Congress had actually implemented and ratified that particular treaty." A.G. 9. Nevertheless, the Court, in what it terms a "strong dictum", stated that "there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an Act of Congress conferring it. . . ."[17] I was at pains to study each of the cases cited by the Court for this assertion, and abstracted them in an appendix attached to my statement before the Senate Subcommittee on Separation of Powers. There you may see for yourself that half of the cases thus cited are entirely irrelevant, and that the rest concern "reserves" under which, as Taney observed, no title had passed to the United States but remained in the given Indian. In considering

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[13] A.G. 9.
[14] Hansell 6; Erickson 97.
[15] 175 U.S. at 12, emphasis added.
[16] Id. 21.
[17] Quoted A.G. 9; 84 U.S. at 247.

such dicta, it is well to bear in mind Chief Justice Taney's statement that the Court's

> opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should thereafter depend altogether on the force of the reasoning by which it is supported.[18]

As to other treaties, Hansell tells us, "the precedents supporting the power to dispose of property by treaty alone can be found in the boundary treaties with neighboring powers, especially in the treaties between the United States and Great Britain in 1842 and 1846 for the location of our northeast and northwest boundaries. . . ." [19] Settlements of boundary disputes are not really cessions of United States property. The Oregon boundary dispute proceeded from an extravagant claim: "Fifty-Four Forty or Fight"; the British, on the other hand, claimed land down to the forty-second parallel. Only when the dispute was settled by negotiation at 49 degrees could either party confidently assert that it had title. As a respected commentator, Samuel Crandall, observed, "a treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition." [20]

Among other examples of alleged treaty transfers of property, Hansell instances the return to Japan of the Ryukyu Islands.[21] By Article III of the 1951 Treaty of Peace with Japan, the United States received the right to exercise "all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of those islands . . ." While Japan renounced in Article II "all right, title and claim" to various territories, it made no similar renunciation with respect to the Ryukyus.[22] Quoting the Legal Advisor of the State Department, that "sovereignty over the Ryukyu Islands . . . remains in Japan," a District Court stated that sovereignty over a territory may be transferred by an agreement of cession," but it concluded that there had been no cession.[23] The Fourth Circuit Court of Appeals quoted a statement by Ambassador John Foster Dulles, a delegate to the Japanese Peace Conference, that the aim was "to permit Japan to retain residual sovereignty," and it held that the treaty did not make "the island a part of the United States, and it remains a foreign country for purposes of the Federal Tort Claims Act.[24]

In sum, Messrs. Hansell and Erickson have failed to make out a case for the President's "concurrent jurisdiction" with Congress in the disposition of United States property.

It remains to consider the arguments advanced by Attorney General Bell before the Senate Foreign Relations Committee. He cited *United States v. Percheman*, 32 U.S. (7 Pet.) 51, 88–89 (1833) to prove that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly

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[18] The Passenger Cases, 48 U.S. (7 How.) 283, 470 (1849), dissenting opinion.
[19] Hansell 6.
[20] S. Crandall, "Treaties, Their Making and Enforcement" at p. 226 (2d ed. 1916).
[21] Hansell 6.
[22] 3 U.S.T. 3169, 3172, 3173.
[23] *United States* v. *Ushi Shiroma*, 123 F. Supp. 145, 149, 148 (D. Hawaii, 1954).
[24] *Burna* v. *United States*, 240 F. 2d 720, 721 (4th Cir. 1957).

acquired territory." A.G. 10. At the cited page it appears that Article 8 of the treaty provided,

> all the grants of land made before the 24th of January, 1818, by his Catholic Majesty . . . in said territory ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands. . . .

This article, Chief Justice Marshall held,

> must be intended to stipulate for that security of private property which the laws and usages of nations would, without express stipulation, have conferred.

In other words, the treaty provided that prior Spanish grants to *private* persons should be ratified and confirmed, a provision far removed from presidential "regulation" of *public* territory. Such regulation is confined to Congress, as *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253, 314–315 (1829) held with respect to the self-same provision: "the ratification and confirmation which are promised must be by the Act of the Legislature," i.e., Congress.

REMARKS IN THE LEGISLATIVE HISTORY OF THE TREATY POWER

Before discussing the legislative history adduced by the Attorney General, permit me a few words of explanation and apology. When his statement before the Senate Committee reached me late of a Saturday afternoon, as appears on my own Senate statement, I had only about two days to prepare my comments before having them typed and forwarded to the Senate Committee. Pressure of time conduces to oversights, and I was mistaken respecting a time sequence, and in following the Attorney General's erroneous identification of a motion made by Williamson and Spaight with one he attributed to Sherman and Morris. Leisure for reflection and further research has since enabled me to correct such inaccuracies and to sharpen my analysis. And it has strengthened my conviction that the treaty power was not designed to diminish the Article IV power of Congress.

For the most part the Attorney General's citations have reference to settlement of boundary disputes by treaties of peace which, as we have seen, do not involve cessions. He begins with a remark of George Mason in the Constitutional Convention, an *in terrorem* statement *during a debate on whether the Senate could share in originating revenue-raising bills.* Speaking for exclusion of the Senate, Mason stated that the Senate "could already sell the whole country by means of treaties," and then toned down this extravagant overstatement to that quoted by the Attorney General: "The Senate by means of a treaty might alienate territory, etc., without legislative sanction." A.G. 6, 2 Farrand 297. Mason spoke *before* the Article IV progenitor was even proposed and referred to the Committee on Detail, 2 Farrand 321, 324, and of course before the resultant "disposition" provision was debated, id. 466. *Manifestly his earlier remark hardly expressed the view that the treaty power overrode the as yet unborn "power to dispose."*

The Attorney General's other citations will be considered seriatim.

(1) The remarks of Gerry, and of Williamson and Spaight, cited A.G.6., were made after Madison's motion to "except treaties of peace"

from the two-thirds vote requirement had been agreed to by unanimous consent. 2 Farrand 540. Gerry protested

> that in treaties of peace a greater rather than a lesser proportion of votes was necessary than in other treaties. In treaties of peace the dearest interests will be at stake, as the fisheries, territory, etc. In treaties of peace also there is more danger to the extremities of the Continent, of being sacrificed, than on any other occasions.

Id. 541. The "extremities" patently refer to boundary disputes. Notwithstanding, Madison's "exception" was again approved by a vote of 8 to 3. Now Williamson and Spaight took up the opposition and "moved that no Treaty of Peace affecting territorial rights should be made without the concurrence of two thirds of the [members of the Senate present.]" id. 543 [25] In short, they sought to exclude treaties of peace "affecting territorial rights" from the Madison "exception." A note added to Madison's records recites that "The subject was then debated, but the motion does not appaer to have been made." 4 Farrand 58. On the following day, Sherman and Morris spoke "agst leaving the rights, *established* by the Treaty of Peace, to the Senate, & moved to annex a 'proviso that no such rights shd be *ceded* without the sanction of the Legislature,' ", id. 548,[26] a clear reference to boundary disputes. The matter was resolved by striking Madison's exception. 2 Farrand 548–549. Throughout all that was under discussion was the performance of the Senate's own "advice and consent" function, without a hint of desire to curtail the House function under Article IV. The Convention's overnight reversal of its approval of Madison's motion testifies how fluid were its views in this area, arguing against giving the remarks of Gerry et al preponderant weight.

(2) Of the same order is a letter by Hugh Williamson, a delegate to the Convention, written to Madison some nine months after its close, to recall to him

> a Proviso in the new Sistem which was inserted for the express purpose of preventing a majority of the Senate . . . from giving up the Mississippi. It is provided that two-thirds of the members present in the Senate shall be required in making treaties.

A.G.7–8; 3 Farrand 306–307. As the Attorney General's fuller quotation shows, Williamson feared that General Wilkinson might be led to give up "the Navigation of the Mississippi," and recalled that "the Navigation of the Mississippi . . . was not to be risqued in the Hands of a meer Majority." A *cession* of territory was not therefore involved, but rather claims to rights of navigation. At best, the Mississippi issue was a boundary claim finally settled by the Louisiana Purchase. Nor was that issue the sole motivation for insistence on a two-thirds requirement. George Mason explained in the Virginia Ratification Convention that because of their concern about the Newfoundland fisheries, "The eastern states therefore agreed a length, that treaties should

[25] The Attorney General mistakenly attributes a more complete version of this motion to Sherman and Morris, A.G. 6–7, citing 4 Farrand 58. That page merely sets forth an insertion to be made in 2 Farrand 543, which contains only the "motion" of Williamson and Spaight.

[26] Emphasis added.

require the consent of two-thirds of the members present in the Senate." 3 Farrand 335. Such diverse motives counsel against reading the several "two-thirds" remarks as evidencing an intent to diminish the role of the House under Article IV. It was one thing to insist that the Senate, in the performance of its own function, must act by a two-thirds vote, and something else again to court the wrath of the democratically minded, who placed their faith in the House and were already disgruntled by the exclusion of the House from the negotiation and making of treaties, by further reducing the role of the House under Article IV.

(3) The Attorney General also cites an amendment proposed by the Virginia Convention as exhibiting the awareness of the Founding Fathers that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States:

> no commercial treaty shall be ratified without the concurrence of the members of the Senate (not merely of those present); and no treaty ceding, contracting . . . the territorial rights or claims of the United States . . . shall be made, but in cases of extreme necessity; nor shall *any* treaty be ratified without the concurrence of three-fourths of the whole number of the members of both Houses respectively. (Emphasis added.)

A.G. 7; 3 Elliot, Debates on the Federal Constitution 600. From this attempt to bring the House into treaty ratification the Attorney General would infer that it could be excluded from the Article IV "disposition" of territory. It is simpler to read it as a renewal of the struggle for House participation in treaty-making. In any event, he proves too much. The Virginia Convention likewise recommended "That the legislative, executive and judicial powers should be separate and distinct," that the right to challenge jurors should not be restrained. 3 Elliot 657–658.[27] Do these proposals prove that the separation of powers therefore is not a fundamental principle of the Constitution, or that it does not guarantee the rights to challenge jurors? When *implicit* rights are not thus negatived, how much stronger is the case for giving effect to the *express* Article IV grant to Congress despite such proposals. Like the earlier remarks, the Virginia amendment testifies to the importance the Founders attached to the disposition of territory—no cession except "in cases of extreme necessity"—and suggests, as in the proposal to spell out the right of challenge, that the Virginians were merely seeking to make assurance doubly sure.

Our guide is furnished by *Pierson* v. *Ray*, 386 U.S. 547, 554–555 (1967). There the Court declared with respect to the common law immunity of judges from suit for acts performed in their official capacity.

> We do not believe that this settled principle was abolished by § 1983, which makes liable "every person" who under

[27] "That in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury." 3 Elliot 657–658. The Virginia Convention had been assured by John Marshall, Edmund Pendleton and Governor Randolph that the words "trial by jury" embraced all its attributes, such as the right to challenge jurors. 3 Elliot 559, 546, 547, 436, 573.

> color of law deprives another of his civil rights . . . we presume that Congress would have specifically so provided had it wished to abolish the doctrine.

Thus the all-inclusive "every person" was held not to curtail an existing common law immunity in the absence of a specific provision. The more equivocal treaty-making power demands an even more exacting standard. Before it be concluded that it in any way diminishes the explicit grant to Congress of "power to dispose" of territory and property, a clearly expressed intention to do so should be required. That requirement is not satisfied by the random remarks collected by the Attorney General.

In my judgment, the Panama Treaty should contain a provision making it subject to approval of the Congress.

APPENDIX A

Opening statements at Panama Canal hearings conducted by Subcommittee on Separation of Powers:

PANAMA CANAL TREATY
(DISPOSITION OF UNITED STATES TERRITORY)

FRIDAY, JULY 22, 1977

OPENING STATEMENT OF SENATOR ALLEN

Senator ALLEN. The subcommittee will please come to order.

The Subcommittee on Separation of Powers of the Senate Committee on the Judiciary is convened today to investigate certain constitutional issues bearing on the Panama Canal negotiations. The subcommittee has jurisdiction over matters relating to the separation of power between the three branches of the Federal Government and the division of power between the Federal Government and States.

In this instance, the subcommittee hopes to examine and will seek to determine the proper role of the Congress and of the executive branch in negotiating a treaty with the Republic of Panama for the transfer of certain U.S. territory and property in the Isthmus of Panama.

Inasmuch as section 3, article IV of the Constitution provides that Congress, that is, both houses of Congress, shall have power "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," the subcommittee is concerned that serious constitutional issues involving the doctrine of separation of powers are raised by the continued secret negotiations of the executive branch for the disposition of U.S. territory and property in the Canal Zone.

While obviously the Executive has the power to negotiate for the acquisition of territory and property by treaty ratified by the Senate, many serious scholars of the Constitution are of the view that territory or property of the United States may be disposed of only by Congress itself and not simply by the Executive through the treaty ratification process. The subcommittee will, therefore, hear testimony from several

respected scholars of the Constitution and from other interested parties in the hope that the subcommittee can reach consensus and report thereon to the full committee.

Additionally, members of the subcommittee are concerned that certain other agreements with the Panamanians for direct financial assistance may be concluded outside the context of the treaty negotiations with the result that any such agreement would not be subjected to the normal treaty ratification process which would be necessary otherwise. The press has mentioned a possible total of $5 billion. Direct financial assistance of that magnitude would, of course, be made subject to specific congressional action through the appropriations process, but if such assistance were, in fact, an integral part of the treaty, then as such it would also be subject to ratification by the Senate.

The subcommittee will, therefore, require testimony on the intentions of the executive branch with respect to separately negotiated financial arrangements with the Panamanians so that the subcommittee can determine whether such negotiations should be addressed by the Senate as part of the proposed canal treaty.

ECONOMIC AID PACKAGE

Press reports during the past week have indicated that officials of the Department of the Treasury, representatives of the Agency for International Development, and representatives of the Department of Commerce have all conferred with the Minister for Economic Planning of the Republic of Panama with respect to an economic aid package for Panama designed to assist the troubled Panamanian economy. Obviously, any such negotiations would tend to bear directly on the negotiations for a new Panama Canal Treaty and could be said to be an integral part of the canal treaty talks.

Accordingly, the subcommittee will seek to establish the extent of those discussions so that the subcommittee may advise the Senate whether such discussions are within the ambit of the treaty negotiations and whether any direct financial aid agreement with the Panamanians ought to be encompassed within the terms of any proposed treaty rather than be reviewed as a separate matter through the appropriations process. In that connection, certainly the subcommittee would desire that the ratification process not be circumvented by denying the Senate an opportunity to pass on the desirability of separately negotiated financial agreements which might be, in actuality, within the ambit of the treaty negotiations and properly within the scope of any proposed treaty submitted to the Senate.

THIRD HEARING SCHEDULED

We anticipate that these hearings will require the 2 days presently scheduled and possibly a third date soon after the Senate reconvenes following the August recess. The subcommittee has already scheduled the testimony of a very distinguished group of witnesses.

I am particularly pleased that the Governor of the Panama Canal Zone, Hon. Harold Parfitt. will appear before us this morning, and that the Commander-in-Chief of the Southern Command, Lt. Gen. Dennis McAuliffe, will later in the morning give the benefit of his own

expertise and experience as military commander in the zone. I look forward also to hearing the views of my good friend and constituent, Adm. Thomas Moorer, former Chief of Naval Operations and former Chairman of the Joint Chiefs of Staff.

To outline the constitutional issue posed by section 3, article IV of the Constitution and to state his own opinion of the proper interpretation of that provision in light of other relevant provisions of the Constitution, we are fortunate to have as our first witness, Mr. George Leonard, who took to the Supreme Court of the United States the case of *Helms* v. *Vance*, a suit for injunction which sought to establish the exclusive authority of Congress to dispose of the Canal Zone territory.

FRIDAY, JULY 29, 1977

Senator ALLEN. The meeting will please come to order.

The Subcommittee on Separation of Powers is convened this morning to continue the subcommittee's investigation of the constitutional issues surrounding the negotiations of the executive branch with the Government of the Republic of Panama regarding the territory and property of the United States in the Panamanian Isthmus.

The subcommittee is pleased to have for this mornings hearing a distinguished group of witnesses from Government, from the legal profession, from the academic community, and from organized labor—all of whom are in some way affected by or involved in the canal negotiations.

I am certain that most of those present this morning are well aware of the central constitutional issue under investigation; however, perhaps it would be helpful for me to reiterate the propositions which are the focal point of this inquiry.

DISPOSAL OF U.S. TERRITORY

Article IV, section 3 of the Constitution of the United States provides that Congress "Shall have power to dispose of and make all needed rules and regulations respecting the territory or other property belonging to the United States." Many scholars of the Constitution believe the power given to Congress in that clause is exclusive,

which would prohibit the Executive from negotiating a treaty disposing of United States territory except with congressional consent. On the other hand, some constitutional lawyers have postulated the theory that the power of the Congress to dispose of the territory and property of the United States is not exclusive but is rather concurrent with the power of the executive branch to conclude treaties with the advice and consent of the Senate.

In any event, the subcommittee, I am sure, does wish to explore the issue fully so that all the facts are developed to enable the subcommittee to advise properly both the Committee on the Judiciary and the Senate on this point of constitutional law which is of particular national importance in the circumstances surrounding our discussions with the Panamanian Government.

FINANCIAL ASSISTANCE

Additionally, members of the subcommittee are also concerned that certain other agreements with the Panamanians for direct financial assistance may be in process of being concluded outside the context of the treaty negotiations with the result that any such agreement might not be subjected to the normal treaty ratification process which would be necessary otherwise. The press has mentioned a possible total of $5 billion.

Direct financial assistance of that magnitude would, of course, be made subject to specific congressional action through the appropriations process, but if such assistance were, in fact, an integral part of the treaty, then as such it would also be subject to ratification by the Senate.

The subcommittee will, therefore, require testimony on the intentions of the executive branch with respect to separately negotiated financial arrangements with the Panamanians so that the subcommittee can determine whether the result of such negotiations should be addressed by the Senate as part of the proposed canal treaty.

THURSDAY, SEPTEMBER 8, 1977

Senator ALLEN. The committee will please come to order.

The Subcommittee on Separation of Powers of the Judiciary Committee is convened this morning to continue the subcommittee's investigation of constitutional issues arising out of the new proposed Panama Canal Treaties. I am certain that most of those present this morning are aware of the central constitutional issue under investigation; however, perhaps I should again reiterate the proposition which is the focal point of this inquiry.

Article IV, section 3, of the Constitution of the United States provides that Congress "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." The power given to Congress in that

clause appears to be exclusive and, if it is an exclusive power, then the Executive is prohibited from entering into a treaty disposing of U.S. territory except with express congressional authorization; that is, statutory authorization by both Houses of Congress in addition to separate Senate approval through the treaty ratification process.

Additionally, members of the subcommittee are also deeply concerned that the executive department has reached certain financial agreements with the Panamanians for substantial financial assistance outside of the context of the provisions of the treaty itself. These financial agreements, if not embodied in the treaty, will not be subjected to the normal treaty ratification process which would otherwise be the case.

The subcommittee has further learned that the congressional appropriations process itself may in large measure be circumvented in the implementation of proposed financial arrangements with Panama but that, nevertheless, substantial sums of money are proposed to be made available to Panama by unilateral executive branch action. The subcommittee will therefore diligently continue to seek testimony on the full intentions of the executive department with respect to separately negotiated financial and banking arrangements with the Republic of Panama.

EXECUTIVE AGREEMENTS

Finally, in continuing its work, the subcommittee will seek to determine the extent to which the operative provisions of the executive department proposal are embodied in the executive agreements rather than in actual treaty language. There are, of course, in fact two treaties: the proposed Panama Canal Treaty itself and an additional treaty which purports to provide for the neutrality of the Panama Canal. Unfortunately, these treaties are in no way to be construed as the whole agreement.

Both treaties are accompanied by very lengthy executive agreements which actually contain the substance of the deal struck with Panama. These executive agreements, once implemented, would be subject to renegotiation and revision—and we find this astonishing—every 2 years.

This subcommittee, I am sure, shares a concern of many that Congress will relinquish forever any control over this country's relation with the Republic of Panama if the executive department is authorized to enter into a plenary relation with Panama based not, in reality, on treaty law but rather based on executive agreements authorized by treaty law but subject to change at the whim of the Executive. In short, the subcommittee wishes to establish by its inquiry the extent to which the Executive would be given a blank check by the new proposed treaties to amend, interpret, abrogate, or replace entirely the lengthy accompanying substantive executive agreements.

I have just returned from Alabama where in the course of the August recess I met with citizens in 37 counties. These meetings were held in most instances at the county courthouses; they were widely announced and well attended. One topic was invariably raised. Notwithstanding drought, unemployment, inflation, high energy prices,

low farm prices, and a host of other subjects which could easily have been foremost in mind, virtually every group I encountered wished to know the answer to one question: Would the United States, in fact, give away the Panama Canal Zone? Of the thousands I spoke with, almost no one favored a policy of surrender in Panama.

Many are saying that the people need education and that with education they will come to support the giveaway of the American canal in Panama. In my judgment, the true state of affairs is the exact opposite. Further knowledge will only strengthen the resolve of the people; and, in my judgment, our all-wise Federal Establishment could itself well stand some education from the American citizen who has the wisdom to see the obvious fact that the Panama Canal is vital to the economic stability and military security of the United States, from the American citizen who has the commonsense to recognize the lunacy of paying billions to an unstable pro-Marxist dictatorship for taking over billions in property belonging to the United States, from the American citizen who has the clarity of thought to see the reality behind the sham and the traveling medicine show that has passed for an open discussion of the actual provisions of this proposed new arrangement with Panama.

Perhaps, however, Americans do need education in the fine points of the Panama Canal treaties. That education has been hard to come by of late because throughout the treaty negotiations a veil of secrecy prevented any useful information being made available either to the public or, in large measure, to the Congress. Perfunctory briefings containing no real substance and seeking no advice, to be sure, were conducted. However, until yesterday most of the information this subcommittee has been able to obtain on the new treaty has come from translations of speeches made by the Panamanian negotiators in Panama.

$2.262 BILLION IN CASH PAYMENTS

By that method we have learned that the Panamanians expect to receive during the next 22 years at least $2.262 billion in cash payments from the United States. The Department of the Treasury, when its representative testified before this subcommittee was apparently unable to advise the committee of any negotiations whatsoever with Panama, yet we could read from translated Panamanian documents that the Export-Import Bank plans to lend Panama $200 million, that the Agency for International Development is to guarantee—and no doubt pay off—housing loans in the amount of $75 million, and that the U.S. Overseas Private Investment Corporation is to guarantee $20 million in loans for a new Panamanian development bank—everyone else has a bank in Panama, why should not the Panamanians?

Finally, the committee has learned—not from the Department of Defense, but from the Panamanians—that $50 million in military aid would be provided to prop up and guarantee the continuance of the military dictatorship now oppressing the people of the Republic of Panama.

But now that the proposed Panama Canal Treaty and Neutrality Treaty have finally been made public—and it has been signed by the President and the Panamanian dictator—there are disclosed even more items about which the American citizen should be educated. The Amer-

ican citizen should learn that in addition to all the other massive payments to be made to the Republic of Panama, as the ultimate insult, it is proposed that we pay to the Republic of Panama $10 million a year for providing police services within the territory which would be ceded to Panama. We trust that during his education the American citizen will share our own disbelief and outrage that our great country proposes to cede United States territory to Panama and then to pay Panama for performing the normal functions of government within that same land.

FOUR U.S. MILITARY BASES TO REMAIN IN CANAL ZONE

We hope, too, that the American citizen will soon learn that out of 14 military bases now in the Canal Zone, only 4 would remain after implementation of this treaty and that the 4 retained bases would be under direct Panamanian civil and political jurisdiction, subjecting thereby our Armed Forces to the dictatorial rule of the present Panamanian Government. And although it is true that a status of forces agreement will provide some marginal protection to U.S. soldiers in the Canal Zone, the American citizen should learn that in essence our forces will be made subject to a code of laws based on the autocratic rule of one man and devoid of any constitutional safeguards even remotely resembling those previous American rights now enjoyed within the Canal Zone.

Yes, there is much to learn about this proposal. Does the average citizen now know that the American flag will not be permitted to be flown in a place of honor, even at our military installations, and, according to the speeches of the Panamanian negotiators, will be permitted at our own bases only when inside and when displayed jointly with a Panamanian flag in the position of honor. Perhaps this latter point is trivial, but it typifies this entire proposed agreement: Our flag in a broom closet and our vital canal at the mercy of a banana republic.

So, the Subcommittee of Separation of Powers does intend to continue its investigation of these issues to insure that all the facts are made available both to the Congress and to the people. We will be, I am sure, greatly aided in our efforts by the witnesses scheduled to appear at today's hearings.

Senator Hatch, do you have an opening statement?

Senator HATCH. Thank you, Mr. Chairman. I do not have a prepared statement. But I would like to say that, when I first examined the Panama Canal issue, I was eager to learn about the reasons for this treaty. I listened to Ambassador Bunker once and to Ambassador Linowitz a number of times. I read everything I could get my hands on. I did everything I could to look at all of the arguments in an objective manner.

This morning I read in the New York Times an editorial asserting that there has not been one substantive argument offered against the treaty. I think this is typical of irresponsible journalism in today's world. We have heard many, many responsible, carefully reasoned, substantive arguments against this treaty right in these hearings.

Last evening I met with one of the most knowledgeable men in America, a man who knows a lot about foreign policy and foreign

affairs. He had not even heard of the constitutional issues and arguments that have been raised in connection with this treaty. I think it is deplorable that the press has ignored the serious constitutional problem created by this treaty. Everybody in the House of Representatives who has any constitutional understanding at all knows that the House is being bypassed in contravention of the Constitution of the United States.

In article IV, section 3, clause 2 it says that the transfer of American property requires the consent of both Houses of Congress.

Here is a situation where this provision of the Constitution is being subverted. Briefs prepared by the American Law Division of Congressional Research Service do not support the State Department's position. There has not been one valid precedent presented by the State Department supporting the President's extraordinary exercise of power. Even these briefs indicate that.

Yet we have had hardly a responsible report on this crucial topic in the American press or news media.

The second constitutional issue—and I think it is important to know this—that is being circumvented here is that all appropriations bills have to originate in the House of Representatives. It is specifically mandated by the Constitution. A treaty cannot appropriate funds. The Senate itself, as evidenced by our last session, just prior to the ending thereof, acknowledged that with great pomp and circumstance on the Senate floor.

Here we are entering into a treaty that is going to place a monumental burden upon the taxpayers of America. It has been suggested by the proponents of the treaties that the tolls will take care of everything. There is the misrepresentation that the tolls can cover all the payments to Panama under these treaties—about $70 million a year. Last year we operated at a $7.2 million deficit. How are the tolls going to pay for these increases unless Panama escalates them to such a degree that every country in Latin America is going to be seriously injured?

Every country that uses the canal, including our own and excepting Panama, which always has gotten to use the canal free, is going to be injured. I think it is important to note that we are going to be paying these moneys permitted by a State Department approach here without ever going to the House of Representatives, not only for the permission to transfer $7 to $12 billion—and that is what we have had in testimony before this subcommittee—of American property. The House of Representatives is not even being asked whether they have any interest in the matter. The administration intends to bypass the House and deal only with the Senate.

In addition, we are going to give a total of about $2.25 billion more in cash payments up to the end of this century. Payments will include $350 million in loans, military aid, and other payments almost immediately. Then we will also guarantee $70 million a year to the Panamanians to be taken from canal revenue. The only way those moneys could be raised in addition to assimilating the Panamanians into the operation of the canal—which should be done—is either to drastically increase the tolls or to underwrite the whole giveaway with American taxpayer dollars.

These constitutional issues indicate another overreaching, overextension beyond the separation-of-powers doctrine provided in the

Constitution by the executive branch of Government, through the State Department, to the detriment of the Congress and the Constitution.

I think this matter is so crucial that everybody in America ought to know about it. I think that ultimately the Supreme Court will be called upon to support the Congress in this constitutional struggle.

I might also mention that I think that most of the problems we have in this world today are caused by an elitist foreign policy philosophy that has dominated American for too long. It is an elitist philosophy that has made us appear to the world as imperialist colonializers, when the Soviet Union, the greatest imperialist colonializer in the history of the world, controls and dominates colonies all over the world. If the Soviet Union receives any criticism at all from the world, you would never know it from reading the newspapers or viewing television newscasts.

Now we are in the posture of being imperialist colonializers who give up everything—this time the Panama Canal.

Another major foreign policy development that concerns me, is this Presidential release memorandum No. 10, which has indicated that we will use the force of world opinion rather than military aid and assistance to stop world aggression to protect not only Europe but also Korea.

This is the type of State Department foreign policy to which this country is subjected.

The fact of the matter is, as a result of the diplomatic blunders involved in this treaty, we are going to have trouble no matter what we do. If we fail to ratify the treaty and the President does not act firmly and responsibly and expeditiously, we know there will be incidents and difficulties down there. We were also told in Panama that, if we do ratify it, within a short period of time we will probably be shut off from the use of the canal.

THURSDAY, OCTOBER 13, 1977

Senator ALLEN. The committee will please come to order.

This is the fourth hearing that the Subcommittee on Separation of Powers of the Judiciary Committee has held on the question of the Panama Canal Treaties.

The main thrust of the committee's inquiry has been to determine whether article IV, section 3, paragraph 2 of the Constitution should be applicable to the Panama Canal Treaties inasmuch as they do make disposition of property belonging to the United States.

This section of article IV of the Constitution gives Congress the power to dispose of and to make all the needful rules and regulations respecting the territory or property of the United States. The power granted is exclusive, so the investigation of that power has constituted the main thrust of the committee hearings.

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At the same time, we have felt it appropriate for the committee to study and to report upon the advisability of ratifying the proposed treaties from the standpoint of our national security and of our national economic interest.

We have had a series of witnesses to express their views on the constitutional issues involved. We have had numerous witnesses who have given their views on the advisability of entering into these treaties—whether the Senate should give its advice and consent to the treaties.

FRIDAY, OCTOBER 28, 1977

Senator ALLEN. The subcommittee will please come to order.

The Subcommittee on Separation of Powers convenes today to continue its investigation of certain constitutional issues involved in the negotiations conducted by the executive branch for the transfer of U.S. territory and property in the Isthmus of Panama to the Republic of Panama.

Also subject to the investigation of the committee are financial arrangements apparently concluded outside the context of the proposed Panama Canal Treaties. These extrinsic financial arrangements appear to violate the doctrine of separation of powers inasmuch as they deny to the Senate the right to give advice and consent to all aspects of the new proposed treaty arrangements with Panama. Clearly these separately consummated financial deals are properly a part of the proposed treaties, and the committee is seeking to ascertain the best recommendation to the Senate with respect to these extrinsic multimillion dollar financial agreements concluded by the executive department and the Government of Panama.

So the committee in conducting its review of these two major constitutional issues, has been privileged to hear from a variety of knowledgeable witnesses, both in the relevant areas of constitutional law and with respect to the factual backdrop against which these constitutional matters must be resolved. Today the committee is especially honored to hear the testimony of two highly distinguished individuals, both of whom have particular knowledge regarding certain aspects of the proposed canal treaties.

THURSDAY, NOVEMBER 3, 1977

Senator ALLEN. The subcommittee will come to order.

The Subcommittee on Separation of Powers convenes to continue its investigation of certain constitutional questions involved in the negotiations conducted by the executive branch for the transfer of U.S. territory and property in the Isthmus of Panama to the Republic of Panama.

Also subject to the investigation of the committee are financial ar-

rangements apparently concluded in executive agreements made outside the context of the proposed Panama Canal Treaties. These extrinsic financial arrangements also appear to violate the doctrine of separation of powers, inasmuch as they deny to the Senate the right to give advice and consent to all aspects of the new proposed treaty arrangements with Panama.

In conducting its review of these two major constitutional issues, the committee has been privileged to hear from a variety of knowledgeable witnesses both in the relevant areas of constitutional law and with respect to the factual backdrop against which these constitutional matters must be resolved.

TUESDAY, NOVEMBER 15, 1977

Senator ALLEN. The subcommittee will please come to order.

The Subcommittee on Separation of Powers is convened this morning to continue the subcommittee's investigation of constitutional issues arising out of the proposed Panama Canal treaties. I am certain that most of those present this morning are aware of the two central constitutional issues under investigation; however, perhaps I should again state the propositions which are the focus of the committee's inquiry.

First, article IV, section III, clause 2 of the Constitution of the United States provides that Congress—that is, both Houses of Congress—"shall have power dispose of * * * the territory or other property belonging to the United States." Many witnesses have testified before the committee that the power given to Congress in that clause is exclusive and therefore that the executive branch is prohibited from entering into a treaty disposing of U.S. territory or property except with express congressional authorization by statute.

Prof. Raoul Berger, of the Harvard Law School, and Prof. Charles Rice, of the Notre Dame Law School, both eminent scholars of the Constitution, have testified that the power of Congress to dispose of territory or property is an exclusive power and that a treaty disposing of property concluded without congressional authorization would be void insofar as it purported to transfer territory or property without congressional assent.

Second, members of the committee are also deeply concerned that the executive department has made certain financial commitments to the Government of Panama pursuant to executive agreement not included in the provisions of the canal treaties nor in the provisions of the other executive agreements which accompany the treaties. These separately consummated financial deals were apparently negotiated concurrently with the treaty provisions during the treaty negotiations, and certainly there is therefore reason to be concerned that these arrangements are properly a part of the proposed treaties or, at a minimum, a part of the executive agreements accompanying the proposed treaties. The committee will consider whether these extrinsic financial arrangements for some $345 million violate the doctrine of separation of powers—much as does the contemplated circumvention of the Congress on the property disposal issue—because these extrinsic financial deals deny to the Senate the right to give its advice and consent to all aspects of the new proposed treaty arrangements with Panama.

A related problem which has also been subject to investigation in the committee is the manner in which funds would be transferred to the Republic of Panama using a new Panama Canal Commission for the purpose of providing promised money to Panama without the necessity of seeking an appropriation from the Congress. The members of the committee, I am sure, are concerned that apparently the executive branch intends to transfer the assets of the present Panama Canal Company to a new Panama Canal Commission which would eventually be turned over to Panama but that the executive branch does not intend to transfer some $319 million in liabilities to the new Commission. That is the present debt of the Panama Canal Company to the U.S. Treasury.

SATURDAY, MARCH 11, 1978

Senator ALLEN. The Subcommittee on Separation of Powers of the Committee on the Judiciary is convened today for the purpose of receiving the testimony of Doris McClellan, clerk of the U.S. court for the Panama Canal Zone, and of James C. Luitweiler, formerly Secretary of the Joint United States-Republic of Panama Land Commission. The committee is convened for the further purpose of acting on the staff draft of the report of the subcommittee on the Canal Zone property disposal issue, the main focus of the committee's work during the past 8 months.

As has been constantly emphasized for some time now during the Canal Treaty debate, the Constitution does very plainly require that Congress authorize any disposal of property belonging to the United States. Specifically, article IV, section 3, clause 2, of the Constitution states as follows: "Congress shall have the power to dispose of * * * the territory or other property belonging to the United States."

The requirements of this constitutional provision do not have anything whatsoever to do with whether or not the United States is sovereign within the Canal Zone or even whether the Canal Zone is unincorporated territory of the United States as the Federal courts have consistently held. The issue is simply whether the United States owns property in Panama. If property is owned by the United States, then no disposal of such property to Panama can occur without the express prior authorization of the Congress, including the House of Representatives.

Earlier this morning one of the representatives of the radio networks asked me if this was a last ditch effort to defeat the Panama Canal Treaties. I told the person no, that the committee has been investigating this point of constitutional law for the last 8 months. We have the records of the hearings in three books and a committee report as well.

I am glad that the media, at long last, is taking note of this important constitutional provision.

Not only has the Senate Subcommittee on the Separation of Powers of the Judiciary Committee been going into this point, but also on the House side one of those committees has been investigating this point. It is happening not only in this Congress but happened in the last Congress. So it is not a new issue. It is a most important issue as to

whether the House of Representatives will be allowed to participate in and to vote on the disposition of property of the United States in Panama.

The testimony which we will receive today and documentary evidence which the subcommittee will examine should lay to rest forever the idle and ill-informed recent assertions that the United States merely rents its property in Panama. Nothing could be further from the truth.

Several able Senators in debate on the floor of the Senate, who should have known better, have stated that the United States does not own the property in the Panama Canal Zone but merely rents the property. Well, we would like to disabuse them about that misconception of the facts.

Not only is the Panama Canal Zone unincorporated territory of our country, but additionally—and this is sufficient to trigger the requirements of the Constitution—the actual fee simple title to a major part of the lands in the Canal Zone has directly vested in the United States by purchase. That would be information to a number of Senators who have participated in the debate on the floor of the U.S. Senate.

FEE SIMPLE TITLE TO 3,598 TRACTS OF LAND

In other words, not only does the United States possess the Canal Zone as owner of the territory, but additionally, the fee simple title to the land itself has become public property as a result of our Government's decision to buy up all private land holdings in the Canal Zone.

These purchases of private land rights occurred during the period 1905 through 1920, and by the date of the final report of the Joint Land Commission on March 10, 1920, title to all former private land holdings in the Panama Canal Zone had vested exclusively in the United States.

In obtaining its title, the United States dealt with the owners of some 3,598 tracts of land and did ultimately obtain full fee simple title to all lands in the Canal Zone previously held by these Panamanians or other private landowners. I might state that in the Treaty of 1903 this land purchase commission was set up for the expressed purpose of allowing the United States to purchase the land in Panama in the Canal Zone owned by private owners. These purchases were made at a cost of at least $4,728,889 and possibly more.

Although the activities of the Joint Land Commission are obviously a matter of record, the committee has nevertheless been greatly concerned and, indeed, alarmed that many otherwise responsible Government officials seem to be under false impression that the United States does not hold title to these lands in the zone. For that reason, the committee hopes that the testimony we are to receive today will establish beyond a shadow of a doubt the fact that the United States does own property in Panama and that Congress, therefore, must authorize any transfer of these public lands to any foreign government or, indeed, to any entity not part of the Government of the United States.

ORIGINAL DEEDS

In other words, the United States owns the fee simple title, and we have three cartons containing the records and the original recorded deeds to this property. I think this will lay the matter to rest.

This is public property belonging to all of the people of the United States, and it cannot be legally given away except under authority of the whole Congress representing all of the people of the United States. It takes a statute enacted by both Houses of Congress. The Congress and the people bought the land; only the Congress and the people can give it away.

HISTORICAL SPECULATION NOT NECESSARY

This principle of public property disposal is a matter of record, yet there is a peculiar tendency of late to ignore the record and to ignore the true facts of the history of the actions of the United States in Panama. These revisionist historians—both in and out of government—are handicapped by one significant fact. That fact is that many of the people involved in this great national undertaking some 60 to 70 years past are still alive and possess memories unimpaired by the dream world inhabited by many modern commentators.

Mr. J. C. Luitweiler has been, I am confident, bemused and possibly annoyed by current accounts of the nature of the United States' activities in Panama during the early days of the construction and operation of the canal. Mr. Luitweiler went to Panama as a young man in February 1913, 65 years ago. He set sail with Dr. Rowe and Dr. Faulkner, both of whom had been appointed by President Wilson as American Commissioners on the Joint Land Commission. The two Panamanian Commissioners appointed by the President of Panama met Mr. Luitweiler and the two American Commissioners on their arrival in Panama, and the Joint Commission soon thereafter began its work in purchasing private lands in the zone.

This does not seem like a reluctant Panama helping to purchase this property. It seems they gave their full permission and certainly they ratified in every possible way the bona fides of the 1903 treaty.

The particular Commission on which Mr. Luitweiler served was one of several Commissions appointed during the period 1905 through 1920, but the work of this particular Land Commission was exceptionally significant inasmuch as it was carrying out the instructions of President Wilson that all remaining private lands in the zone should be acquired by the United States. Mr. Luitweiler has a wealth of information for the committee, and we are indeed fortunate to have his testimony, both for the immediate purpose of setting the record straight and for the larger purpose of preserving for history Mr. Luitweiler's experiences in Panama with Colonel Goethals, now "General;" Colonel Gorgas, now "General;" and the other great Americans who saw this great national adventure in Panama through to a successful conclusion.

GREAT ALABAMIAN

General Gorgas was a great Alabamian who was able to eliminate the yellow fever there. Without his contribution I feel that the canal would never have been built. That was one of the factors involved in the French failure to build a canal several decades before that.

The committee is also deeply honored to have an opportunity to receive the testimony of Doris McClellan, who is clerk of the U.S. district court in the Canal Zone but who is also the daughter of

Senator John McClellan, who is greatly missed by the Senate and the country and who was to me a friend and a guiding example. We will hear from Miss McClellan, I am sure, that she is and has been custodian of the records of the land purchases by the United States in Panama and that under her safekeeping and custody these deeds and other records have been preserved and they are here this morning for the observance of the subcommittee and as a matter of record, in order to show without doubt the ownership by the United States of the property in the Panama Canal Zone by actual purchase.

Miss McClellan is here to authenticate documents sent to the subcommittee by order of the U.S. district court. These documents are present in the sealed chests before us. The committee is advised that these documents do establish the title of the United States to the real property in the Canal Zone which was purchased by the actions of the Joint Land Commission on which Mr. Luitweiler served. Very likely many of the documents upon which Mr. Luitweiler himself worked some 65 years ago are here in these chests.

At the direction of the court, the subcommittee will open the chests and examine the records. As clerk of the court, Miss McClellan will certify the authenticity of the documents, and a representative sample will be received in the form of authenticated copies for inclusion in the record of this proceeding.

I might also suggest that a portion of these deeds be inserted in the Congressional Record as typical of the deeds of which there are several thousand that are in possession of the court showing ownership by the United States of land in the Canal Zone.

Thereafter the documents will be returned to the custody of the administrator of the U.S. court, and they have been in his custody under the direction of Miss McClellan, and inasmuch as they have now been microfilmed, I understand they will eventually be retired to the National Archives and the microfilm itself will bear witness to the title of the United States. For that reason the committee also has present a microfilm reader-printer so that again a representative sample of the microfilm record can be secured by the committee, authenticated by Miss McClellan, and included in the record of these proceedings.

We are delighted to have you, Miss McClellan and Mr. Luitweiler, to appear before our committee to give us the benefit of your knowledge as to the acquisition by the United States of property in the Panama Canal Zone.

APPENDIX B

TESTIMONY OF RAOUL BERGER, AUTHOR OF "EXECUTIVE PRIVILEGE" AND "GOVERNMENT BY JUDICIARY"

Professor BERGER. Mr. Chairman and Senator Hatch, I appreciate your courtesy.

Permit me to say preliminarily that I am no longer a member of the Harvard Law School. I was from 1971 to 1976 the Charles Warren senior fellow in the American League of History. But after age 75 you cannot even serve as a janitor at Harvard Law School. I am now almost 77.

FOR PANAMA CANAL TREATY

Second, I want to make clear that I am for the Panama Canal Treaty as a matter of personal judgment. I am not here in any way to discredit President Carter. I am here for precisely the reason that Senator Hatch mentioned because I have an overriding commitment to the Constitution.

You have invited me to comment on the relation between the article IV, section 3(2) power of Congress to dispose of property of the United States and the treaty power, in light of the statements respecting the relation by Herbert J. Hansell, Legal Adviser, Department of State [1] and Ralph E. Erickson, Deputy Assistant Attorney General.[2]

Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress be diminished.

I have long held the conviction that all agents of the United States, be they Justices, Members of Congress, or the President, must respect these boundaries. No agent of the people may overleap the bounds of delegated power. That is the essence of constitutional government and of our democratic system.

Long experience has led me to be skeptical of arguments by representatives of the executive branch when they testify with respect to a dispute between Congress and the President, for they are then merely attorneys for a client, the President.

It was for this reason that Justice Jackson dismissed his own prior statements in the capacity of Attorney General as mere advocacy, saying, a "judge cannot accept self-serving press statements for one of the interested parties as authority in answering a constitutional question, even if the advocate was himself." [3]

You have asked me to comment particularly on the statements that were made by the representatives of the State Department and the Department of Justice; namely, Mr. Hansell and Mr. Erickson. I may say immediately that the Hansell-Erickson testimony did not serve to diminish my skepticism.

I should add that I am not here as an opinion witness. What I have attempted to do is this: I have taken time to study your record and the various statements, and independently to study the constitutional sources and the cases and make up my mind as to where the truth

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[1] Hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of Powers (95th Cong., 1st sess.) part II, p. 3 (July 29, 1977), hereafter cited as Hansell.

[2] Hearings before the House Subcommittee on the Panama Canal on "Treaties Affecting the Operations of the Panama Canal," (92 Cong., 2d sess.) p. 95 (Dec. 2, 1971), hereafter cited as Erickson.

[3] *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 647 (1952), concurring opinion.

lies in this morass of conflicting opinions. I am not going to ask you to rely on my opinion. Instead I will ask you to rely on the documentation because my opinion is worth no more than the documentation.

PROGRESSIVE ATTRITION OF CONGRESSIONAL POWERS

I agree, too, with Senator Hatch that the effect of these hearings ranges beyond the Panama Treaty. The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for concurrent jurisdiction of the President in the disposition of U.S. property. Acquiescence in such claims spells progressive attrition of congressional powers; it emboldens the executive to make ever more extravagant claims.

I would remind you that congressional acquiescence encourages solo Presidential adventures such as plunged us into the Korean and Vietnam wars. Congressional apathy fostered the expansion of executive secrecy. Then, as now, the State Department invoked flimsy precedents, for example, the pursuit of cattle rustlers across the Mexican border, to justify Presidential launching of a full-scale war.[4]

If Congress slumbers in the face of such claims, it may awaken like Samson shorn of his locks.

Earlier judicial statements that this or the other executive practice has been sealed by long-continued congressional acquiescence [5] need to be reexamined in light of more recent judicial opinions, more conformable to the Constitution, that Congress may not abdicate its powers [6] and a fortiori, it cannot lose them by disuse [7] that usurpation cannot be legitimated by repetition.[8]

Senatorial insistence on respect for constitutional boundaries will warn the executive against encroachments on Congress powers; it will alert foreign nations to the fact that treaties for the cession of U.S. property must be subject to the consent of the full Congress.

Mr. Erickson, the Deputy Attorney General, addressing himself to the question whether article IV, section 3(2), "pursuant to which Congress has the power to dispose of property of the United States is an exclusive grant of legislative power to the Congress or whether the Congress and the President and the Senate, through the treaty power, share that authority," handsomely states that "the answer to this question is not simple and altogether free from doubt." [9]

That doubt counsels against encroachments on a power explicitly conferred on Congress; a clear case for establishment of "concurrent jurisdiction" is needed in the teeth of that express grant.

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[4] R. Berger, "Executive Privilege: A Constitutional Myth" 75–88 (1974).

[5] Congress "uniformly and repeatedly acquiesced in the practice." "It may be argued that while the facts and rulings prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice." *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 471 (1915). But as Justice Frankfurter later declared, "Deeply embedded traditional ways of conducting a government cannot supplant the Constitution or legislation . . . ." Youngstown Sheet, supra, n. 3 at 610, concurring opinion.

[6] *Panama Refining Co.* v. *Ryan*, 293 U.S. 388, 421 (1935).

[7] *United States* v. *Morton Salt Co.*, 338 U.S. 632, 647 (1950).

[8] "That an unconstitutional action has been taken before surely does not render that same action less unconstitutional at a later date." *Powell* v. *McCormack*, 395 U.S. 486, 546–547 (1969). *Zweibon* v. *Mitchell*, 516 F. 2d 594, 616 (D.C. Cir. 1975): "there can be no doubt that an unconstitutional practice, no matter how inveterate, cannot be condoned by the Judiciary.' *United States* v. *Morton Salt Co.*, 338, U.S. 632, 647 (1950): "nonexistent powers can [not] be prescribed by an unchallenged exercise . . ."

[9] Erickson 97.

In support of the claim that the President and Senate enjoy "concurrent power" to dispose of U.S. property, Messrs. Hansell and Erickson invoke a melange of dicta, without weighing even stronger statements that Congress disposal power is "exclusive." Thus, the Supreme Court declared that article IV "implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise." [10]

Echoing such judicial statements, an opinion of the Attorney General stated in 1899 that:

> The power to dispose permanently of the public lands and public property in Puerto Rico rests in Congress, and in the absence of a statute conferring such power, cannot be exercised by the Executive Department of the Government.[11]

Such statements respond to two cardinal rules of construction. First, there is the rule that express mention signifies implied exclusion, which the Supreme Court has employed again and again: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode." [12] In other words, when article IV says "Congress shall dispose," that means Congress and nobody else shall dispose.

The rule was invoked by the Founders; for example, Egbert Benson said in the First Congress, which drafted the Bill of Rights and in which sat many Framers and Ratifiers, that:

> It cannot be rationally intended that all offices should be held during good behaviour, because the Constitution has declared [only] one office—namely the judicial office—to be held by this tenure." [13]

The fact, emphasized by Hansell, that "the property clause contains no language excluding concurrent jurisdiction of the treaty power" is therefore of no moment. Having given Congress the power to dispose of public property, it follows that the President and Senate were "impliedly excluded" therefrom.

Second, there is the settled rule that the specific governs the general. The Supreme Court has said:

> Where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates. [14]

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[10] *Wisconsin Cent. R.R. Co.* v. *Price County*, 133 U.S. 496, 504 (1890); see also *Swiss Nat. Ins. Co.* v. *Miles*, 289 Fed. 571, 574 (App. D.C. 1923).

[11] 22 Op. Atty. Gen., 544, 545 (1899). 2 J. Story, *Commentaries on the Constitution of the United States*, Section 1328, p. 200 (4th ed. 1873): "The power of Congress over the public territory is clearly exclusive and universal * * *" Cf. *Osborne* v. *United States*, 145, F. 2d 892, 896 (9th Cir. 1944).

[12] *Botany Worsted Mills* v. *United* States, 278 U.S. 282, 289 (1929); *T.I.M.E.* v. *United States*, 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carrier Act when the very sections which established that right in Part I [for railroads] were wholly omitted in the Motor Carrier Act."

[13] *13 Annals of Cong.* 505 (2d ed. 1836) (print bearing running head "History of Congress"); and see Alexander White, id. 517.

[14] *Swiss Nat. Ins. Co.* v. *Miller*, 289 Fed. 570, 574, (App. D.C. 1923). *Ginsberg & Son* v. *Popkin*, 285 U.S. 204, 208 (1932): "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Buffum* v. *Chase Nat. Bank*, 192 F. 2d 58, 61 (7th Cir. 1951). In this light, the fact, stressed by Hansell, that the Framers contemplated that a treaty could affect "territorial" rights, Hansel 5, is not decisive, for the treaty would yet be subject to the special Congress "power to dispose." There is no evidence in the records of the Convention that the Framers intended in any way to curtail that power, or to give the President a share in it. Were the matter less clear, we should yet "prefer a construction which leaves to each element of the statute a function in some way different from the others" to one which causes one section to overlap another. *United States* v. *Dinerstein*, 362 F. 2d 852, 855–856 (2d Cir. 1966).

In terms of the present issue, the specific power of disposition governs the general treaty provision. In other words, if the treaty power stood alone it might be read to comprehend the power "to dispose." But since the Framers in addressing themselves to the power to dispose of property, specifically confided it to Congress alone, it lies outside the treaty power. That is the basic rule of construction.

I may say that we have centuries of history that teach, in the absence of clear definition, resort should be had to these well-established maxims of construction.

Under these rules it is of no avail that, according to Hansell, "there is no restraint expressed in respect to dispositions" in the treaty power itself, because there is an implied exclusion which is as good as written in the constitutional text.

For this "there is no restraint expressed" Mr. Hansell relies on *Geofroy* v. *Riggs*:

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the * * * departments. * * *" [15]

Now, in the text of that quote there is the distinction between the treaty power which is "expressed" and restraints which can be "found" in the Constitution. *Geofroy* does not call for express restraints—it suffices that they can be found in the Constitution.

The "implied exclusion" is "found" in the Constitution by virtue of the express grant of disposal power to Congress under the rule of express mention, and of the fact that the general treaty power is limited by the special congressional power of disposition.

These principles are reflected in the Supreme Court's statement in *Sioux Tribe of Indians* v. *United States*:

> Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in the lands must be traced to Congressional delegation of its authority.[16]

To this the State Department responds that *Sioux Tribe* "did not deal with the relation between the treaty power and the congressional power under article IV, section 3, clause 2;" Hansell labelled it "dicta." [17]

By this test the Hansell-Erickson collection of dicta falls to the ground, for almost all were not uttered in the context of that relation.

The executive branch employs a double standard—what is dictum when the language is unfavorable to it becomes holy writ when the dictum reads in its favor.

Erickson, for example, tells us that: "*Jones* against *Meehan* is cited as an example by reason of the quote and the language there, which it seems to me is of significance, irrespective of the particular facts involved." [18]

What he is actually saying is that no matter what the cites are, the language is so clear that we should pay heed to it.

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[15] Hansell 4; 133 U.S. 258, 267 (1890), emphasis added. One might with equal force argue that no limitation on Congress' "power to dispose" is "expressed" in article IV.

[16] 316 U.S. 317, 326 (1942). *Turner* v. *American Baptist Missionary Union*, 24 Fed. Cas. (No. 14,251) 344, 346 (C. Ct. Mich. 1852): "Without a law the president is not authorized to sell the public lands . . . The [Indian] treaty, in fact appropriated the above tract of 160 acres for a particular purpose, but, to effectuate that purpose, an act of congress was passed."

[17] Hansell 27, 22.

[18] Erickson 105.

We have at least equally clear language—maybe even sharper language—on the exclusivity of the disposal power.

Messrs. Erickson and Hansell cannot have it both ways. They have got to make up their minds. Either all dicta go by the board or you have to weigh them in the same scales. In truth, dicta carry little weight when a particular issue has not been decided.

Chief Justice Marshall dismissed his own dicta in *Marbury* v. *Madison* when they were pressed upon him in *Cohens* v. *Virginia*, 19 U.S. 264, 399 (1821), on the ground that dicta do not receive the careful consideration accorded to the question "actually before the court."

The statements here quoted respecting "exclusivity" carry sepcial weight because they reflect traditional canons of construction and were generally in support of the particular holding. The foregoing considerations should suffice to dispose of a number of other Hansell-Erickson arguments for "Concurrent jurisdiction," but I shall consider them for the cake of completeness.

I hope you will bear with me because I think it is precisely this kind of analysis that should dissipate the myths. One must face up to the arguments that have been made on behalf of the administration. If you will be patient I will do this, one after another.

To escape from the exclusivity of Congress disposal power, Mr. Erickson argues: "To begin with, article IV, section 3, clause 2, uses the same terminology, 'Congress shall have power,' as article I, section 8, which in our opinion, permits treaty provisions relating to such matters to be self-executing [that is, without congressional action], at least to the extent that the inherent character of the power or other constitutional provisions do not make the power exclusive to Congress." [19]

Erickson's qualification is a concession that some article I powers cannot be concurrently exercised by the President. The Department of State concedes that "treaties may [not] impose taxes." [20]

Why is that power more "inherently" exclusive than such other article I, section 8 powers as the power to estabilsh post offices, to provide and maintain a navy, to declare war, to coin money, et cetera, all of which manifestly cannot be exercised by treaty. Erickson proves too much.

Second, he urges: "Article IV, section 3, clause 2, is included in a portion of the Constitution which deals with the distribution of authority between the Federal and State governments. It does not purport to allocate powers exercisable by Congress or pursuant to treaty." [21]

But Section 3(2) unmistakably does "allocate powers exercisable by Congress": "The Congress shall have power to dispose of . . . property belonging to the United States."

Hansell argues that the placement of the property article in clause 4 . . . provides strong evidence that the property clause does not restrict the treaty power." [22]

That the "placement of a power in one or another article is without significance for its scope is readily demonstrable: (a) "Congress

[19] Id. 97.
[20] Hansell 25.
[21] Erickson 97.
[22] Hansell 4–5, emphasis added.

shall have power to declare the punishment of treason" is located in the judiciary article III; (b) Congress powers to make "exceptions and regulations" respecting the Supreme Court's appellate jurisdiction is lodged in article III, section 2; (c) the provision that "Congress may determine the time of choosing the electors" is placed in the executive article II, section 1(4).

Does this authorize the President by treaty to declare the punishment of treason, to regulate the Court's appellate jurisdiction, or to interpose in the choice of electors? Obviously not.

Whether located in article I or article IV, "Congress shall have power" means one and the same thing—the power resides in Congress, not in the President. It needs constantly to be borne in mind that the President has circumvented Senate participation in treatymaking by affixing the label "Executive Agreements" to treaties, without constitutional warrant [23] so that claims ostensibly made on behalf of the Senate and the President can be turned to his own advantage.

Mr. Hansell also attaches significance to the close linkage between the article IV "power to dispose" and "the power to make all needful rules and regulations" respecting the territory or other property belonging to the United States, and cites *Geofroy* v. *Riggs* for the proposition that "the treaty power can be used to make rules and regulations governing the territory belonging to the United States, even in the District of Columbia." [24]

The disposition power and the regulation power are contained in the same article IV provision.

Geofroy presented the question whether a citizen of France could take land in the District of Columbia by descent from a citizen of the United States. Local law withheld the right, but in keeping with national solicitude for protection of citizens abroad, a treaty provided for reciprocal rights of inheritance in such circumstances for citizens of both signatories.

In consequence, the treaty overrode the local provision; but this hardly stretches to the "making of rules and regulations" by treaty for the District of Columbia. Were this true, the President could by treaty take over the governance of the District of Columbia, in spite of the article I, section 8(17) provision that, "The Congress shall have power to exercise exclusive jurisdiction in all cases whatever over such district."

Assume notwithstanding, contrary to fact, that the treaty power does indeed comprehend the "making of rules and regulations governing the * * * District of Columbia," does the "close" linkage with the "power to dispose" comprehend a disposition of the White House by treaty? Such arguments verge on absurdity.

Messrs. Hansell and Erickson have cited a string of cases in support of "The power to dispose of public land * * * by treaty." [25]

Such cases, such as *Holden* v. *Joy*, 84 U.S. 211 (1872), and *Jones* v. *Meehan*, 175 U.S. 1 (1899), have frequently been cited in your hearings for opposing viewpoints.

Let me begin with Hansell's citation of *Missouri* v. *Holland*, 252 U.S. 416 (1920), for it quickly illustrates how far-fetched are the State

[23] Berger, supra n. 4 at 140–162.
[24] Hansell 5.
[25] Id.; Erickson 97.

Department's interpretations. *Missouri* v. *Holland* arose out of a State challenge to the treaty with Great Britain for the protection of migratory birds which annually traversed parts of the United States and of Canada. Justice Holmes, addressing the argument that the treaty infringed powers reserved to the States by the 10th amendment, stated:

> Wild birds are not in the possession of any one, and possession is the beginning of the State's rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State, and in a week a thousand miles away.[26]

Consequently, he held the State could assert no "title" to migratory birds. By the same token, the United States could lay no claims to "ownership" of the birds, and *Missouri* v. *Holland* is therefore wholly irrelevant to the power by treaty to dispose of property belonging to the United States.

Holden v. *Joy* and *Jones* v. *Meehan* will repay close analysis because they involve Indian treaties which constitute one of the pillars of the argument, to quote Erickson, that "the United States can convey its title by way of self-executing treaty and that no implementing legislation is necessary." [27]

To begin with *Jones*, both Hansell and Erickson quote:

> It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribes, without any act of Congress, or any patent from the Executive authority of the United States.[28]

The treaty had "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres * * *" for an individual Indian; and the issue was what kind of title did he take. The Court quoted from an opinion of Attorney General Roger Taney, destined before long to succeed Chief Justice Marshall:

> These reservations are excepted out of the grant made by the treaty, and did not therefore pass with it; consequently the title remains as it was before the treaty; that is to say, the lands reserved are still held under the original Indian title.[29]

I might say that almost all Indian treaty cases involve precisely such issues. A treaty reserved land to the Indians. Titles to those lands never passed to the United States. The United States, therefore, was not disposing of its property, but was mechanically confirming what the treaty provided; namely, that the individual Indian had the title.

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple." [30]

That explanation presumably responded to the fact that tribal lands were generally held in common; individual titles were all but unknown, so that such title had to be secured through the machinery of the treaty.

But that is far from a disposition of Government land because, as Taney explained, the "reserved" title remained in the Indians. Many, if not most, of the cases of Indian treaties involve such "reserve" provisions.[31]

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[26] 252 U.S. at 434.
[27] Erickson 97.
[28] Hansell 6; Erickson 97.
[29] 175 U.S. at 12.
[30] Id. 21.
[31] See infra appendix.

The quotation from *Holden* v. *Joy*, Erickson acknowledges—I found that the Attorney General also generously concedes—is dictum; notwithstanding, Hansell relies on it as "a clear statement of the law." [32]

It is a statement. I am not sure that it is clear. It certainly did not state the law, notwithstanding our respect for the Supreme Court, we are entitled to look behind the statement.

The statement was:

> It is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted.

In a word, it would not admit consent of Congress was required, and it went on to say:

> On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in such cases purely political.[33]

What bearing the last clause has on Congress "power to dispose" of public land at first escaped me. But when I came to research the cases cited I found that this particular clause was lifted from an earlier statement by the court in *Foster* v. *Neilson*, where the Court said, under one of these treaties, it is not the function of Congress to construe the Constitution or the treaty. That is a purely judicial function, that is our job. That is all that last clause means. You have the *Foster* v. *Neilson* quotes in the appendix to my statement.

As to the "many authorities," the Court's citations could hardly be farther afield. To avoid cluttering this statement with a minute analysis of each case cited by the Court for the assertion that "a treaty may convey to a grantee a good title . . . without an act of Congress," I have abstracted them in an appendix, so that you may see for yourself that half of the cases thus cited are altogether irrelevant, and that the rest concern "reserves" under which, as Taney observed, no title had passed to the United States but remained in the given Indians.

In considering such dicta, it is well to bear in mind Chief Justice Taney's statement that the Court's "opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported." [34]

I would urge that while we should have a proper respect for the Supreme Court, we should not yield to a mystique of the Court any more than we yielded to the mystique of the Presidency in the case of Mr. Nixon. We are always entitled—you, as Members of Congress, and I, as an American citizen—to look behind these holdings and be critical of the courts. I have a letter from Justice Black, with one of whose opinions I ventured to disagree, stating, "I do not agree with your conclusions, but I welcome your argument. That is the only way in which we will arrive at the truth."

I would always urge you to go behind these opinions, remembering what the Warren Courts taught us and the Burger Courts are teaching us anew.

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[32] Erickson 97; Hansell 22.
[33] Quoted by Hansell 5–6; 84 U.S. at 247.
[34] *The Passenger Cases*, 48 U.S. (7 How.) 283, 470 (1849), dissenting opinion.

By the Taney standard the *Holden* dictum is no authority at all. The inappositeness of *Holden* is underscored by the facts.

In May 1928 and February 1833, "the United States agreed to possess the Cherokees of 7 million acres of land west of the Mississippi."

It "was the policy of the United States to induce Indians to surrender their lands and possessions to the United States and emigrate and settle in the territory provided for them in the treaties," so an exchange of land was provided.

But a third treaty, that of December 1835, proved necessary, whereby the Indians ceded their lands to the United States in consideration of $5 million to be invested in the manner stipulated. The Indians considered that the prior treaties, confirmed by the new, did not contain a sufficient quantity of land, so the United States agreed to convey an additional tract in consideration of $500,000 to be deducted from the $5 million.[35]

This may be viewed either as a purchase and sale or an exchange: "the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them * * * " And the transaction was authorized by the act of 1830, which empowered the President to set aside land west of the Mississippi for the reception of such tribes as chose to emigrate, and to "exchange" such lands with any tribe.[36]

The 1830 act served to ratify the act of 1838, and "ratification is equivalent to original authority."[37]

"It is well settled that Congress may * * * 'ratify * * * acts which it might have authorized' * * * and give the force of law to official action unauthorized when taken."[38]

Although the subsequent 1833 and 1835 treaties differed in some particulars from the authorization, the purpose was the same—"to induce the Indians * * * to emigrate and settle in the country long before set apart for that purpose."[39]

When, therefore, the Court, speaking to the contention that the President and the Senate "could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress," stated that "a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it," it was making a statement that was unnecessary to the decisions, because Congress had authorized the conveyance.

I have learned that the Attorney General in his statement before the Senate Foreign Relations Committee stated that "The Court conceded that the question was immaterial" because Congress had actually implemented and ratified that particular treaty. Ratification, as you know, is as good as having authorized it from the very beginning.

As to other treaties, Hansell tells us, "the precedents look two ways." One, some have been "contingent upon congressional authorization." Two, the "precedents supporting the power to dispose of property by treaty alone," he states, "can be found in the boundary treaties with neighboring powers, especially in the treaties

[35] 84 U.S. at 237, 238, 241.
[36] Id. 245, 238–239.
[37] *Wilson* v. *Shaw*, 204 U.S. 24, 32 (1907).
[38] *Swayne & Hoyt, Ltd.* v. *United States*, 300 U.S. 297, 301–302 (1937).
[39] 84 U.S. at 240.

between the United States and Great Britain of 1842 and 1846 for the location of our northeast and northwest boundaries * * *." [40]

Let me underscore that the best cases Hansell can invoke for his position are boundary cases.

Settlement of boundary disputes are not really cessions of U.S. property. The Oregon boundary dispute proceeded from an inflated claim: "Fifty-Four Forty or Fight"; the British, on the other hand, claimed land down to the 42d parallel.

If you will look into history of that period, you will find that the authorities consider that the British claim was better than our own. The American population in this area was very thinly scattered over a vast terrain.

Only when the dispute was settled by treaty—at 49 degrees—could either party confidently assert that it had title.

If you have ever owned a farm and had a boundary dispute you did not really know what you owned until the court told you; you had to bring a suit to remove a cloud from title to determine just what your boundaries actually were.[41]

Consequently, as Samuel Crandall, a respected commentator stated, "A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition." [42]

Those boundary cases are the strongest cases that Hansell could invoke. In my judgment, they shed no real light on the problem.

Among other examples of alleged treaty transfers of property, Hansell instances the return to Japan of the Ryukyu Islands.[43]

By article III of the 1951 Treaty of Peace with Japan, the United States received the right to exercise "all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of those islands. . . ."

There is not a word about cession of territory or sovereignty. They are saying go ahead and exercise the powers of administration and jurisdiction.

While Japan renounced, in article II, "all right, title and claim" to various territories, it made no similar renunciation with respect to the Ryukyus." [44]

Quoting the Legal Adviser of the State Department, that "sovereignty over the Ryukyu Islands . . . remains in Japan . . .", a district court stated that "Sovereignty over a territory may be transferred by an agreement of cession," but it concluded that there had been no cession.[45]

Mark that the position of Mr. Hansell today really departs with respect to these islands from the position that was taken in court by the legal adviser.

With respect to the same islands, the Fourth Circuit Court of Appeals quoted a statement by Ambassador John Foster Dulles, a delegate to the Japanese Peace Conference, that the aim was "to permit Japan to retain residual sovereignty," and held that the treaty did

[40] Hansell 6.
[41] S. E. Morison, "Oxford History of the American People," 538, 546–547 (1965).
[42] S. Crandall, "Treaties, Their Making and Enforcement," 226 (2d ed. 1916).
[43] Hansell 6.
[44] 3 U.S.T. 3169, 3172, 3173.
[45] *United States* v. *Ushi Shiroma*, 123 F. Supp. 145, 149, 148 (D. Hawaii, 1954).

not make "the island a part of the United States, and it remains a foreign country for purposes of" the Federal Tort Claims Act.[46]

Let us turn to Panama.

"In the history of transfers of property to Panama," Hansell tells us, "we have had a mixed practice."[47] In other words, it cuts both ways.

By the 1903 Panama Convention, Panama granted to the United States "all the rights, power and authority within the Zone . . . which the United States would possess if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority. . . ."[48]

The words "if it were sovereign" signal an intent to stop short of a cession of sovereignty. That is confirmed by an "Opinion of the Attorney General." Considering the Tariff Act levy of duties on articles imported "into the United States or into any of its possessions," he stated that "the Canal Zone is not one of the possessions of the United States within the meaning of that term as used by Congress in the Tariff Act, but rather is a place subject to the use, occupation, and control of the United States for a particular purpose."[49]

In a word, the opinion of the Attorney General distinguishes a possession of the United States from a place which is merely subject to the use, occupation, and control of the United States.

In *Luckenbach S.S. Co.* v. *United States*, Chief Justice Taft stated, "Whether the grant in the treaty amounts to a complete cession of territory and dominion to the United States or is so limited as to leave titular sovereignty in the Republic of Panama, is a question which has been the subject of diverging opinions" (in the words of Hansell, "We have had a mixed practice"). Taft, writing for the Court, found it unnecessary to decide that question and is, therefore still open.[50]

Instead, Taft relied on a "long continued course of legislation and administrative action that has operated to require that the ports in the Canal Zone are to be regarded as foreign ports within the meaning" of the act governing the transport of "mail between the United States and any foreign part."[51] For one of the most domestic functions—the transfer of mail—Panama was a foreign country, a foreign port, not a possession of the United States. That fact itself is a hint that the Panama Treaty is no more a cession than the Japanese Treaty respecting the Ryukyus.

SOVEREIGNTY NOT THE ISSUE

It does not follow, however, and I want to caution you here, that the interests of the United States do not constitute "property of the United States." The grant of "use and occupation . . . in perpetuity" constitutes "property" no less than the familiar lease of realty for 99 years.

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[46] *Burna* v. *United States*, 40 F. 2d 720, 721 (4th Cir. 1957).
[47] Hansell 7.
[48] Quoted Hearings, supra n. 1, part I, p. 5, emphasis added.
[49] 27 Opinion of the Attorney General 594, 595 (1909).
[50] 280 U.S. 173, 177–178 (1930).
[51] Id. 178.

Then there are the installations that cost billions of dollars. Disposition of these no less requires the consent of Congress than does that of territory. In 1942, the President, by executive agreement, promised to transfer certain installations to Panama subject, however, to congressional approval.[52]

A similar provision is to be found in the treaty of 1955.[53] These are executive constructions that speak against Messrs. Hansell and Erickson.

In sum, Messrs. Hansell and Erickson have failed, in my opinion, to make out a case for "concurrent jurisdiction" with Congress in the disposition of U.S. property. If the President is to fly in the face of the express "power of Congress to dispose" it must be on a sounder basis than the arguments they have advanced.

In my judgment, the Panama Treaty should contain a provision making it subject to approval of the Congress.

ANALYSIS OF THE OPINION OF THE ATTORNEY GENERAL

Now, gentlemen, I pass to a six-page addendum which is devoted to a statement by Attorney General Bell before the Senate Foreign Relations Committee in late September. It is an addendum for the simple reason that the Attorney General's statement only reached me through the courtesy of your staff only last Saturday. I just had a few days to study and draft an opinion.

It bears the weight of a statement due to the statement of any Attorney General of the United States. It must be carefully scrutinized.

Only three points made by the Attorney General seem to me to call for additional comment, and of these I shall speak in turn.

One, the *Percheman* case.

The Attorney General cites *United States* v. *Percheman*, 32 U.S. (7 Pet.) 511, 88–89 (1833) to prove that "the Court held self-executing"—which means it does not need the consent of Congress—"certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory." A.G. at p. 10.

At the cited pages it appears that article 8 of the treaty provided:

> All the grants of land made before the 24th of January 1818, by his Catholic Majesty . . . in the said territory ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands. . . .

In a word, just like the Indian reserves, grants had been made by the King of Spain to private individuals. Reference to those private grants was made in the treaty.

This article, Chief Justice Marshall remarked: "Must be intended to stipulate expressly for that security of private property which the laws and usages of nations would, without express stipulation, have conferred * * *" In other words, even in the absence of any stipulation under the law of nations, in any cession by one nation to another, private property will be respected. The treaty merely expressed that respect for private property.

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[52] "When the authority of the Congress . . . shall have been obtained therefore . . ." Agreement of May 18, 1942, 59 Stat. (Pt. 2) 1289.

[53] Agreement of January 25, 1955, 6 U.S.T. 2273, 2278.

Marshall continued, "Without it (article 8), the title of individuals would remain as valid under the new government as they were under the old * * * the security of (pre-existing) private property was intended by the parties * * *."

In short, the treaty provided that prior Spanish grants to private persons should be ratified and confirmed, a provision far removed from Presidential "regulation" of public territory. There was no reason for the treaty to be other than self-executing because there was no disposition of public properties.

Moreover, *Foster* v. *Neilson*, 27 U.S. (2 Pet.) 253, 314–315 (1829), a case cited by the Attorney General (A.G. at p. 3), held with respect to the selfsame provision that "the ratification and confirmation which are promised must be by the act of the Legislature," that is, Congress. So, even this confirmation was not self-executing. The citation to *Percheman* illustrated why I approach an Attorney General's statement with something less than awe.

By this I mean no disrespect to the Attorney General personally. I did not have time to find the lovely statement by Justice Jackson where he contritely rejected a formal opinion that he had signed as Attorney General, noting the possibility that he may not have had the time to study it. Bearing in mind the torrent of things that have to be signed by the Attorney General, I can hardly ask him to rush out to the library as old man Berger did to read *United States* v. *Percheman* for himself.

This is without disrespect to the Attorney General personally. Attorneys General have to rely on their subordinates.

I move now to remarks in the legislative history of the Constitution. There are a group of quotations in the legislative history which the Attorney General asserts show that "the members of the Convention were fully aware of the possibility that a treaty might dispose of the territory or property of the United States" (A.G. at p. 5).

I am not going to quote all of them in this oral statement, but shall content myself with a few.

The Attorney General begins with the remark of George Mason in the Constitutional Convention: "The Senate by means of a treaty might alienate territory etc. without legislative sanction" (A.G. at p. 6; 2 Farrand 297).

This was during a debate on a resolution that "Each House shall possess the right of originating bills, when Mason seconded Strong's motion to "except bills for raising money for the purposes of revenue, or for appropriating the same," which ultimately found its way into the Constitution, and had nothing to do with the treaty power.

The Senate, said Mason, "could already sell the whole country by means of treaties," plainly an extravagant overstatement, made at a time when the treaty was not under discussion. His "alienate territory" remark may merely represent a strategic retreat from his untenable "sell the whole country" remark.

Who has not made in the course of eloquent discourse, or what he deemed eloquent discourse, a remark which thirty seconds later he regretted making.

I suspect that is what happened to George Mason, and he tried to tone it down.

Now for the rest of the quotations, considered in my written statement, they all deal with boundary disputes. One and all. Some dealt with the anxiety lest the Mississippi be given away.

You remember from your history courses how vital the Mississippi was to the settlers west of the Appalachian. They felt their whole future depended on having free access to the Mississippi and the expansion of the West. They were worried that they might be sold down the river. Our claim to the Mississippi really was not made good until the Louisiana Purchase.

When the treaty power was under discussion, Williamson and Spaight moved "that no Treaty of Peace affecting territorial rights should be made without concurrence of two-thirds of the [members of the Senate present]" (A.G. at p. 6; 2 Farrand 543). Similarly, Gerry, speaking for a greater proportion of votes on "treaties of peace," said that here: "The dearest interests will be at stake, as the fisheries, territories, etc. In treaties of peace also there is more danger to the extremities of the Continent of being sacrificed than on any other occasion" (A.G. at p. 6; 2 Farrand 541).

The "extremities of the Continent" has reference to boundary disputes which do not really involve territory owned by the United States.

"Sherman and Morris proposed but did not formally move," the Attorney General states, "the following proviso:

"But no treaty (of peace) shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the United States may be contracted * * *" (A.G. at p. 6; 4 Farrand 58).

Farrand adds that "The subject was then debated, but the motion does not appear to have been made" (A.G. at p. 6; 4 Farrand 58).

Why was the motion not made after debate? Presumably, the matter was postponed for consideration when article IV, section 3(2) would come up for discussion. During this subsequent discussion of "The Legislature shall have power to dispose of . . . the territory . . .", it is singular that no mention was made of an exception for disposition under the treaty power (2 Farrand 466).

As you know, Mr. Chairman, somebody that has been the proud parent of a motion and has consented to postpone it for the time being is apt to bring it up again at a later time. He does not surrender it readily. He wants to raise it and have it considered.

Of course, the records of the Convention are so sparse that we do not have all of these things. But I think it is reasonable to infer that they must have told Sherman and Morris that the problem would be dealt with when article IV came up for discussion.

I think that is a far more reasonable inference from the Sherman-Morris remark that to infer that the power with respect to boundary disputes was intended to confer a boundless power over cession of all territory by treaty.[1]

Nonmention is the more remarkable because such an exception would carve out an area of undefined magnitude from the power

[1] (From written statement-addendum p. 3.)
During the subsequent discussion of "The Legislature shall have power to dispose of * * * the territory * * *," it is singular that no mention was made of an exception for disposition under the treaty power.

conferred, a matter which would affront the democratically minded who placed their faith in the House. It seems more reasonable to infer from the history that article IV, section 3(2), was designed to set at rest the fears that territory might be ceded without the concurrence of the House.

The Attorney General cites an amendment proposed by the Virginia Ratification Convention as exhibiting the "awareness of the Founding Fathers that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States."

This was a proposal for an amendment:

> No commercial treaty shall be ratified without the concurrence of the members of the Senate [not merely of those present] and no treaty ceding, contracting * * * the territorial rights or claims of the United States * * * shall be made, but in cases of extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both Houses respectively.

This is stepping up from two-thirds of the Senate and a majority of the Congress to three-fourths of both Houses. (A.G. at p. 7; 3 Elliot, Debates on the Federal Constitution 660.)

The Attorney General's reading paradoxically transforms Virginia's anxiety to have greater safeguards—that is, three-fourths of both Houses rather than the bare majority that satisfies article IV—into an argument for excluding the House altogether.

Like the earlier remarks, the Virginia proposal testifies to the importance that the Founders attached to the disposition of territory—no cession except "in cases of extreme necessity"—and it counsels against reading the equivocal "treaty-making" to encroach upon the "power to dispose" that requires the vote of both Houses, not merely the Senate.

In any event, it may be asked, should the post-Convention view of one State—which was not adopted even when they drafted the Bill of Rights and had all sorts of amendments thrust upon them—should that view be permitted to override the plain terms of article IV?

Hugh Williamson, a delegate to the Convention, wrote to Madison some 9 months after its close, to recall to him: "a Proviso in the new System which was inserted for the express purpose of preventing a majority of the Senate * * * from giving up the Mississippi. It is provided that two-thirds of the members present in the Senate shall be required in making treaties * * *." (A.G. at p. 7–8; 3 Farrand 306–307.)

The Mississippi presented a gnawing boundary question which threatened the expansion of the West and was only settled by the Louisiana Purchase. Boundary treaties do not really involve the disposition of territory or property of the United States but the adjustment of conflicting claims, even when some believe their claims to be more valid than those of the opposing party.

To my mind, the history is at best inconclusive; the remarks quoted by the Attorney General are confined to adjustment of boundary disputes, with one exception—the hasty remarks by George Mason—by treaties of peace.

Boundaries are settled not by treaties generically but by treaties of peace which are peculiar treaties. Treaties of peace present special problems, and such citations do not add up to general concurrent jurisdiction over the disposition of Government territory or property.

To go beyond such territorial adjustments collides with the rationale of *Pierson* v. *Ray*, 386 U.S. 547, 554–555 (1967), in an opinion written by Chief Justice Burger.

With respect to the common law immunity of judges from suit for acts performed in their official capacity, the Court declared:

> We do not believe that this settled principle was abolished by section 1983, which makes liable "every person" who under color of law deprives another of his civil rights * * * we presume that Congress would have specifically so provided had it wished to abolish the doctrine.

Mark that the all-inclusive "every person" is much more inclusive than the treaty power. "Every person" was held not to curtail an existing common law immunity in the absence of a specific provision. The more equivocal treatymaking power demands an even more exacting standard. Before it be concluded that it in any way diminishes the explicit grant in the Constitution itself to Congress of "power to dispose" of territory, a clearly expressed intention to do so under the rationale of *Pierson* v. *Ray* is required. That requirement is not satisfied by the random remarks collected by the Attorney General.

Finally, point 3. These are some arguments that have been made earlier by Hansell and Erickson, and with all due respect, I had not taken them seriously. But now they carry the weight of the Attorney General's imprimatur, and I felt they called for notice.

The Attorney General concedes that: "the specific power granted to the House of Representatives and Congress in fiscal matters (art. I, sec. 7, clause 1 and art. I, sec. 9, clause 7, money bills and appropriations power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the purse strings." (A.G. at p. 45.)

Now, sections 9 and 7 are couched in quite dissimilar terms. One, section 9(7), is framed in terms of flat prohibition: "No money shall be withdrawn from the Treasury but in consequence of appropriations made by law * * *."

Section 7(1), on the other hand, merely provides that "All bills for raising revenue shall originate in the House." Yet the Attorney General reads section 7(1) to preclude the President and Senate from "bypass[ing] the power of Congress and in particular of the House of Representatives over the pursestrings."

What is there that distinguishes "All bills * * * shall originate in the House" from "The Congress shall have power to dispose * * * "? Why, if you cannot bypass "all bills shall originate in the House," can you bypass "Congress shall have the power"?

The impalpability of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes." Nothing in this article I, section 8(1), "The Congress shall have power to lay and collect taxes" distinguishes it from the article IV "The Congress shall have power to dispose * * *."

In my judgment, they are absolutely on a par.

Finally, if the President may not by treaty "bypass" the power of the House to originate revenue-raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the territory and property of the United States.

Gentlemen, with that, I will be pleased to answer your questions.

Senator ALLEN. We are called to a rollcall vote on the floor of the Senate. We are halfway through the rollcall. Senator Hatch and I must go over there.

So, suppose, if you do not object, we come back at 11 o'clock and ask you to respond to questions. Certainly we look forward to that.

Professor BERGER. I will be happy, to the extent I can, to answer your questions. That will be fine.

[Recess taken.]

Senator HATCH [acting chairman]. The subcommittee will come to order. The Chairman was detained in a discussion on the floor of the Senate. He will return as soon as possible.

Professor Berger, I appreciated your testimony because it clearly evidences that you have spent a lot of time—effective time—in trying to resolve what I feel is one of the most important issues in America today.

Would you agree with me that this is an important issue of great magnitude with regard to the Constitution and executive power and the extension of executive power?

Professor BERGER. Oh, yes, but I would be careful about one thing. I think you owe it to yourself also to note that my opinion does not proceed from political motivation. You really have to address it as a great constitutional issue which will have an impact over the years.

Senator HATCH. I agree with that. You and I are on opposite poles with regard to whether or not we should transfer the Panama Canal pursuant to these treaties. I think we have to have a new treaty that will do a lot more than what our 1903 treaty did. But I am not in agreement with you that the United States should surrender sovereignty over the canal.

Professor BERGER. We do not have to get into that.

Senator HATCH. Yes, and I would like to suggest to you that the reason we invited you here is that, notwithstanding, immediate political considerations, we consider this to be a major constitutional question of great magnitude because it involves, in my opinion, an unprecedented extension of executive power by the Department of State. I do not think the President fully understands this problem at this point, and I am not certain that the American people clearly understand it.

But I think it is a blatant extension of the executive power to the detriment of the other two branches of Government and in particular, the Congress. Not too many people understand this issue because, frankly, it is a difficult one to understand. I am sure that many people will have read your statement many times before they will understand fully the momentous impact that your statement and analysis has on this question.

After days of hearings on this subject, I believe I can state that we are in agreement with your position that the full Congress must authorize the disposal of territory or property of the United States, even if such disposition is proposed to be accomplished by a treaty submitted to the Senate for ratification.

I note that the treaty of 1955 contains in several places a clause stating that insofar as a disposition of territory or property is contemplated, then such disposition is subject to the enactment of authorizing legislation by the Congress.

So, there is precedent even with regard to our previous arrangements with Panama which show the need for implementing or authorizing legislation by the Congress.

Professor BERGER. I would agree that a Panama treaty should contain a clause that this treaty is subject to congressional authorization as far as disposition of any property of the United States is concerned.

Senator HATCH. The question I really want to get into is this.

If there should be authorizing legislation, what would be the procedure that the President and the State Department should have followed? Let us assume that we are at a pretreaty stage.

What steps should the State Department and the President have taken prior to negotiating and signing these treaties?

Professor BERGER. Here you get into a field that is not nearly as clear as any of the matters I have been testifying about, about which one cannot speak categorically.

You recall at the very outset of our beginning as a nation, when the Jay Treaty was presented, Jefferson was Secretary of State and counseled President Washington, that inasmuch as the treaty would require appropriations by the House, he felt it would be safer to consult the House, notwithstanding that it could not be a participant in the negotiation of treaties.

We have to separate out the power of the President and the Senate to negotiation and ratify a treaty and the need for consent by the full Congress, including the House, to make an appropriation or disposition of property.

As I said, Jefferson argued that it would be wise to consult the House as they were going along.

But historically that has not been done.

Whether or not we have a clear constitutional mandate for that, I am not prepared to say.

Senator HATCH. I would suggest, although I agree with you that this is a hazy area, and that your suggestion is an after-the-fact suggestion, I would suggest that in the future if this is to be fully understood, that it would be important for the President to come to the full Congress for implementing rights, in other words, to grant him rights to go and negotiate a treaty and to bring it back for two-thirds ratification.

Difficulty is there also with that position because if you cannot transfer property without consent of both Houses of Congress, then I think it logically follows that after the treaty is entered into, that the ultimate treaty would have to be passed at least by majority vote of the House of Representatives.

Professor BERGER. You are going too far, Senator. By the same token the Senate has to consent and ratify the treaty by two-thirds, and yet many treaties have been negotiated without even consulting the Senate. However, the Senate, as in the case of the Versailles Treaty, refuses to consent and upsets the entire applecart. It has that opportunity to do that.

We realize the extreme situation for the Senate or the House in doing that, but the power is there. That cannot be taken away.

I think, if I may suggest, you are taking on enough to require that the disposition be subject to the consent of the Congress.

Senator HATCH. So what you are saying——

Professor BERGER. Fight one fight at a time.

Senator HATCH. The way then to handle this problem is to put language in the treaty that the treaty itself is subject to the consent of Congress with the majority vote in the House of Representatives and two-thirds ratification by the Senate; is that right?

Professor BERGER. That will arouse people in the State Department and in the President's office to the need for such consent. There is no sense in shutting your eyes to it. What is the sense of marching up the hill if you march back?

Senator HATCH. That is why the founding fathers wanted it there, so these matters would be debated and so the people's representatives would be considered in matters of cession of property and would have to stand up and vote.

Professor BERGER. My off the top of my head reaction is this. I would be content to say, that is, to insert the provision you suggest in the treaty and let the matter be subject to further study and then make up your mind whether or not that is effective. If it is not effective, you can take further action. These constitutional issues are thorny. They cannot be decided offhand as you have learned from addressing yourself to this one.

Senator HATCH. That is right.

Professor BERGER. If your experience proves that you really need consultation as to a disposition as the treaty is going along and being negotiated, then that is another story.

Senator HATCH. How would you recommend that the House of Representatives protect itself in this matter? If the President has taken the position that all he has got to have is a two-thirds ratification by the Senate as a result of the State Department's concurrent jurisdiction, then what steps might the House take to protect its rights, or their rights, that is, what steps should the House Members take to protect their rights?

TREATY IS VOID WITHOUT CONCURRENT ACTION BY HOUSE AND SENATE

Professor BERGER. In my view any attempt of disposition without getting the concurrence of the Congress, including the House, would be void.

Senator HATCH. That is a strong statement.

Professor BERGER. If I am right, if there is no "concurrent jurisdiction" to dispose of property in the executive branch if that power is exclusively in the Congress, then the President oversteps his bounds. That is unconstitutional, and if it is unconstitutional, it is void.

Senator HATCH. What you are saying is that even if the Senate ratifies this by a two-thirds ratification, and even if we go through all the process and everybody thinks we have a treaty, then it is void because the House did not agree to the property transfer.

Professor BERGER. Yes; it seems to me that consent of the House to the disposition is required. I have tried to lay out the grounds for the view that there is no constitutional warrant for proceeding without such consent.

If you will permit candor on my part, I think that if the Senate were really solicitous, genuinely anxious about the preservation of the separation of powers, it could insist in the process of ratification itself, to consult with the House on a proposed disposition. It could say that the House has a role to play and the Senate would not ratify without that.

Senator HATCH. That is my position.

Professor BERGER. I do not think you will find much sympathy for it in the Senate. I would venture to predict that.

Senator HATCH. I think we have sympathy for it, but I am not sure we have majority sympathy for it. That is the problem.

That is because there seems to be very little interest in this issue. We have tried to bring it to the Senate's attention here in the subcommittee. More and more people are beginning to understand the problem. But I have asked people all over the country if they have heard about the constitutional problem here. They have not.

Professor BERGER. I had not thought about it myself until it was brought to my attention by Dr. McClellan of your staff who sent it to me and asked me to express an opinion.

Senator HATCH. I was with Dr. Richard Morris, the eminent U.S. historian who is the authority on the Jay papers last week at dinner. We were talking about Panama and these things. I said, "Of course, you have heard of one of the arguments that I have been making all over the country, but I cannot seem to get the media to understand how to present this side of the argument."

He said, "Goodness gracious, I never thought of it. That is a heck of a point. You are right."

Professor BERGER. I had not thought of it. I refused to give an off-the-cuff opinion. I was busy, but I offered to read the papers. I began to read them, and I went through a whole mess of the hearings and so on. It was a most interesting point.

I found problems along the road. I knew there was only one way to go about it—that was serious research and study.

Let me also say this. In saying what I did about the House, I want you to remember that I was at pains to defend the right of the Senate to be included in the negotiation of treaties because, No. 1, it became the practice of a succession of Presidents to deal cavalierly with the Senate and not to include them and not to confide in them.

There is a whole chapter in my book on executive privilege, 62 tightly documented pages to show that the phrase "Advise and consent" meant that the Senate had to be a participant every inch of the way.

So I fought for the rights of the Senate.

Senator HATCH. Yes, you have.

Professor BERGER. And, I have told the House committee and Chairman Zablocki "You fellows were excluded from treaty negotiations." That is the history. There is no question about it. It was confined exclusively to the Senate, but having said that, you have raised a different point—the disposal power.

On this, as on appropriations, they ought to be consulted. This is a big problem, but we do not have to meet it now. But at what point should they be consulted? I have learned to go step by step. You will have a famous victory if you establish that the Senate ought to insist on "subject to consent" of the House in the treaty before they ratify. They can write the ticket subject to the consent of Congress to the disposition. That is a simple solution.

Senator HATCH. I agree with you. I think the Senate should be consulted throughout the negotiations. This is one of the points we have been trying to make here. But I also believe the House should

have been consulted step by step in every matter that involved a proposed disposition of U.S. property.

One of my points is this. And I have made this point in my speeches across America. Regardless of which point of view you have with regard to treaties—and I acknowledge there are sincere points of view on both sides and some of them have moment—but regardless of your point of view until we solve these constitutional problems, I do not see how any reasonable Senator could vote for ratification of a treaty which deprives their brethren in the House of rights, which decreases the Senate's rights in a very real sense, and which really establishes a very bad precedent extending and increasing the powers of the Executive to extremes never contemplated by the Founding Fathers.

Professor BERGER. It will haunt those who are closing their eyes to it down the years because it will be brought up by people who will succeed Hansell and Erickson. They will say they have a precedent. The Senate retreated, and in the future they will insist on it as a matter of Executive right.

Senator HATCH. Let me ask you this. As you could tell through the hearings, I agree with your position. Both Senator Allen and I have advanced this view very forcefully after, I think, extensive reading and study by us both.

I am certainly not as expert as you are, I am sure.

But there is, in my opinion, another constitutional issue here. There are a number, but there is at least one other major constitutional issue to which I would like for you to give some thought.

I think it also will intrigue you.

We are transferring, according to the State Department, somewhere around $9.8 billion of American property. As we view it, there are five different types of property that the United States has down there. There may be more, but there are at least five that I can name.

What I would like to do is this. In addition to the $9.8 billion of American property, we are giving the Panamanians $2.25 billion more in payments to be made out of tolls, allegedly, for the next 22½ years.

In addition to that, we are paying. It is a different form of payment. We will pay what it costs to maintain and operate the principal asset, the canal.

Professor BERGER. Is that in the treaty?

Senator HATCH. Yes; in the treaty and in the documents along with the treaty.

In addition, we are paying for our own management which I am not sure comes out of tolls or not, but I submit it will not come out of tolls but rather out of the Treasury. That cost will be the cost of our own management of the canal under these new treaties during the 23-year period.

In addition to that, we are going to give Panama $10 million per annum to operate the garbage collection and other municipal functions within the zone.

In addition to that, we are going by Executive agreement alone to loan $345 million to the Panamanians. There are other expenditures that are being made pursuant to these treaties that will also have to be made inevitably.

Professor BERGER. The treaties authorize it?

Senator HATCH. That is right.

Professor BERGER. If authorized in the treaties, then it is up to the Senate.

Senator HATCH. Can we authorize all of these new payments without an appropriations bill which should originate in the House of Representatives?

Professor BERGER. Before you get to that, it is up to the Senate to ratify or not. You have the power in the Senate to stop it dead in its tracks if you do not like these particular provisions.

Senator HATCH. But until we can educate our brethren to the point where they realize they must do that, then is there not another major constitutional violation here wherein we have new appropriations without the appropriations bill originating in the House of Representatives as mandated by the Constitution?

Professor BERGER. Senator, it is my habit never to shoot from the hip.

Senator HATCH. We understand.

Professor BERGER. I can speak confidently about something to which I have addressed myself and have studied. It is one man's opinion and good only as far as the documentation is concerned.

But this is too involved and too difficult a question to answer hastily. It needs serious study. I, myself, would not find it possible to undertake it right now. I have other commitments.

It is certainly a question. I would agree.

Senator HATCH. You recognize it is a momentous question?

Professor BERGER. $345 million looks like an awful lot of money to me.

Senator HATCH. Well, $9.8 billion is a lot of money also, and $2.25 billion is a lot and $10 million is a lot, too.

These are the principal two constitutional issues that are recognized issues by at least this committee which are issues involved in the Panama Canal treaty.

I am suggesting that until those two matters are cleared up that no thinking Senator should be voting to ratify these treaties.

Of course, we have No. three. I think there is a third argument that is very important. It may or may not involve constitutional implications. That is the myriad of ambiguities and misstatements and misinterpretations that presently exist in these treaties.

The fourth issue that might involve the Constitution is this. This issue happens to involve this one sheet of paper involving our "right" to intervene unilaterally to protect the neutrality of the Canal under the neutrality treaty and our "right" to have "expeditious transit". I refer to the document issued when the President and Mr. Torrejos got together and promulgated an unsigned joint communique. They say that this paper is going to resolve our difficulties in those two areas.

Of course, they do not answer in discussing expeditious transit as to who will determine what is an emergency warranting expeditious transit nor do they answer many other issues.

I submit that there may be some constitutional implications there as well. I admit that this is a complex area.

But they are saying that this paper rises to the dignity of the treaty, or at least they are saying we should not worry because they orally agreed.

I submit that an oral agreement reduced to a position paper without signature and without the force and will of the executive of our country and of the other country, does not rise to the dignity of treaty.

These are some of the technical problems that I have with these treaties.

Professor BERGER. When you argue that, you can make a grave misstep also. You then say that this is merely an executive agreement.

I am one of those who has inveighted against executive agreements. In the field of international treaties and foreign relations, I do not believe there is a Presidential power to enter into executive agreements, except the President making necessary agreements that carry out treaty provisions or statutory provisions.

I appreciate your concern here. You have done your homework. I have not. I am in no position to express an opinion. I am content to be held to what I studied and to express an opinion on that.

Senator HATCH. I respect and appreciate that.

If you have any time, however, I would like you to consider these other questions.

Professor BERGER. In all honesty, Senator, I will not have. I am right now deluged.

Senator HATCH. You have performed a great service to the committee by addressing this one question, which is the paramount question.

Professor BERGER. I have been before your predecessor, Senator Ervin, whose friendship I enjoyed. I testified on other constitutional issues. I think that the respect for and the preservation of the constitutional mandates is absolutely indispensable to the maintenance of our democracy. I do not want to have anybody overstep those boundaries even for noble purposes.

Senator HATCH. I agree with that. I respect you for it. I think that adds weight to your testimony, that is, your statement that you are in favor of these treaties and that you would like to see them properly approved.

I submit that you have looked at both sides here and you have looked at the documents. You have come up with something that overrides your desire to have the treaties ratified. That is, how can we solve the constitutional dilemma most effectively and still not abrogate the rights given by the Constitution?

Professor BERGER. A man of my years has long since learned that he is not infallible. In fact, one of the great anxieties which not only scholars but lawyers share is the apprehension that they may overlook something or misinterpret something.

Should the State Department and Attorney General point out Berger's errors in this particular area, I will consider them. I think it would be useful for me to have an opportunity to comment.

As I said at the outset, I attach no weight to my mere opinion. I feel no matter how much work a man has done in the field of constitutional law, with each fresh problem it is like coming up to bat in the world series. It does not make any difference if you batted 100 percent yesterday or the last series, it is what you do at bat now.

I ask no more than respect for my documentation and my reasoning. I could be mistaken. If so, it would be the result of honest error and oversight.

You will find that I will immediately acknowledge those errors if they are pointed out. But at the same time I am accustomed to having wool pulled over the eyes. I know how to avoid it.

Senator HATCH. I think it would be fair to say, however, that this is the best your scholarship has been able to determine.

Professor BERGER. It represents a dispassionate honest effort arrived at after trying to read all the cases.

I have an appendix where I actually went to the length of studying every case that was cited for the *Holden* v. *Joy* dictum. I wanted to find out if it had any footing, never mind that it was a dictum.

If I misread the cases, and if the Department of State and the Attorney General want an opportunity to show that I have, then that is OK. Im I am wrong, I will confess error, and if they are wrong, I would like to point it out.

Senator HATCH. I would like to borrow your metaphor. I would suggest that you hit a homerun today. You have done this committee—and I think the country—a great service in helping us to understand this problem better. I understand it better now than at any time since the beginning of our deliberations, although inherently I felt the same way about these cases that you do.

I am deeply grateful to meet you and to hear your testimony.

Thank you very much.

Senator ALLEN. Professor Berger, we are deeply grateful to you for your fine testimony for which we commend you. We are highly honored by your appearance before our committee to give us the benefit of your views.

As a recognized authority on the Constitution, is it your considered opinion that the power given to Congress under article IV, section 3, paragraph 2 of the Constitution to dispose of territory and other property of the United States is an exclusive right, exclusive power in Congress?

Professor BERGER. Yes, and I would add that I base that opinion not on any claim of authority as a constitutional scholar—although I have been studying constitutional law for a long time—but I base it on a particular, painstaking, extended study of this very problem against the background of every case that has been cited by the various witnesses. It is an independent study.

My study of the cases has led me to conclude that the power is indeed exclusive.

If I am wrong, I would like to have it pointed out to me where I am wrong.

Certainly the face of the Constitution itself indicates that the power is exclusive and nothing has been summoned by the Department of State or the Department of Justice, in my judgment, that vitiates that view.

Senator ALLEN. Where the power is given to the Congress and an effort is made to establish concurrent jurisdiction, such justification of concurrent jurisdiction should be by clear and overwhelming proof; should it not?

Professor BERGER. I would exercise the word "overwhelming." I am satisfied with "clear."

I would say that certainly, in the teeth of this express power, there should be clear proof and, I would remind you Hansell or Erickson, I forget which, admitted that the question is not free from doubt. I

consider that a mistake—to cut down explicit language where there are doubts is a left-footed approach to constitutional interpretation.

Senator ALLEN. You call attention to the fact that Mr. Hansell and Mr. Erickson rely a great deal on dicta in their testimony whereas you are able to cite direct holdings, rulings of the Supreme Court. Is that not true?

Professor BERGER. No. I think both sides have cited dicta, insofar as the precise question of the relation of article IV to the treaty power has never been adjudicated.

You have dicta about the treaty power which are far afield, and you have utterances that the power is exclusive but never in the framework of the treaty power.

I do not claim that the statements for exclusivity are any better than the dicta for concurrent jurisdiction.

What I do say is this. The exclusivity statements win support from the face of the Constitution by virtue of two cardinal rules of construction, the rule of express mention, and the rule that the special governs the general. Remember when we do not have legislative history, these maxims, which are centuries old, help us to interpret.

That is why I think the case for the exclusivity statements is better. I do not think that Hansell and Erickson can bolster their dicta. I think I have been able to bolster the dicta favoring exclusivity.

Senator ALLEN. You cite *Wisconsin Central Railroad Company* v. *Price County*. You quote from the Supreme Court opinion that article IV implies an exclusion of all other authority over property which could interfere with this power vested in Congress or obstruct its excise.

Professor BERGER. That is true. That reflects the arguments based on maxims of construction. The mention of Congress alone implies that everybody else was excluded. The Court does not cite the maxim, but that, in effect, is what the statement relies on.

But it remains, nevertheless, as far as the treaty powers are concerned, a dictum. It was uttered in a nontreaty framework, and although it was not dictum as far as the particular holding was concerned, as far as the treaty power is concerned, we have to regard it as a dictum.

Mr. CHAIRMAN. May I interpolate: at the outset of my career I asked a sage, old practitioner what made a fine lawyer. He said, "Lots of scar tissue."

I hope I am a good lawyer by virtue of the fact that I have lots of scar tissue. [Laughter.]

Professor BERGER. So, I would say let us not get into a battle about "Our dicta are better than yours." I would prefer to take the opposite view to what Mr. Erickson and Mr. Hansell tacitly took. When they cite dicta, it becomes Holy Writ. When statements are cited for "exclusivity," then that becomes pure dicta. I do not want to get into their camp. Dicta for me are dicta. If dicta are going to have weight, it is because they reflect cardinal principles of constitutional construction.

Senator ALLEN. I notice you call attention to Mr. Justice Jackson who brushed aside testimony of representatives of the executive department even in a particular case where it had been his own statement.

Professor BERGER. He brushed aside his own statements as Attorney General. He said he was then just an attorney for a client.

REPRESENTING THE PRESIDENT

Senator ALLEN. So you think we might well then be skeptical of Mr. Hansell's testimony and Mr. Erickson's testimony and even that of the Attorney General inasmuch as they are representing their client who is the President, whereas you have no interest in the matter other than as a student of the Constitution?

Professor BERGER. I may refer you to my book on "Executive Privilege" where I examine Attorney General Rogers' opinion to the President for uncontrolled discretion to withhold information from the Congress. That examination has been called by people like former Solicitor General Archibald Cox a devastating critique.

So, I have learned from experience to take Attorneys General opinions involved in these conflicts between Presidents and Congress with what Samuel Goldwyn called a bushel of salts.

Senator ALLEN. One whole chapter of your book, "Executive Privilege," is devoted entirely to one of the issues of concern of the committee.

Would you have any objection if we reprinted that in the record; that is, that chapter of your book? [1]

Professor BERGER. I would be pleased. I think it could be useful to you as you grapple with the problems of foreign relations and with the problems of executive agreements. I devoted the better part of a whole year to researching that question and minutely going over it every inch of the way.

I want to emphasize that I do not claim infallibility, that I try honestly to look at the case for views that are opposed to the view that I arrive at and to examine them. I do not brush them under a rug. You will find that to be true of that chapter. I think it might be useful, especially on the executive agreements.

Senator ALLEN. I think it will also. You would have then no objection to our using other portions of your book as an addendum to your testimony?

Professor BERGER. That will be fine.

Senator ALLEN. Very well. Without objection, so ordered.

EXECUTIVE AGREEMENTS

Professor Berger, you are recognized, as I have stated, as a leading authority on questions involving executive privilege and the related issues associated with the so-called executive agreements.

The committee has learned from the Department of State that it is proposed in one of the executive agreements to lend or grant to the Republic of Panama $345 million without the advice or consent of the Senate. For that matter, it is without appropriation by the Congress.

This executive agreement does not reference either of the Panama Canal Treaties, and, therefore, purports to be operative and effective on its own. What would be your view of this or similar executive agreements?

Professor BERGER. In the chapter which we spoke about—I believe it is chapter 5—I treated executive agreements at great length.

[1] See p. 375 for ch. 5 of Professor Berger's book "Executive Privilege: A Constitutional Myth."

I concluded—and there are other scholars of constitutional law who believe—that executive agreement historically and constitutionally should be limited to carrying out the details of a treaty and to implementing a statute. The practice in the last 20 or 30 years has gone beyond that as a subterfuge to bypass the Senate. The treaty-making power was plenary, as Hamilton said. You will find the quotation by Hamilton in my chapter 5. They covered every possible exigency of foreign relations. Everything in foreign relations was to be governed by treaty.

I may remind you, Mr. Chairman, that Senator William Fulbright, who was chairman of the Senate Foreign Relations Committee, bitterly complained that international agreements involving trivia were submitted to them in the form of treaties whereas grave matters involving billions of dollars were put in the shape of executive agreements.

I would remind you that Senator Ervin attempted to get legislation which would bar the use of executive agreements. The Congress itself was at fault. They did not pass it. That battle ought to be renewed.

In my judgment, the Congress is derelict. The Senate is derelict when it sits supinely by and lets anything go by in the shape of an executive agreement just because of that label.

In my judgment, if the treaty itself does not authorize expenditure of $345 million, then an executive agreement cannot be considered to implement the treaty. It therefore requires an independent international agreement which must be cast in treaty form. The documentation for this I have furnished in my chapter on foreign relations.

Senator ALLEN. Thank you very much.

We are in the midst of another vote on the Senate floor. I do have one additional question which I would like to propound to you.

I will ask Mr. Crommelin of the staff to work with you so that you can give your response for the record. You would not then be inconvenienced by that. We would like you to give him your answer.

This is No. 3 of my written questions to be propounded to you. With that agreed upon, Professor Berger, we will conclude and I wish to express to you again the thanks of the committee and my own personal thanks for your kindness and your cooperation and for your very fine and persuasive testimony.

Thank you.

Professor BERGER. Thank you, sir.

Mr. CROMMELIN. Professor Berger, the chairman's question reads as follows:

There are other executive agreements associated with these proposed Panama Canal Treaties, but these additional executive agreements at least reference the treaty and do not purport to come into force until the treaty itself is ratified.

Nevertheless, members of the committee are deeply concerned that these plenary executive agreements which contain the real meat of the Panama Canal arrangements would, after ratification, in effect turn over to the Department of State virtually every aspect of our relations with Panama since these executive agreements could presumably be modified and amended by the Executive more or less at will from the time of ratification forward.

Some Members of the Senate have considered introducing an amendment to the proposed treaties which would incorporate by reference all of the extrinsic executive agreements. Do you have an opinion as to the effect of such an incorporation by reference—in other words, would it preserve the future role of the Senate in advising and consenting to proposals advanced by the Executive in connection with our relations with Panama?

Professor BERGER. Traditionally incorporation by reference merely means "as if the pages incorporated" are in the treaty. If the pages have the effect that you attribute to them, incorporation by reference does not limit that effect.

I would not want to speak about the effect because you have outlined some really complicated issues here. One needs to study them.

I did not find as much difficulty with the question that the chairman asked about the $345 million by executive agreement which does not come under the treaty. But you do raise some questions that one would want to study carefully. However, I am not equipped to deal from the hip with those. I would not want to do so.

Mr. CROMMELIN. Thank you, sir, very much. You have been very helpful to the committee. The staff has enjoyed working with you also.

APPENDIX C

TESTIMONY OF RICHARD N. COOPER, UNDER SECRETARY OF STATE FOR ECONOMIC AFFAIRS

Secretary COOPER. Thank you, Mr. Chairman.

As you have indicated, I am here at your invitation to discuss arrangements for economic cooperation betwen the United States and Panama which will complement the process of implementing the new Panama Canal Treaties signed by President Carter and Panama's General Torrijos on September 7. Since the subcommittee's hearings are directed primarily toward the legal and constitutional implications of these arrangements, Mr. Herbert Hansell, the Department of State's legal adviser, is also present and will make a brief statement following my own. As requested in your October 28 letter to Secretary Vance, I will direct my remarks to the substance of the economic cooperation arrangements rather than to the related legal and constitutional questions.

The program of economic cooperation developed out of the canal negotiations but is separate and independent from the Panama Canal Treaty.

Perhaps it would be best to start with the background. At the start of the negotiations which led to the new canal agreements, the United States and Panama agreed, in the February 1974 Kissinger-Tack statement of principles, that Panama should receive a "just and equitable share of the benefits derived from the operation of the canal in its territory." Consistent with this principle, the United States maintained during the negotiations that Panama's share of the economic benefits from the canal should be drawn entirely from canal revenues; that is, that payments to Panama should reflect the canal's economic value as measured by its own revenue-generating capacity.

Panama's negotiators proposed that the United States pay Panama a large initial lump-sum payment and a very sizable annuity, either of which far exceeded the most optimistic estimates of gross canal revenues. The Panamanian negotiators sought to justify these proposals by assigning high economic value to the economic and security benefits derived by the United States from the canal, without comparable benefits to Panama. They further suggested that as a counterpart to U.S. investment in the Panama Canal, Panama had provided its unique geographic location and much of its prime land and water resources, as well as the labor of its people, to the canal effort. Panama also cited the low remuneration received by Panama under the present treaties and the value to our security interests of the military bases and the new neutrality arrangements.

Finally, the Panamanian negotiators stressed the importance to Panama of being able to obtain the resources to undertake rapid social and economic development with wide distribution of benefits to its people.

The final result, as you know, was that the new Panama Canal Treaty embodied the U.S. position. With regard to the canal enterprise, Panama is to receive annual payments which will be drawn entirely from canal revenue.

At the same time, the U.S. negotiators recognized that there was considerable merit, from the standpoint of the future U.S. interest in the canal, to giving attention to Panama's development needs. The United States and Panama under the new treaties would share a special relationship created by mutual interest in the canal. Panama's development could foster the stability which is the underpinning for an open, safe, efficient, and accessible canal before and after the expiration of the Panama Canal Treaty.

The U.S. negotiators therefore arranged for their Panamanian counterparts to meet with representatives of the Departments of State and the Treasury, the Agency for International Development, and the Export-Import Bank to consider Panama's development needs. In doing so, it was clearly understood that any arrangements to assist with Panama's development were to be separate from the canal agreements and were in no way to be tied to the rights and obligations of the United States under the Panama Canal Treaty and the Neutrality Treaty.

Out of these discussions emerged a program which was set forth in a diplomatic note signed by Secretary of State Vance on September 7. This program was designed to utilize financial assistance programs that are suitable to Panama's stage of development and directed at meeting Panama's present economic needs for low income housing and a revived private economic sector. It is undertaken on a best-efforts basis. It introduces no special assistance devices and is subject to all applicable procedures under existing programs. All of its elements fit within existing statutory authorization.

The components of the economic cooperation program are as follows:

First, up to $75 million in AID housing guarantees over a 5-year period.

Second, up to $200 million in Export-Import Bank loans, loan guarantees, or insurance over a 5-year period subject to approval by the Bank.

Third, a guarantee by the Overseas Private Investment Corporation of $20 million in U.S. private capital to the Panamanian National Finance Corporation, COFINA, for the use in productive projects in the private sector.

In addition to these economic programs, the Secretary's note of September 7 also proposed issuance of repayment guarantees under our foreign military sales program not to exceed $50 million over a 10-year period. These guarantees are to assist Panama in meeting its responsibilities to contribute to canal defense under the Panama Canal Treaty.

Let me add a few comments about each of the components in the cooperator program.

The AID housing program is directed toward housing for lower-to-medium income groups in less developed countries. The program provides full faith and credit U.S. Government guarantees to private U.S. lenders who make loans for housing projects in less developed countries.

The 5-year program for Panama would fit within existing authorization. The guarantee program, which began in the 1960's, is designed to be self-sufficient and has not required congressional ap-

propriations. Total current housing guarantee authority is $1.055 billion. The proposed Panama program would conform to the statutory limitations of $25 million per year to any one country and an average annual face value of $15 million.

As for the Export-Import Bank component, Panama is expected to become an expanding market for U.S. exports after the canal issue is settled and investment in Panama accelerates. This projected market expansion is expected to give rise to more applications for Eximbank support, but at a minimum Eximbank has indicated that its business in Panama could well amount to the $200 million we have been discussing over the next 5-year period.

The portfolio risk to Eximbank as a result of this offer will be small. With an additional $200 million to Panama over 5 years, exposure in Panama will amount to less than 1.37 percent of Eximbank's total existing portfolio. Projected risk will be controlled in the usual manner, since each transaction will be subject to normal Eximbank financial, legal, and engineering criteria, including the Eximbank's statutory requirement to find a reasonable assurance of repayment.

Concerning the Overseas Private Investment Corporation guarantee, this will be the first instance in which OPIC has participated in financing the expansion of a government-owned development bank, although OPIC is permitted to do so by longstanding OPIC Board policy guidelines. The Panamanian Development Bank, COFINA, is engaged in supporting the development of private enterprises in Panama through project lending. The guarantee of borrowing by COFINA would therefore be wholly compatible with OPIC's mission and in accord with our view that OPIC should help strengthen the private sector of Panama's economy. The guarantee would raise OPIC's exposure in Panama to only 8.5 percent of its total existing portfolio, which we believe to be a reasonable risk. A Panamanian Government guarantee will further reduce OPIC's risk. OPEC has stipulated that its offer to Panama depends on terms being negotiated which are acceptable to OPIC's Board.

Finally, the military sales guarantees, like other components of the cooperation program, are not grants to be financed by the American taxpayer. The only appropriations required would be to cover 10 percent of the annual program in the form of deposits in a special reserve account.

These, then, are the components of the United States-Panamanian cooperation program which developed from the canal negotiations. They rely on existing programs which are proven tools for furthering U.S. interests abroad. All offers of assistance under this program are subject to compliance with legal and managerial requirements of the institutions involved and to the availability of funds. They are separate from the Panama Canal Treaty because they do not relate to our rights and obligations under that treaty. But we expect them to make a positive contribution to the successful implementation of the new United States-Panamanian partnership in the canal enterprise which will grow out of the new treaties.

Thank you, Mr. Chairman.

Senator ALLEN. Thank you, Secretary Cooper.

I believe it would be a more orderly procedure if we heard at this time from you, Mr. Hansell, so that then we might direct questions

to both of you or either of you, as the case might be. Therefore, please proceed with your testimony.

TESTIMONY OF HERBERT J. HANSELL, LEGAL ADVISER OF THE DEPARTMENT OF STATE

Mr. HANSELL. Thank you, Mr. Chairman.

It is a pleasure to appear before you this morning to discuss the legal status of the note regarding economic and military cooperation which was transmitted to the Ambassador of Panama by the Secretary of State on September 7 of this year.

I believe it is important to understand at the outset that this instrument does not constitute an agreement. It is in the form of a unilateral diplomatic communication from the Secretary of State to the Panamanian Ambassador. No response to the document was requested or received from the Panamanian Government. The penultimate paragraph of the document clearly states that "the undertakings of the United States provided for herein will enter into force upon an exchange of notes to that effect between our two Governments." Therefore, the document will establish no obligation in a legal sense until such time as the United States and Panama enter into an agreement to bring it into effect. Rather, the document constitutes an assurance of intent to enter into a specific agreement at a future date.

I would now like to describe briefly the nature of the obligations the United States would assume once such an exchange of notes takes place. As the document clearly provides, the various undertakings set forth are to be within the limitations of U.S. law and subject to compliance of the contemplated programs with all applicable legal requirements. Thus, upon entry into force of the undertakings, the commitment would be that the United States would take the necessary measures within the authority conferred by law to bring into being the specified programs of economic and military cooperation. There would be no legal obligation to do anything not authorized by U.S. law. Moreover, each of the programs described is either made subject to applicable administrative and statutory criteria or is subject to terms to be approved by a U.S. Government agency responsible for the program. Each proposed project or transaction will be subject to review in the same manner as other similar proposed projects and transactions.

I now propose to take up a question in which I understand this committee has expressed particular interest: Why were these arrangements set forth in the form of a diplomatic note rather than as part of the Panama Canal Treaty?

In addressing this question, I believe it would be useful to recapitulate briefly a bit of the background of these arrangements about which Under Secretary Cooper has already testified in some detail.

During the negotiation of the treaties, the parties recognized their mutual interest in assuring the continued soundness and stability of Panama's economy, to enable it to carry out its new responsibilities in an effective manner. Understanding was reached that the United States would consider with Panama how it might cooperate in this regard under programs authorized by existing U.S. legislation. Arrangements were made for exploration of the possibilities for cooperation by officials of both governments other than the treaty negotiations.

It was not considered appropriate or desirable to link these potential arrangements in any way with the rights and responsibilities of the parties under the new treaties. For the same reason—to avoid any implication of a legal linkage between the cooperative programs and the rights and obligations of the parties under the treaties—it was considered important that the treaties should not mention such programs and that the note describing the programs should not refer to the treaties.

The relevant documents reflect these considerations. The legal rights and obligations established by the treaties are not in any way dependent upon the fulfillment of the intentions of the parties reflected in the note. Irrespective of what may occur with respect to these cooperative arrangements, the Panama Canal treaties, once ratified, stand independently and cannot be affected.

The understandings of the parties with respect to the contemplated economic and military cooperation programs have been set forth in a form which is entirely appropriate and highly desirable from the standpoint of the United States. There is no question as to the authority of the executive branch under existing law to enter into such understandings.

Mr. Chairman, that concludes my presentation. I will be pleased to join Under Secretary Cooper in responding to any questions the committee may have.

Thank you, Mr. Chairman.

Senator ALLEN. Thank you very much, Mr. Hansell.

Secretary Cooper, would you describe briefly your present duties for the Department of State and tell how long you have been in your present job?

Secretary COOPER. Yes; I went to work for the Department of State in my current job in practice in January but, in fact, I was not finally confirmed until sometime in April of this year, 1977.

As my title suggests, I have overall responsibility for foreign economic policy of the United States insofar as that is lodged in the State Department. There are parts of foreign economic policy for which other departments of the Government have the principal responsibility. In those instances I act as a liaison between the State Department and those other departments.

I have no formal line responsibility.

Senator ALLEN. Were you with the Department of State prior to your appointment as Under Secretary of Economic Affairs?

Secretary COOPER. About 12 years ago I spent 1 year at the Department of State.

Senator ALLEN. There was a hiatus of some 12 years?

Secretary COOPER. Yes, that is right.

INFORMAL MEETINGS WITH BARLETTA

Senator ALLEN. You did participate in certain of the negotiations here in Washington with Minister Nicholas Barletta of the Republic of Panama, the Minister for Economic Planning and Development there, did you not?

Secretary COOPER. I participated in three meetings with Minister Barletta. We made clear to the Panamanians that we did not regard those meetings as negotiations.

One was a rather formal meeting in which we heard an elaborate statement of the Panamanian case for an economic component of these negotiations. Our role during that meeting—and I chaired the American side—was primarily to listen to that case and to ask a number of questions.

Subsequent to that I met in a small group informally with Minister Barletta along the Under Secretary Solomon of our Treasury Department. We had discussions concerning the Panamanian request and the basic principle of the desirability of some kind of economic assistance for Panama, the extent to which we Americans had a stake in the viability of the Panamanian economy and policy. We had two sets of informal discussions and talked about the things that might be done and about the things that could not be done in the context of Panamanian economic development.

Senator ALLEN. You had two meetings in all?

Secretary COOPER. That is correct.

Senator ALLEN. It seems from what you say that they were all merely preliminary discussions. When did you reach the agreement that was finally reached?

SEVERAL OPTIONS CONSIDERED

Secretary COOPER. I was not present when the final agreement was reached. On the basis of these discussions we in the U.S. Government put together a series of options, as they are called, or various ways in which we could assist the Panamanian economy. There was a discussion in the Policy Review Committee, which is a Cabinet-level committee that looks at such matters of foreign policy across the board. As a result of those discussions, a paper was put to the President containing recommendations very much along the lines of what came out. There were some changes in detail. The President approved those discussions.

Senator ALLEN. You came to the Department in April?

Secretary COOPER. I came formally into my job in April; that is correct.

Senator ALLEN. You did not participate in any of the meetings and conferences until you were named to your present position; is that correct?

Secretary COOPER. That is correct.

Senator ALLEN. What was the status of the negotiations at the time you came to the negotiating table?

Secretary COOPER. I am not quite sure how to answer that.

Senator ALLEN. At what stage did you find the negotiations when you started?

Secretary COOPER. The negotiations were in an intense phase of discussion. As you know, Ambassador Linowitz was asked to join Ambassador Bunker in these negotiations early on in the new administration. During the course of the spring there had been intense discussions between the American negotiators and the Panamanians. They had reached a wide measure of agreement on some issues. This was in June. They were still some distance apart on other issues. I would describe the status of the negotiations as still constructive. They

had not reached an impasse but neither had they reached final agreement as yet.

SUBSTANTIAL CASH PAYMENT

Senator ALLEN. Were they not demanding a cash payment of several hundred million dollars at the time you entered into the negotiations?

Secretary COOPER. I would not describe what I heard as a demand on the Panamanian side. They did put forward a case for a very substantial economic payment running well beyond a few million dollars. It was a rather, I would say, carefully, skillfully-worked-out case based on historical analysis going right back to the early part of the century.

As I indicated a moment ago, we listened to that case with interest. We asked a number of questions but we indicated in our discussions with Minister Barletta and others that we felt that while that was an interesting historical analysis we should look forward rather than backward, and that our mutual interest in this domain was in the future prospects and prosperity of the Panamanian economy.

Essentially we set to one side the Panamanian case.

Senator ALLEN. Their attitude, then, was not of a demanding nature?

Secretary COOPER. I would not so describe it, no. They were, however, insistent that Panama should receive greater economic benefits from the location of the Panama Canal and so forth than they had historically. They were quite emphatic on that point.

Senator ALLEN. Following the conference in which you participated, by whom were the final touches put on the unilateral statement, as I believe it has been called?

Secretary COOPER. Are you referring to the economic cooperation statement?

Senator ALLEN. Yes.

Secretary COOPER. On the strength of the President's decision, our negotiators discussed with the Panamanians what we were willing to do in the economic area.

Senator ALLEN. In other words, the President decided what the United States would give Panama; is that correct?

Secretary COOPER. The President decided what elements of economic cooperation the United States would engage in with Panama; yes.

Senator ALLEN. What options did you submit to the President, or did you submit to the President through an intermediary, in addition to the option that was finally agreed upon? Did you submit options calling for payments of sums of money to Panama direct by the U.S. Government.

Secretary COOPER. No; we did not. That was not among the options. I would have to look at the paper again to remind myself what exactly went forward.

There was only one option, speaking in gross terms, that did not go into the final package which was discussed extensively at that stage. It was a rather complicated arrangement for financial support of Panamanian development but it would not have involved direct pay-

ments by the U.S. Government to Panama. We in the end rejected that option.

AMERICAN IDEA TO USE LOANS RATHER THAN CASH

Senator ALLEN. Whose idea was it to shift from the Panamanian demand of a direct payment by the U.S. Government in cash to Panama over to the system of providing some $345 million in loans and guarantees?

Secretary COOPER. Do you mean whether it was an American idea or a Panamanian idea?

Senator ALLEN. I assume it was an American idea because the Panamanians were demanding cash. What I want to know is who came up with the alternative suggestion that you avoid seeking appropriations from Congress and instead go the route of furnishing loans and guarantees?

Secretary COOPER. I cannot recall which individual. There were a number of people working on this range of issues. I cannot recall which individual or individuals came up with that particular idea or that cluster of ideas, but it did come from the American side, not from the Panamanian side.

APPROPRIATIONS AVOIDED—ALMOST

Senator ALLEN. Was some discussion held by the American negotiators of the need to come up with a plan that would avoid seeking appropriations from Congress?

Senator ALLEN. Excuse me. I did not hear that.

Secretary COOPER. In the preliminary discussion of the economic package the negotiators themselves were not directly involved.

Secretary COOPER. In the framing of the economic package the negotiators themselves—that is, Ambassadors Lenowitz and Bunker—were not directly involved.

As I said, the Panamanians made their presentation. Under Secretary Solomon and I subsequently had two informal conversations with Minister Barletta in which we had indicated that while the historical analysis was interesting we did not view it as relevant to either our or Panamanian concerns, and that we should be future oriented rather than historically oriented We agreed that we had a common interest in the prosperity of the Panamanian economy. We were concerned to do what we could do to help insure that prosperity, which we see as an integral part of the effective, efficient, and secure operations of the canal.

Senator ALLEN. Now you say that you do not recall who it was but that somebody on the American team came up with the idea of substituting the loans and guarantees for an appropriation from the U.S. Treasury by the Congress; is that correct?

Secretary COOPER. At some point when we were looking around to see what could be done in this framework of economic development the staff—and Treasury and State were both involved in this—produced a series of suggestions of what might be done.

Senator ALLEN. Did the negotiating team seek to provide alternatives to an appropriation by the Congress?

Secretary COOPER. We did not discuss an appropriation by the Congress for this.

Senator ALLEN. You wanted to avoid that?

Secretary COOPER. I am not sure we wanted to avoid it, but we didn't discuss it.

Senator ALLEN. You did avoid it.

Secretary COOPER. We did avoid it—well, almost.

Senator ALLEN. Sir?

Secretary COOPER. Almost. I mean the military sales program does, as you know, under existing framework require an appropriation for a guarantee fund.

Senator ALLEN. That is what, 10 percent of the amount?

Secretary COOPER. Ten percent of the amount.

Senator ALLEN. That is $5 million.

Secretary COOPER. $5 million over a 10-year period.

Senator ALLEN. That would not be much of an obstacle but $345 million might be an obstacle, might it not, that much money to be appropriated by the Congress for Panama?

Secretary COOPER. The notion of appropriation is not really relevant in the context which we were discussing with the Panamanians.

Senator ALLEN. They were demanding cash. Someone on the American team, whose identity is unknown to you, proposed the substitution of loans and guarantees.

Secretary COOPER. That is because we shifted the line of discourse from payments or repayments based on past claims, which is the framework in which the Panamanians put forward their case, to one of the future development of the Panamanian economy. Panama, while while being a developing country, is not one of the poorest developing countries. The case for truly concessional aid is not a strong one.

We have instruments of policy already existing in the United States to accomplish the kind of objective which we felt was important in Panama.

Incidentally, things such as Export-Import Bank credits also promote American exports.

Senator ALLEN. The Panamanians were talking about cash. That would have required an appropriation by the Congress. Your team suggested as an alternative a method that would not require appropriation by the Congress; is that correct?

Secretary COOPER. With the exception I have mentioned, the package we worked out in the end does not require appropriations by the U.S. Congress. It is fully within the framework of existing authority and our objectives.

Senator ALLEN. Do you know how much the annuity of Panama would be raised under the proposed treaty? Do you have an estimate of how much would go to Panama under the proposed treaty?

Secretary COOPER. Do you mean the total amount?

Senator ALLEN. Yes, annually.

Secretary COOPER. There are several different provisions. That is why I am hesitating. There are several different provisions under the treaty itself that involve payments to Panama that are not now being made. Some of those are quid pro quo for services which Panama will take over.

Senator ALLEN. That is the police service?

Secretary COOPER. Those are the local public services; that is correct.

In addition to that, the treaty provides for a royalty to Panama from tonnage going through the canal. It provides for the payment to Panama of $10 million plus an additional $10 million if the earnings of the Panama Canal warrant it.

That, obviously from the way it is structured, does depend, first, on the tonnage that goes through the canal and, second $10 million is paid. We believe that that sum will start out roughly in the neighborhood of $60 or $65 million a year. It will then grow through time if and as the tonnage of traffic through the canal grows.

$100 MILLION PER YEAR

Senator ALLEN. Wouldn't it average out pretty close to $100 million a year over 23 years of the treaty?

Secretary COOPER. I would not want to—I mean, that depends on what happens to traffic through the canal.

Senator ALLEN. Did Mr. Barletta come up with a somewhat larger estimate than you did?

Secretary COOPER. In terms of the initial receipts?

Senator ALLEN. No. I am talking about the payments over 23 years to Panama.

Secretary COOPER. It could. There are two elements which would tend to raise that figure from the initial figure of, say, $60 million to $65 million that I mentioned. The first is traffic through the canal. As that grows, the royalty part of that will grow in proportion to the traffic.

Senator ALLEN. The total is going to grow, too. Also the rate of the royalty per ton is indexed as is the payment for municipal services. Minister Barletta uses the figure $2.262 billion in 1977 dollars.

Secretary COOPER. Second, there is provision for adjustment of that corresponding to a modest measure of world inflation. So on both grounds there will be an increase in the dollar amount over time. I have not done the calculation to double check the figure you mention, but it could happen that by the year 2000 that number could be well in excess of $100 million per year.

Senator ALLEN. Did I understand you correctly to say that the President set the final terms of the American offer to Panama?

Secretary COOPER. That is not exceptional. As is general with any major policy decision, it is put to the President for his approval.

Senator ALLEN. This final package was one of the options. What was finally agreed upon was one of the options; is that correct?

Secretary COOPER. No. A series of options were discussed. What I do not actually remember was what was actually put to the President.

There was only one option which in its gross features was not in this package which was discussed extensively. That was essentially a lending arrangement, a somewhat complex lending arrangement, which

would have provided development finance to Panama against a guaranteed fund, which would have provided out of canal revenues. In the end that proposal was rejected.

Senator ALLEN. But the President then accepted this option; is that correct?

Secretary COOPER. The President gave his approval to this general approach, yes.

AGREEMENT NOT AN AGREEMENT

Senator ALLEN. Mr. Hansell has testified that there is no binding agreement to carry out the terms of this unilateral agreement and that it will take an exchange of notes between countries. If Panama sent a note to the State Department saying, "We will accept these terms," would the State Department be bound to send a note stating that they were going to implement the carrying out of the accepted terms? In other words, is this an agreement or not an agreement?

Mr. HANSELL. Senator Allen, I assume you are addressing that question to me. The answer is that it is at the moment a statement of our intention.

Senator ALLEN. In other words, it is like a letter of intent that is entered into by private companies. They will issue a letter of intent. Is that correct?

Mr. HANSELL. I think it is more in the nature of an agreement to agree, but perhaps that is just another term for the same thing.

$345 MILLION TIED TO TREATY RATIFICATION

Senator ALLEN. Do you feel that the United States could honorably withdraw from this unilateral statement if Panama chose to accept it?

Mr. HANSELL. I think the question is really the status of the treaty at that point. Although this is not a part of the treaty package, nevertheless, the timing of implementation of this program would depend a good deal on the timing of implementation of the treaties.

Senator ALLEN. Does that mean, then, that if the treaties are not approved by the Senate and if the Executive fails to get agreement by statute from Congress for the transfer of property—does that mean that the United States will not carry out this agreement? In other words, is the carrying out of this agreement contingent upon the approval of the treaties?

Mr. HANSELL. It is not literally contingent upon approval of the treaties. We would continue to have, of course, an interest and a concern with the state of our relations with Panama and the Panamanian economy. One or more of these programs might for good, sufficient reason, even under those circumstances, seem to be a worthwhile undertaking on the part of the U.S. Government. It would depend upon the circumstances at the time.

Senator ALLEN. I understood Secretary Cooper to say that the United States was interested in furthering the economic development and stability of Panama and, therefore, it entered into these agreements. Now, from what you say, there seems to be some doubt about whether the United States would carry out that concern by going through with the agreements if the treaty is not approved.

Mr. HANSELL. I think we would continue to have an interest in the Panamanian economy. What the circumstances might be at that time if those events were to occur, we obviously have not tried to envision.

Senator ALLEN. These treaties may not be approved, if they are ever approved, before 1979. Suppose Panama calls for the United States to deliver on this $345 million in loans and guarantees. Is it obligated to respond?

Mr. HANSELL. I think we would have to look at that situation, Mr. Chairman, at the time any such request was received. To answer, we would be not obligated to respond; no.

Secretary COOPER. If I may add to that, Senator, I think that is the right answer. We would not be obligated to respond but as a matter of policy we might want to, depending on the circumstances and so forth. As I have said, we do have an interest in the functioning of the Panamanian economy. These are ongoing programs. We already have some Export-Import Bank lending in Panama now, for example.

We do not mean to suggest here that if none of this comes to pass we would not be doing any of these things. They are ongoing programs. The interest continues to be there.

Senator ALLEN. Suppose before action is taken by the Senate Mr. Torrijos says, "I need help now. I want you to implement this unilateral agreement." Would you do it?

Secretary COOPER. I think we would not make that decision until we were confronted with it. We find ourselves in any given year with a number of countries coming in saying, "You know, we are in bad shape. We would like a big, wealthy country like the United States which says it has an interest in our welfare to help out." Panama would surely be among those countries. Because of the canal, we have a special interest in Panama. If they were in serious trouble, we would want to take a very careful look at what we might do to mitigate that problem.

Senator ALLEN. You could do that in the absence of these agreements, couldn't you?

Secretary COOPER. That is correct.

Senator ALLEN. We do not need agreements to do those things.

Secretary COOPER. That is correct.

AWKWARD TO INCLUDE $345 MILLION IN TREATIES

Senator ALLEN. It would seem to me that these agreements are something in the nature of quid pro quo in connection with the approval of the treaties and, hence, should have been part of the treaties. What is your answer to that?

Secretary COOPER. I think it would have been awkward to make this kind of thing a part of the treaties because of the implication that if the treaty did not go forward these kinds of things could not go forward. That would have been unusual. These are things that are operating under existing statutory authority.

As I indicated, the Export-Import Bank already has loans, not on this scale, but it does have some loans to Panama on a modest scale. There are housing guarantees in Panama.

What we were trying to do here was to indicate in a concrete way our position on the proposition the Panamanians put to us in terms of their economic development objectives and so forth, that we were willing to help, and it was not just a question of a year-by-year basis.

Let's take a forward look. The timeframe of this is 5 years. Let's take a forward look. Here is a statement of intent on our part to indicate with some degree of concreteness——

Senator ALLEN. But it is intent that is subject to the approval of the treaties; is it not?

Secretary COOPER. It is intent that is subject to exchange of notes.

Senator ALLEN. Pardon me?

Mr. HANSELL. Mr. Cooper said that it is subject to exchange of notes, and that is right. It is not directly tied to the treaties.

Senator ALLEN. But before the the United States issues its note it is going to have to be satisfied in connection with approval of the treaties, is it not? Or else, as you said, you would take another look at it.

Mr. HANSELL. Senator, perhaps it is important to point out that we did, for very important reasons, want to have a separation between these arrangements and the treaties. All of these programs, of course, are provided for by separate statutory authorization. Each is subject to administration by an agency which conducts the particular program. It would have been from the standpoint of the United States undesirable to have made these programs a part of the rights and obligations that would flow from the treaties. Nevertheless, we did want to provide for the prospect of these programs and did so separately so that they would stand really on their own feet.

Senator ALLEN. For the record, what would our obligation be if Torrijos demanded that you implement this unilateral agreement now by an exchange of notes? In other words, what if he did not want to wait for the Senate to approve the treaty? What if he wants action now?

Mr. HANSELL. As Mr. Cooper has said, if that eventuality should occur, obviously the Government would have to look at it at that time and under those circumstances and decide what to do with it.

Senator ALLEN. I see. I wonder if Mr. Torrijos understands it that way.

Mr. HANSELL. I am sorry, Senator Allen, but I did not hear you.

Senator ALLEN. I said I wonder if Mr. Torrijos understands it that way or whether we might have to have another agreement as to what the unilateral agreement means.

Mr. HANSELL. I think they do understand that this is not, and it is not intended to be, a legally binding document.

Senator ALLEN. If it is not effective at this time if call is made for it, isn't it then tied in with the treaties?

Mr. HANSELL. Excuse me?

Senator ALLEN. Is is not then tied in with the treaties?

Mr. HANSELL. Not necessarily. It is a separate set of programs to be implemented in a manner that seems appropriate as time goes on.

PRESENT ANNUITY HYPOTHECATED

Senator ALLEN. This present annuity that Panama receives, that really does not go to Panama. It goes to New York banks, does it not? Is it not sent to them rather than to Panama?

Mr. HANSELL. The present annuity?

Senator ALLEN. Yes, sir.

Mr. HANSELL. Some part or perhaps all, I am not sure, has been assigned by Panama to service outstanding bonds issued by Panama.

Senator ALLEN. All right. Of the sum, whether it be $60 million or $70 million a year or closed to $100 million a year, that Panama would get under the treaties, what part will go to the New York banks to service Panama's $2.7 billion of indebtedness?

Mr. HANSELL. It is paid under the treaties to Panama. What arrangements the Panamanians will make to service their debt is, of course, a matter for them, not for the United States. The $2.7 billion figure, I think, is not the amount of their outstanding debt. Our information is that it is much less than that. However, whatever that debt is, it would be subject to whatever arrangements would be made to service the debts to the bondholders.

Senator ALLEN. The banks will be taken care of out of the $70 million-plus per year that Panama gets, will they not?

Mr. HANSELL. I beg your pardon? I did not hear the question.

Senator ALLEN. I said the banks will be taken care of, will they not, out of this payment that Panama will receive?

Mr. HANSELL. Presumably the Panamanians will make arrangements to pay their debts. How they will do that, we do not know.

Senator ALLEN. You do not think they would arrange to have this money run through them to the banks in the same manner as the present $2.3 million annuity?

Mr. HANSELL. That was accomplished by conventional assignment of proceeds. I suppose the same could be done with a part of these payments.

Senator ALLEN. You say the debt is not $2.7 billion. What figure is it then?

Secretary COOPER. Our figure on the public debt is about $1.1 billion. The whole question of debt is fraught with some ambiguity because it depends upon exactly what you count. The $2.7 billion figure which you mentioned does involve liabilities by residents of Panama with the rest of the world. Many of those liabilities are banking liabilities in the same sense that any bank owes liabilities to its depositors. Against those liabilities stand, on the other side of the balance sheet, substantial claims on the rest of the world.

Panama has tried over the past decade or so, with considerable success, to build up Panama as a regional banking center. Figures on Panama reflect that role.

The debt of Panama itself is closed to $1 billion. While that debt is much higher than it was a few years ago, Panama, like most of the other countries of the world, found itself caught after 1974 in the squeeze between higher oil prices and world recession and borrowed. On the kinds of comparisons we make with other countries, the Panamanian situation is not an alarming one. They have taken on a lot of debt, but we think that the debt continues to be manageable.

COMMITMENT OF INDEPENDENT GOVERNMENT CORPORATIONS

Senator ALLEN. How were the negotiators able to commit these various agencies of the U.S. Government to make these loans and to give these guarantees? For instance, the Export-Import Bank, how were they able to get them to commit to make $200 million in loans?

Secretary COOPER. The Ex-Im Bank is not committed to make those loans. It was made clear to the Panamanians that each individual loan

or guarantee would have to stand on the usual criteria that Ex-Im Bank applies to all of its loans. There is a whole series of criteria that is applied.

It is similar with the housing guarantees. Those are made under normal programs.

What the letter amounts to is a statement of our willingness to entertain in the normal fashion requests for loans up to that amount over the 5-year period of time.

Senator ALLEN. That is the point I am making. What right would you negotiators have to say what the Export-Import Bank would do?

Secretary COOPER. We had discussions with the Export-Import Bank. The Export-Import Bank told us that this is what they thought they could reasonably do over this period of time.

Senator ALLEN. The Overseas Private Investment Corporation is a private concern, isn't it? Don't the have more private citizens than public citizens?

Secretary COOPER. OPIC is a semiautonomous Government corporation with its own board of directors. It does have on its board of directors a number of private citizens.

Senator ALLEN. They have a majority of private citizens, do they not?

Secretary COOPER. That is correct.

COMMITMENT NOT A COMMITMENT

Senator ALLEN. I am wondering how you are able to commit them.

Secretary COOPER. Again, to repeat, we are not committing them to do something. We are stating the willingness of them to do something subject to their own standards of approval.

Senator ALLEN. It seems we have had an agreement that is not an agreement and a commitment that is not a commitment.

Mr. HANSELL. I might point out, Senator, that the letter in question provides, for example, with respect to the OPIC program that whatever is done by OPIC would be subject to terms that would be agreed upon by OPIC. They would be, of course, in control of their own program.

Senator ALLEN. But still the negotiators suggested very strongly I assume, to the Panamanians that this would be forthcoming.

Secretary COOPER. It would be forthcoming subject to all the normal things.

What, in effect, we were saying, I suppose, was that there would be no political barriers to doing these kinds of loans or guarantees.

NO ASSURANCE THAT LOANS NEED NOT BE REPAID

Senator ALLEN. Some of these lending agencies, I guess private as well as public, make soft loans, loans where there is very little likelihood that they will be repaid. Was any assurance given that these loans might be in that category, soft loans, and that nobody would lose a lot of sleep if the money was not repaid?

Secretary COOPER. None whatever, no.

You use the term "soft loan" in a somewhat different sense from which it is used. It usually means concessional terms.

All of these operations are not on concessional terms. The Export-Import Bank charges an interest rate which covers its costs. The Housing Guarantee Authority charges market interest rates. There is no suggestion at all that these loans should not be repaid.

NO EFFORT TO GUARANTEE LOAN REPAYMENT

Senator ALLEN. Was any effort made to see that income that Panama receives from the canal might be pledged or hypothecated to the payment of this $345 million in loans and guarantees?

Secretary COOPER. No. The income that is provided for under the canal treaties is income that accrues to Panama. The individual loans and guarantees would be made on the basis of which such loans and guarantees are usually given. They do, under these programs, require a guarantee by the Government of Panama. In that sense they represent a potential claim, if something were to go wrong, on the entire revenue base of Panama. However, there is no effort to link them dollar for dollar in any direct way.

Mr. HANSELL. May I point out, Mr. Chairman, that this does not preclude conventional arrangements being made in the future. Whatever arrangements, for example, OPIC or Eximbank may choose to make within its normal framework would still be available.

EFFECT ON PROGRAM FOR REDUCTION OF FOREIGN MILITARY SALES

Senator ALLEN. Would the $50 million in military credits run contrary to the President's desire to cut down on foreign military sales?

Secretary COOPER. The President's policy on foreign military sales stems from concern about the very substantial growth in arms sales which has taken place in the past several years, including U.S. participation in that, and a worry that we are feeding arms sales or arms races around the world.

At the same time, it seems to me we must continue to be a major supplier of arms. Therefore, what he was really addressing was drawing attention to that sharp rate of growth and arguing that we should cut it back.

In the case of Panama, we think that the Panamanian Forces are now small. They will be, under the treaties, taking over some land for which they had not had responsibility previously. We think that the very modest amounts provided here over a 10-year period are desirable in strengthening the local security forces in Panama. Both in terms of its location and in terms of its size, it seems to me that it does not cut against the general thrust of the President's policy in arms sales.

Senator ALLEN. That would take an act of Congress, I believe you stated; did you not?

Secretary COOPER. That is correct. Under existing arrangements foreign military sales guarantees require an appropriation of one-tenth of the amount covered, which is then sequestered in a guarantee fund.

Senator ALLEN. That would take action by the House as well as the Senate, would it not?

Secretary COOPER. Yes, as all appropriations do.

Senator ALLEN. The House might not look with great pleasure on that request inasmuch as it is my understanding that the administra-

tion does not plan to seek a statute from the Congress for the disposition of the property of the United States in the Canal Zone. Is that correct?

Secretary COOPER. We view these as not entirely linked issues. They are separable issues.

The commitment that we have to Panama is to make the administration's best efforts to provide these military sales credits. The Panamanians understand very well our legislative processes. They know—they have been told—in this case that our following through on that requires congressional appropriation. That is understood.

SLIPS BETWEEN THE CUP AND THE LIP

Senator ALLEN. If, as I understand that which has been stated before the committee, the administration does not plan to seek a statute authorizing the disposal of this property, is it not conceivable that the House might put an amendment to the Export-Import Bank authorization saying that this money should not be lent to Panamanian interests? Aren't you running into that?

Mr. HANSELL. That is always a possibility. Yes, that is always a possibility.

Senator ALLEN. So it looks as though there might be a number of slips between the cup and the lip here with regard to Panama getting these loans.

In the first place, you say you are going to take another look at the matter of this $345 million if the treaties are not approved and you have to look at it pretty closely if a request is made for these funds prior to the approval of the treaty. So it looks as though Panama does not have any ironclad agreement on this $345 million, does it not?

Mr. HANSELL. It does not have an ironclad agreement. That is correct, Senator.

MORAL COMMITMENT

Senator ALLEN. Do you feel there is a moral obligation on the part of the Government to see that they get this $345 million or its equivalent?

Mr. HANSELL. There certainly is a moral commitment to endeavor to bring these programs to fruition.

Senator HATCH. Could I interrupt you for a minute, Mr. Chairman?

If there is a moral commitment to bring these programs to fruition, then why is there not a moral commitment to recognize the Congress of the United States to whom you are going to have to go in order to do it later? Why not do it up front? If we have moral commitments, let's talk about morally committing ourselves to follow the Constitution.

Mr. HANSELL. I think there is a fundamental misunderstanding. The objective was not to avoid the Congress. The objective was to avoid cost to the taxpayer. The only way Congress can provide funds, of course, is by providing tax funds. The entire objective here was to find a means of assisting the Panamanians to boost their economy without cost to the U.S. taxpayer. Now that is an objective, it seems to me, that the executive branch shares with the Congress.

There was no decision and there was no effort to circumvent the Congress. Basically the program here was intended to save money.

If this goes well, there will never be a penny of taxpayer funds expended.

Senator HATCH. But there is a very good chance that it is not going to go well and that they will not be capable of making any of these payments.

Mr. HANSELL. Conceivably.

Senator HATCH. Very conceivably.

Mr. HANSELL. Each of these transactions, of course, will be looked at as a separate transaction and justified on its own terms before it is entered into.

CONGRESS MAY SAY NO

Senator HATCH. That comes back to my point. If we are going to bind the American taxpayer in advance of any appropriation, it would seem to me better to go to Congress and ask in the first place, so that we will not be put in the embarrassing position of having Congress turning it down later and then have us say to the Panamanians, "Well, we told you during the negotiations we might not be able to deliver," which is what Mr. Cooper seems to be saying.

Mr. HANSELL. I do not understand the question.

Mr. HATCH. I am talking about turning down the payments and guarantees that you are making here.

Secretary COOPER. Senator, with the exception of the military sales credits which do require appropriations, and which has been explained fully to the Panamanians, the other items are all under existing statutory authority. It would not be a question of putting the Congress in an embarrassing situation or the United States in an embarrassing situation.

Senator HATCH. Keep in mind that there is a lot more than just these loan credits and guarantees involved here.

Secretary COOPER. I am sorry but I thought that was what you were talking about.

Senator HATCH. I did not mean to interrupt the Chair for so much time. I will ask some more questions before we are through today.

CONCERN FOR TAXPAYERS

Senator ALLEN. Your concern, Secretary Cooper, for the taxpayer is commendable.

Senator HATCH. I want to echo that statement.

Senator ALLEN. That brings me to wonder about the fact that the Panama Canal Company owes the taxpayers, the U.S. Treasury, $319 million. In this juggling effort of transferring the canal to Panama and setting up a Panama Canal Commission to take over the operations of the canal, this debt of $319 million to the taxpayers is to be canceled. It is not to be carried forward to the new company. That concerns me deeply.

We are setting up this elaborate—I will not say "scheme"—we are setting up this elaborate plan to get $345 million to Panama through a system of loans and guarantees to save the taxpayers some money but yet the remainder of the cost of the canal, if I understand it, is $319 million. The Canal Company has been paying interest on that to the Treasury. It has been paying a little on the principal now and then. That is going to be wiped out. In effect, it is going to be given to Panama.

Where is the concern for the taxpayers exhibited there? Either one of you may respond.

Mr. HANSELL. I am not familiar with the obligation that you mention of the canal company to the United States. There is an investment item, and I cannot speak to the amount, on the books. You say there is an obligation. Could you articulate that a little more explicitly? I am not familiar with it.

DEBT NOT A DEBT

Senator ALLEN. You are not familiar with the $319 million that the Canal Company has on its books as a debt to the U.S. Government?

Secretary COOPER. It is not a debt to the U.S. Government. It is what is left of the capital that the United States originally invested in the canal. It is not a debt. It is carried on the books of the Panama Canal Company and used for purposes of calculating interest payments to the United States.

Senator ALLEN. It seems strange that if it is not a debt since the canal was built they have paid $642 million in interest on this obligation, or whatever you want to call it. It must be something if they are paying interest on it. To this date, they have paid $642 million interest on the money. Why is that not a debt?

Secretary COOPER. Analogies are difficult and sometimes misleading, but it is not technically or legally a debt. If you want to make an analogy, it is more close to the equity which the shareholders of a corporation hold in that corporation. At the discretion of the board of directors over the years there have been returns of equity, one should call them, to the U.S. Government, but it is not a debt in the conventional sense.

Senator ALLEN. They paid $40 million on the principal and $642 million in interest. It is a charge against the revenues of the Canal Company, is it not?

Secretary COOPER. The repayments of equity, if I can put it that way, were done at the discretion of the board. I don't know the detailed history of when those repayments were made but I assume that they came in periods in which the canal was doing very well financially. Since it was operating under a stipulation that it should not make money, it returned this equity to the Treasury.

The interest payments that have been made to the U.S. Treasury arise from a concern that the canal toll structure should reflect the full longrun costs of the canal. It was deliberately built in there so that the tolls should reflect a return to capital in that sense.

Senator ALLEN. Just last year the U.S. Treasury—the taxpayers, if you please—did receive $16 million in interest on this equity investment.

Secretary COOPER. That is correct.

PROGRESS AT LAST

Senator ALLEN. That would be lost to the Treasury, would it not? We have no further claim for repaid capital investment, would we?

Secretary COOPER. At the termination of the treaty that would be lost to the Treasury; yes.

Senator ALLEN. Now we are getting somewhere. In other words, if it is called a debt or unpaid equity investment, it is still money that in the ordinary course of events under the present treaty would ultimately come to the U.S. Treasury with interest. Is that not correct?

Secretary COOPER. No; that is not. You were all right up to the last part.

What comes to the Treasury is denominated "interest." There is no provision for a repayment of that capital item in the balance sheet.

PRINCIPAL NOT PRINCIPAL

Senator ALLEN. Yet the Company has been doing it. The Company has paid back $40 million in principal into the U.S. Treasury.

Secretary COOPER. At the discretion of the board of the Panama Canal Company, repayments of capital can be made. As I indicated, I do not know the history of those particular transactions but there must have been some time in the past in which the revenues of the canal were such that the Canal Company felt that rather than reduce the tolls, it would repay part of the original investment to the U.S. Treasury.

Senator ALLEN. The board is controlled by the U.S. Government. I guess the discretion would be the discretion of the U.S. Government, would it not?

Secretary COOPER. Officers of the U.S. Government, that is correct. There have been, also, as in the case of OPIC, nongovernmental members on the board.

INTEREST NOT INTEREST

Senator ALLEN. Yes, but that policy seems to have gone out the window with the latest round of appointments. How much is the interest rate on this unpaid equity?

Secretary COOPER. About 5 percent a year, I am told.

Senator ALLEN. About 5 percent a year.

It looks as though we are just splitting hairs when we say that that is not a debt or an obligation. It is something on which interest is being paid. It is unrepaid money that the United States has put into the canal, is it not?

Secretary COOPER. It would be more correct to call that interest—although it is called interest—dividends.

Senator ALLEN. That is what you say but it is called interest, is it not?

Secretary COOPER. The reason we avoid the term "dividends" is that the Canal Company is not supposed to make a profit in a conventional sense and is charged by statute not to make a profit; yet there is an enormous amount of capital tied up in the canal.

Senator ALLEN. Is there anything wrong with the U.S. Government getting back its original investment in the canal?

Mr. HANSELL. Senator, may I make a comment that I think perhaps would be helpful with respect to this?

The arrangements that you are discussing with respect to repayment and the operations of the Canal Commission will be a function more of the implementing legislation than of the treaty. These matters of operation of the new Canal Commission and the payments

that it would be expected to make and so forth will be before the Congress in connection with its consideration of implementing legislation. They do not flow, necessarily, from the treaties at all. These issues will have to be addressed in that context.

Senator ALLEN. Under the treaties I understood Secretary Cooper to say that this money would be wiped out. This unpaid equity would be wiped out.

Mr. HANSELL. On the question of what payments are made by the Canal Commission to the United States, the program under the treaties would contemplate the creation of the Canal Commission, although, again, the implementing legislation would actually determine that more than the treaties themselves.

Senator ALLEN. It would not be carried as a debt by the Commission, would it, by the new Commission?

Mr. HANSELL. We would not expect that, although the Commission, of course, will have to speak to that. The Commission will have to make that decision ultimately itself as to how it will set up its books.

Senator ALLEN. You do not anticipate that they would voluntarily take on a $319 million obligation that the treaties relieved them of, do you?

Mr. HANSELL. The treaties do not explicitly relieve them of it, Senator.

Senator ALLEN. They do not carry it forward either, do they?

Mr. HANSELL. No, sir.

What I am saying is that those issues are not directly a function of the treaty as much as they are an implementation of the treaty.

Senator ALLEN. I will disagree on that. We are making a disposition of the canal. We ought to wrap it up in one package, it would seem to me. Three hundred and nineteen million dollars is a large enough item that these treaties ought to be amended to make provision for the $319 million. I think the taxpayer has that investment there. Whether it is an unpaid investment or a debt, that is splitting hairs.

Mr. HANSELL. Do keep in mind that the property transfers and so forth do not all take place at the moment the treaties come into effect. You are familiar with the way in which those are phased out, I know.

My only point is that some of these issues really are not directly functions of the treaty but of the implementation of the treaty.

Secretary COOPER. Senator, if I may say something on that, I cannot pretend to know the history all the way back to 1902 in detail, but my impression is that it was never envisaged that the U.S. investment in the canal should be paid back. It has never been envisaged that it should be paid back.

Senator ALLEN. Nor was it envisaged that the assets of the Company would be given away. But what about the payments on the principal then?

Secretary COOPER. The United States interest was in constructing the canal which we thought was going to serve both our economic and our security interests. That canal continues to exist now.

The whole financial arrangement surrounding the canal was reexamined by Congress in the early 1950's, which is now over 25 years ago. At that time, if there had been a desire on the part of Congress

that the original investment of the United States in the canal be repaid, it would, I think, have been put in legislation. On the contrary, no regular provision was made for the repayment of the investment. Provision was made for continuing interest payments, as they are called, on it, and at the election of the Board, repayment. However, it was not built into the cost structure of the canal that the investment be repaid.

I think it is fair to say that the underlying assumption there was that the asset itself served U.S. interests. It was not necessary to repay the investment as such.

The provision for possible repayment was put in there for completeness but not as part of the builtin cost structure of the canal.

Senator ALLEN. But the taxpayer will be losing this $16 million in interest that is now being paid by the Panama Canal Company and will also lose title to the assets of the Company.

Secretary COOPER. That is correct.

Senator ALLEN. It shifts around so that the United States gets nothing and a Panama gets $60, $70, or $100 million, depending on the amount of the revenue. Is that correct?

Secretary COOPER. I have not seen any figures that suggest a number as high as $100 million in the near future. It might come at some later time, depending on how revenues develop.

Our estimate is in the order of $60 to $65 million, as I said earlier, in terms of revenue accruing to Panama.

EQUITY NOT EQUITY

Senator ALLEN. Do you think it would be inequitable for the American taxpayer to continue to draw interest on this unpaid equity investment?

Secretary COOPER. Equity, like beauty, is in the eyes of the beholder.

Senator ALLEN. What does that mean?

Secretary COOPER. It means that it is one of these words which does not have a precise meaning.

Senator ALLEN. Would it be improper, then, for the U.S. taxpayer to continue to get this $16 million?

Secretary COOPER. I would not want to call it improper, no. We have been getting the $16 million.

Senator ALLEN. Would it be fair to the American taxpayer to deprive him of this $16 million a year in income?

Secretary COOPER. Again, fair is a word like equitable, which is in the eyes of the beholder. The Panamanians would argue, "Is it fair for you to have all of the benefits—the economic and the security benefits of this great resource, the canal, which is right across the middle of our country and pay us only $2.3 million a year for it?"

Senator ALLEN. Do you think that the average American taxpayer would approve of $16 million in income being taken away from the American taxpayers?

Secretary COOPER. Do you think the American taxpayer would approve——

Senator HATCH. Why don't you answer the Senator's questions instead of asking questions?

Secretary COOPER. I am not a pollster, Senator. I cannot comment on what the American taxpayer would approve.

Senator HATCH. How do you feel?

Secretary COOPER. My own view is that within given revenue constraints, the division of revenues, if one can put it that way, $16 million to the United States and $2 million to Panama, has not been appropriate.

Senator ALLEN. You think what?

Secretary COOPER. Senator Hatch asked my own personal opinion. My own personal opinion is that the division of such revenues as there are to be distributed, $16 million to the American taxpayer and $2 million to the Panamanian taxpayer, has not been a fair one. That is a very subjective judgment.

Senator ALLEN. What about the American taxpayer getting nothing and Panama getting $60 million a year? Is that fair?

Mr. HANSELL. Senator, may I interrupt to say that——

Senator ALLEN. No. Let's allow him to answer.

Mr. HANSELL [continuing]. That is not necessarily going to occur. This is an issue as to which the Congress will speak.

Senator HATCH. They think it is going to occur. That is what we were told when we were down there.

Senator ALLEN. Congress cannot retrieve the $16 million once these treaties are executed. We cannot do it.

Mr. HANSELL. The question of how the canal will operate, the tolls that will be charged, the payments that will be made to the United States—these are issues of treaty implementation, a matter of income and expense of the new Canal Commission. These do not automatically and necessarily flow from the terms of the treaty. I think we should be clear about that because there will be before the Congress the implementing legislation. There will be before the new Commission judgments, obviously, as to tolls, income, expenses, and the issue of payments to the United States, if any. Whether there would be any interest or profit or equity to be paid, assuming there was any income to do it, will be an issue that would be confronted hereafter.

ARTICLE XIII FORBIDS LIENS ON ASSETS

Senator ALLEN. We are spelling out in the treaties the methods of arriving at what Panama shall get; moreover, article XIII of the proposed Panama Canal Treaty says that all canal assets must be turned over to Panama free from any liens or encumbrances; yet you say that what the United States will get will have to depend on congressional action taken. I do not believe Mr. Torrijos, once treaties are executed and once the treaties are approved by the Senate and the canal is turned over to him, would pay any attention to an act of the U.S. Congress giving the United States some portion.

Why not decide now what the United States is going to get out of the operation and specify that as a part of the treaties?

Mr. HANSELL. Sir, first of all, may I clarify this: the canal is not turned over to him as a result of the ratification of the treaties. For a period of 23 years, as you know, it continues to be operated——

Senator ALLEN. There is the matter of at least $70 million income, and title to the assets would pass to Panama on day 1—we would have nothing but a management contract, no more; not even the right to share in any profit.

Mr. HANSELL. The Panamanian income, of course, is derived from revenues.

Senator ALLEN. But is our $16 million derived from revenues?

Mr. HANSELL. Well, it may well be paid if there is a surplus.

Senator ALLEN. There is nothing in the treaty about it.

Mr. HANSELL. We would not negotiate that with the Panamanians, sir. We have negotiated with the Panamanians over what they would receive but what the Canal Commission does with any excess of revenue that it receives after it has discharged its obligations and commitments is a matter for the Congress and Commission to determine. That would not be a matter that would be negotiated in the Treaty.

THE UNITED STATES—HAT IN HAND

Senator ALLEN. This seems a little one sided to say that Panama is going to get a definite share of the income and the United States, after the treaties are approved, has to go hat in hand to the Commission and ask for part of the action.

Mr. HANSELL. No, sir. During this period the Canal Commission will be, if you will, using someone's property and has agreed to pay what the Attorney General on one occasion referred to as the equivalent of rent. There is nothing unusual about committing to pay for the use of property.

Senator ALLEN. The property being the canal?

Mr. HANSELL. Yes, sir, the canal that the Commission will be operating.

A QUESTION OF OWNERSHIP

Senator ALLEN. I thought the State Department contends that the canal is not the property of the United States.

Mr. HANSELL. Of course, I did not say anything inconsistent with that.

Senator ALLEN. You said the property that would be used——

Mr. HANSELL. I am saying that this is the equivalent, substantial equivalent, as it was referred to by the Attorney General at one point—and I think it was a pretty good analogy—these charges that are payable to Panama can be looked on as the rent payable for the use of the property.

In any event, if the revenue from the tolls is such that all of the costs and expenses can be paid and there is a surplus, then there is nothing to preclude, by legislation or other argument, the Commission from making payment. There is nothing to preclude it from making a payment.

Senator ALLEN. Why should the United States have to get funds out of surplus when Panama gets its off the top?

Mr. HANSELL. It is a question of who controls the property, I guess.

Senator ALLEN. Sir?

NOT AN UNUSUAL ARRANGEMENT

Mr. HANSELL. I say it is a matter of the contractual arrangements with respect to the treaty and with respect to the property. I am saying it is not an unusual arrangement.

Senator ALLEN. The point I am making is that interest payments are now being made every year. We forgo that. We surrender title to the assets. We satisfy the mortgage and promise no encumbrances. We give Panama $70 million a year out of the revenue, and the United States has to go and try to work something out with the Commission. Somehow these arrangements strike me as unusual—if not bizarre.

Mr. HANSELL. In the past, Senator, I think whatever payments have been made to the Treasury have come after payment of all other expenses. There have been years, I believe, in which that payment has not been made to the Treasury. Others would have to speak to that.

Secretary COOPER. That is correct.

Mr. HANSELL. Our payments have always been after discharge of other obligations of the Canal Company. This is no change.

Senator ALLEN. Yes, but we have been getting it. It has been recognized as an obligation payable at a specified rate figured against principal.

Mr. HANSELL. Not regularly.

Senator ALLEN. $642 million worth. That is pretty regular.

Mr. HANSELL. All I am saying is that the uncertainty in the future as a legal matter is no different from the uncertainty of the past. The numbers are different.

Secretary COOPER. The interest is payable to the U.S. Treasury, if available. There have been times in the past in which the Panama Canal Company has skipped its interest payments.

Senator ALLEN. As I say, though, $642 million has been made available so it must have been pretty regular at $16 million a year. I am also advised that no payment has been missed since 1951. Except in 1976, and in the transition quarter, that interest for those periods has already been partially paid and will be paid in full during 1978.

I have more questions. As a matter of fact, I have several prepared questions, and I have not gotten to any of them yet. These questions were merely ad hoc that I have asked.

I would like to submit these questions for respone for the record, please.

Mr. HANSELL. Yes; we will be pleased to respond.[1]

Senator ALLEN. Senator Hatch and I divided up the time. That is the reason he has not been participating in the questioning. It was agreed that I would have the first hour and now Senator Hatch will have the second hour. So you gentlemen will endure further questioning.

FOOTING THE BILL

Senator HATCH. You have been through the rough time; now you can go through the easy time. [Laughter.]

Let me ask you this: Pursuant to the treaties and the accompanying documents, who pays for our costs of management of the canal?

Secretary COOPER. I am sorry but I do not quite understand the question.

Senator HATCH. Who is going to pay for our cost of management—our employees, our members of the Commission, et cetera?

[1] See page 467.

Secretary COOPER. The Panama Canal Company now and, when this goes through, then the successor company pays all of the costs associated with it, including what you were referring to as "our costs." They come out of the canal revenues.

Senator HATCH. In other words, all these costs have to come out of the canal revenues in addition to the $70 million that we feel can come out of tolls to be made to the Panamanians.

Secretary COOPER. That is correct. The canal is supposed to be run as a fincially self-supporting operation.

Senator HATCH. So what the State Department is saying is that the U.S. taxpayer will not be charged one iota, not one dime, for the operation of the Panama Canal?

Secretary COOPER. That is the assumption.

PENSION COSTS

Senator HATCH. Who is going to pay for the pension costs of the retiring laborers who have been asked to retire early in their careers to come back to the United States presumably? Is the United States going to pay for that or are the canal tolls going to pay for that?

Mr. HANSELL. Pensions that employees are entitled to under existing legislation through the Civil Service Commission——

Senator HATCH. Don't tell us that because there is not existing pension legislation. It may be the basis for making special considerations for these people which will make additional, it seems to me, statutory action; right?

Mr. HANSELL. Correct.

Senator HATCH. That means that we are going to have to make appropriations for that; is that correct?

Mr. HANSELL. If there are retirements.

Senator HATCH. We have been told there are going to be retirements. There are going to be early retirements and there are going to be people who will be given special consideration as a result of their lack of desire to stay down there under a canal with our jurisdiction completely given up, both civilly and criminally, within 3 years after the ratification.

Mr. HANSELL. I guess I have lost the question.

Senator HATCH. I am saying there will be special pension considerations not presently written in the law that we will have to fund here in the United States of America for those who would be retiring early not pursuant to existing pension law.

Mr. HANSELL. If there are those benefits and if there are retirements under them, those would be Civil Service Commission obligations.

Senator HATCH. You are saying that we would have to have special appropriations to take care of those inasmuch as they may not fit within the present civil service pension requirements.

Mr. HANSELL. I am not sure I would agree that they would be special appropriations. The aggregate pension obligations of the Civil Service Commission, if it is the source of payment of pensions—as I understand it is—would have to be paid. That would be a function, of course, of all retirement commitments. It might increase. I am not suggesting that it would not. I don't know, but I am saying you can only calculate all of its pension commitments and the amount needed to service them.

POLICE AND GARBAGE

Senator HATCH. Who is going to pay the $10 million for the police protection and garbage collection about which we have heard?

Mr. HANSELL. The Panama Commission.

Senator HATCH. The successor Commission?

Mr. HANSELL. Yes, sir.

Senator HATCH. That also has to come from the tolls?

Mr. HANSELL. Yes, sir.

Senator HATCH. That is part of the approximately $70 million that we have been talking about?

Mr. HANSELL. I believe so.

Secretary COOPER. I said $60 to $65 million. That does not include that $10 million.

Senator HATCH. That would be on top of that? That is something that has to be paid.

Secretary COOPER. That is something that has to be paid but those are services that are now rendered.

Senator HATCH. Do we pay that or do the tolls pay for that?

Secretary COOPER. What is happening under the proposed arrangement is that certain services which are now rendered directly by the Panama Canal Company or the Canal Zone Government will be the responsibility of the Panamanians. In recognition of that, there will be a payment from Canal Company revenues.

Senator HATCH. Which will come from tolls?

Secretary COOPER. Yes; which will come from tolls. They will be paid to Panama for these services.

At the same time, however, certain services which are now defrayed out of Canal Co. revenues will no longer have to be paid by the Canal Co.

Our reckoning is that once this switch has actually been completed there will actually be a savings of money on that because the cost of rendering those services now exceeds the $10 million payment which will be made to Panama for rendering those services.

WHO PAYS IF NO REVENUES

Senator HATCH. Mr. Hansell, what happens if all of a sudden the Panamanians say that they just cannot afford to operate the canal or for any reason they shut down the canal? What do the treaties provide the United States may do in that situation?

Mr. HANSELL. As you know, the neutrality treaty contemplates that the canal after the year 2000—but prior to the year 2000, of course, it is a matter of our——

Senator HATCH. Let's say after we turn over criminal and civil jurisdiction to the Panamanians, which I understand will occur 36 months after ratification.

Mr. HANSELL. Thirty months after effectiveness.

Senator HATCH. Thirty months after effectiveness what happens if the Panamanians say, "We just do not want to operate the canal anymore. We are going to shut it down because it is just not a winning proposition. We cannot get the $75 million—that is, $60 to $65 million plus the $10 million, plus paying for the American costs of operating

the canal, plus all the costs of assimilation, plus a number of other costs"?

Mr. HANSELL. The operation of the canal until the year 2000 is our responsibility. The Panamanians would not be in a positon to say that. When I say "our," it would be the Canal Commission.

Senator HATCH. Who is going to pay if Panama all of a sudden decides that the tolls are not good enough to warrant contining to operate it?

Mr. HANSELL. They would not be making that judgment.

NEUTRALITY DOES NOT IMPLY RIGHT TO KEEP CANAL IN OPERATION

Senator HATCH. Let's say the year 2000. What if the operation is no longer profitable? Where are we then?

Mr. HANSELL. Where are we? At that point we have the neutrality treaty which commits both countries to maintain the neutrality of the canal, which of course contemplates that it would be open and accessible.

Senator HATCH. Yes; but I do not see that we are anywhere given the right to intervene to keep the canal open. Would we then have a right to come back in and open it up and operate it ourselves for the benefit of our Nation and all the other nations of the world?

Mr. HANSELL. We have to keep the canal open under the neutrality treaty, but, frankly, we would anticipate that the Panamanians by all logic and good sense would be discussing that issue with us because it is an important source, of course, of——

ANALOGY TO RUSSIAN SUBSIDY TO CUBA

Senator HATCH. Why would they when some say that 20 of their top leaders are Communists and that they have close ties with Cuba? We had the same argument when we said that Cuba was so interdependent upon the United States for commerce, trade, and so forth, that it could not exist without the United States.

What if Russia pours the same $1 billion-plus into Panama and says, "Shut it down"? What are we going to do?

Mr. HANSELL. That is so extraordinary.

Senator HATCH. It is? That is what they said about Cuba, didn't they?

Mr. HANSELL. I cannot speak to that.

Senator HATCH. Didn't they say that Castro was a "social, agrarian reformer" and that "he loves the United States"?

Mr. HANSELL. If we had to fall back on our rights under the neutrality treaty—all I am saying is that you pose what is an extraordinarily unlikely set of circumstances.

Senator HATCH. I think it is extraordinarily likely.

Mr. HANSELL. If I can finish my sentence, Senator, I would point out to you that this is such an important source of revenue to them——

Senator HATCH. What if they can get $1.6 billion, like Cuba did, which is more than they will make from the canal, to shut it down? Which would be more important to them—the $1.6 billion on the approximately $70 million, assuming that the canal can pay for that?

Mr. HANSELL. I do not understand the source of the $1.6 billion.

Senator HATCH. I understand it because I understand that amount is about what Russia puts into Cuba annually right now.

Mr. HANSELL. In any event——

Senator HATCH. Weren't the same arguments given then?

Mr. HANSELL. If all of these circumstances that you hypothetically——

Senator HATCH. Let's just say that Russia says, "Hey, it would be inexpensive for us, since there are only four major straits in the world—and Panama being one of the most important and certainly the most important for the United States—it would be very beneficial for us to shut down the canal after these treaties are operating." Let's say they could pay $2 billion to Panama, or $1 billion, or whatever it is. The precise figure is insignificant but it is considerably more than the $70 million the Panamanians would be able to get from the canal tolls.

Why is that so illogical since Russia does it now in Cuba?

Mr. HANSELL. I don't want to get into a discussion with you about what happened in Cuba. My understanding of the facts would be different.

Senator HATCH. We said the same arguments then.

Mr. HANSELL. We did not have a neutrality treaty that would govern the circumstances that whereas we would here. If in the end we had to turn to our rights under the neutrality treaty—and I think that that is the hypothesis you are creating—we would have to turn to our rights.

Senator HATCH. Who is going to pay for that?

Mr. HANSELL. In terms of who would operate the canal——

Senator HATCH. If we would have to assert our rights under the neutrality treaty, who is going to pay for it?

Mr. HANSELL. There would be revenues in the form of tolls, presumably, and there would be expenses.

Senator HATCH. Why don't you just answer that the United States of America taxpayers are going to pay for it?

Mr. HANSELL. Because I could not begin to conceive how all that would take place. At this stage it is such a remote hypothetical, Senator——

RUSSIANS IN PANAMA

Senator HATCH. It is not remote at all. We know the Russians were there in Panama between October 11 and 29, negotiating to go ahead with a heavy-duty equipment plant. Other matters were discussed. What is so unreasonable about their taking an economic advantage of the United States by shutting down the canal and give Panama more money than Panama could make off of the canal? If the price were right, Panama would have little trouble finding an excuse. You do not think that is logical?

Mr. HANSELL. We are talking about 23 years hence.

Senator HATCH. I am talking about after we lose effective jurisdiction over the zone.

Mr. HANSELL. Twenty-three years hence is the time that operation of the canal is relinquished to the Panamanians. Until then, by explicit provision in the treaty, it is our obligation and our responsibility to operate and maintain the canal.

Senator HATCH. An obligation but not our right and on a 5-to-4 Commission basis.

Let me throw out a hypothetical. There are five Americans and four Panamanians, let's say. What if one of our Americans says, "We don't think it is making enough money to pay the Panamanians what they need to have, and I am going to vote with them to shut down the canal"? What do we do then? He would never be able to come back to the United States, but presumably he could retire in Switzerland.

Mr. HANSELL. These are Presidential appointees. The President has the same power over these appointees as he does over——

Senator HATCH. And you are sure that the President is going to appoint people who would always be committed to keeping that canal open for the United States?

Mr. HANSELL. In addition, Senator, I keep coming back to this because it seems not to have come through. Congress is going to have a very substantial say in how all this is going to evolve.

Senator HATCH. Well, I assume there is no chance the Congress would be so stupid as to permit the President to make these appointments without Senate confirmation, but what if we make a mistake and put five people in there, one of whom votes with the Panamanians and shuts the canal down because economically it cannot be run at a profit?

Mr. HANSELL. Congress will have available to it the opportunity to change the legislation.

Senator HATCH. Will we? The Board's membership is specified by the proposed treaties.

Mr. HANSELL. Yes. The Canal Commission will be created by legislation that will be enacted by this Congress.

NO OPPORTUNITY TO RESTRUCTURE COMMISSION

Senator HATCH. If we are bound by these treaties, I don't see how we can vary the treaties with subsequent legislation. The structure of the Commission is fixed.

Mr. HANSELL. I think if you look carefully at the treaties——

Senator HATCH. I have.

Mr. HANSELL. I know you have. If you think through, as I have, how they are to be implemented by legislation, you will come to the conclusion that matters such as these will be a function basically of the legislative action of this Congress.

Senator HATCH. I disagree with you on that, but let's take the easier question.

By the year 2000 assume that we turn over all control to the Panamanians and at that point Russia says, "We want you to shut the Canal down. We are going to give you $1½ billion a year, like we are giving to our dead friends in Cuba." You think that is remote, but I think that is very probable. I am even extending it through the 22-year term so that we can understand the proposition more easily.

Let's assume Panama shuts it down. The price was right. Then we are limited to asserting the rights you say we have under the Neutrality Treaty and coming in and paying for all of this ourselves; is that right?

Mr. HANSELL. No, I don't think we are limited. There is a whole spectrum, really, of remedies and relief possibilities that would be

available to us. When you structure your hypothetical, of course, you exclude all possibilities that are the most likely. One of those is that the Panamanians would come to us because the operation of the canal is important.

Senator HATCH. Would we then give them the $1½ billion rather than have Russia do it?

Mr. HANSELL. According to your hypothetical, as I say, all the terms make impossible any of the many solutions to that kind of problem that as a practical matter would occur. All I can say to you is that I cannot envision that.

Senator HATCH. Why didn't that occur in Cuba?

Mr. HANSELL. I cannot speak to the Cuban situation.

SOVIET FUNDS THROUGH CUBA

Senator HATCH. Let me go to other questions.

I agree that there are a lot of ambiguities and difficulties with these treaties. I would just point out one of them.

I believe it is going to be a very simple thing for them to shut down the Canal after we lose civil and criminal jurisdiction. I think it is a very high probability. I think there will be much more ease in shutting down the canal after we turn over criminal and civil jurisdiction and after we cut our military bases from 14 down to 4 than there would be if we stayed there.

Mr. HANSELL. Why would they do that? This is the source of millions of dollars of revenue.

Senator HATCH. What incentive did Fidel Castro have to cut off his nose to spite his face?

Mr. HANSELL. You are suggesting that this $1.6 billion arrangement is going to be made by the Russians as soon as the civil and criminal jurisdiction is turned over?

Senator HATCH. No; I think they will be smarter than that. I presume it will come through Cuba.

The point is that we said the same thing about that great agrarian reformer, Castro. He was bound to be good to us because he was dependent on us. Now we are sitting here with an alien enemy 90 miles off our coast. Admittedly, Panama will at least be more than 90 miles.

UNDERSTANDING A DISTINCTION

Mr. HANSELL. Our exposure in that respect is no less today than it would be under the new treaties. If you think that is going to occur, it is going to occur under the existing Treaty as it is under the new treaty. There is no difference in that respect from the existing treaty which, after all, provides for our operation of the canal.

Senator HATCH. Yes, there is a major difference because right now we control it militarily and we control all aspects of it. Surely you understand that.

Mr. HANSELL. The distinction in terms of the situation you put really is no different. The Russians have $1.6 billion, I suppose, under the existing Treaty——

Senator HATCH. They can't shut it down as long as we are there. We would not allow it as long as we were there. If we turn it all over, it seems to me that it would be very, very difficult for us to prevent

it at that point, just like we are unable to prevent Soviet actions in Cuba.

HIGH PRODUCTION COST IN PANAMA

Let me ask Mr. Cooper several questions.

According to the American Embassy in Panama—and I refer to the widely distributed note of October 26, 1976, which was reprinted in the Congressional Record—the chronic economic recession in Panama is caused primarily by Panama's high cost of production which has made Panama basically uncompetitive with the world market.

My question is this: In what respect, if any, will these various economic assistance programs alleviate the basic economic problems in Panama? In what way will they help to reduce the high cost of production which presently causes Panama to be uncompetitive?

Secretary COOPER. Senator, I cannot speak directly to the allegation that Panama has a high cost of production relative to other countries.

Senator HATCH. According to a note sent by the American Embassy in Panama to the State Department, October 26, 1976, there were listed a number of economic problems explaining Panama's current recession, chief among these was the chronically high cost of production throughout the Panamanian economy.

Secretary COOPER. Let me comment on that. The interesting thing about that is Panama is not distinctive in its current economic recession. It is a set of problems that sits on most countries of the world. You simply cannot argue that the problems in most countries of the world today are due to their cost of production. There is a much more general phenomenon, which is very high oil prices which continue to be a burden on countries that do not produce oil and have to pay for it and, second, the global recession. We in this country are in the lead of coming out of it. If you go to Europe or many developing countries, you find the kind of phenomenon that you find in Panama.

Indeed, my impressions are that Panama has not been as hard hit as a number of other countries. Unemployment, for example, if I recall it correctly, in Panama is about 6 or 7 percent, which is not that different from in the United States, whereas in a number of developing countries you have 15, 20, or even 25 percent unemployment.

Without knowing the details, I would be inclined to be skeptical of an argument that said that Panama's current economic malaise is due to its high cost of production as opposed to the general world economic situation, which, as I say, affects many, many countries besides Panama.

Senator HATCH. This memo from the State Department says that:

> Panama's basic weakness is that Panama is not competitive on the world market. This is the result chiefly of high cost production in both agriculture and industry. A lack of natural resources exacerbates the problem.
>
> Agriculture. Farm labor costs are high—$3 a day. This is double the rate anywhere in Central America.

Secretary COOPER. Wait a minute. Our wage costs are many factors higher than that, but we do not say that we are uncompetitive. You have to set wage costs against productivity. It is true that Panamanian wages are higher than in Honduras?

Senator HATCH. They are higher than anywhere else.

Secretary COOPER. They are higher than Guatemala. However, it is also true that Panama has on the average a better educated population,

a better trained population, and so forth. You have to set those higher wages costs against productivity.

Second, Panama, much more than the other Central American countries, relies for its earnings on services. As came up earlier in the conversation, it has an extensive international banking community there which the other countries do not have.

Just because Panama cannot compete with, say, Honduras in product x is not the same as saying Panama cannot earn its way. It is oriented much more toward trade in part because of the canal, toward services to the canal itself, and toward bank——

MORE FACTS

Senator HATCH. Let me give you some more facts because you apparently have not read the same memo that I have.

Secretary COOPER. I am sure I have not.

Senator HATCH. Your remarks contradict those of your own Department. The note states:

> Industry. Panama's manufacturing industry has little export or overall growth potential because of high production costs. A lack of natural resources exacerbates the problem.
>
> Minimum wages and the general wage and benefit structure in Panama are the highest in Central America and among the highest in all of Latin America.
>
> Miscellaneous considerations. Overall economic growth is near zero for 1976. Panama's problem is structural and is not caused by worldwide economic trends or world trade.
>
> The country continues to decline economically. Private investment reached a peak in 1971. Growth in manufacturing began to fall off in 1971. There has been almost no increase in the volume of manufactured exports since then.
>
> Expansion of construction activity began slowing down in 1972 and has actually been declining since 1974. Imposition of rent controls in 1973 brought private investment in low cost housing to a standstill.
>
> At the same time, growth of public services has remained near 8 percent annually through 1974.

The conclusions basically were:

No. 1, "Panama's high wages, subsidies, and consumer imports, together with a moderate tax burden and little public savings, has created an artificial high standard of living which no longer appears to be supportable by Panama's inefficient domestic production."

No. 2, "Increasing amounts of foreign money continue to pour into Panama. This has permitted Panama to defer grappling with the core problem of low productivity until a later time—when the problem has worsened. Much of the capital inflow of the past 3 years, instead of going to the heart of the problem, has simply aggravated Panama's economic sickness by increasing its debt service burden without enhancing overall productivity."

No. 3, "The types of actions that are necessary in order to improve Panama's high cost structure run headlong into Torrijos' 'revolution' in that they would require reduced social and economic benefits now being granted to the urban and rural working classes over the past 8 years."

No. 4, "Panama's best economic prospects," according to the memo, "lie in the development of its potential as a hub for servicing international commerce, especially cargo handling. It is thought that Panamanian access to relevant Canal Zone sites would help Panama develop an intrastructure on which growth of various transport, stor-

age, and other commercial services depend. This may be a principal motive for transferring the zone to Panama."

There are additionally the many statements made by Nicholas Barletta, Panamanian Minister of Economics, which indicate that debt service is extremely high, almost 40 percent of revenues, and that public debt is well over $1 billion.

Secretary COOPER. That is not debt service but the debt.

Senator HATCH. Yes; present annual debt service would equal roughly the revenue from these proposed treaties. But putting that aside, did you or any other negotiator propose to Panama that it make substantial changes in its economic policy in order to receive U.S. economic assistance? These economic policies they have now are not working. They have gone from $169 million in 1969 to $1.7 billion in public debt in 1977. At least that is the information that we have from the Library of Congress. That is in less than 10 years.

Mr. COOPER. I am not sure what the question is. I cannot comment on the memo which I have not read. On the basis of what you have said about it, though, one thing strikes me. It says that Panama has no natural resources. In fact, they have the largest copper find anywhere in years.

Senator HATCH. They have great natural resources but they do not know how to develop them. Their system has not developed them.

Mr. COOPER. I understood them to say that they have no natural resources. Maybe I misunderstood.

Senator HATCH. It says they are exacerbated by not having natural resources which are developed.

STATE DEPARTMENT MEMORANDUM REPUDIATED

Mr. COOPER. What I am saying is that that is not a true statement. I think that many of the other statements in that memo fail to recognize what is going on in the world at large. A number of those statements can be applied to dozens and dozens of countries, including European countries, around the world.

The reason for emphasizing this is that the suggestion in the memo is that somehow it is faulty Panamanian policy which has run Panama into these difficulties. Without in any way wanting to endorse Panamanian policy because I do not have a judgment on that, all I want to say is that there are many countries around the world that have pursued policies that are about as sensible under the external circumstances as they could be and they find themselves in similar difficulties. Therefore, I find myself skeptical of the conclusions implicit in the memo.

The important question is looking forward what can be done to make Panama into a more viable economy. The economic development package, which is a cooperation effort, which we have talked with the Panamanians about is designed to help them in the process of developing their economy.

I think because of its location and because of the degree of education of its labor force compared with its neighbors, and for other reasons, it would not be surprising if Panama did find itself with relatively low net exports of agricultural products, for example, and engaged heavily in provision of services.

If I understand it correctly, it is going forward. The copper mine will come on line in several years' time and produce.

Senator HATCH. Developed by American companies.

Mr. COOPER. It is basically American companies that are developing it, sure, but that is true elsewhere in the world also.

Senator HATCH. Let me refer you to this so you can find it easily. It is in the September 27, 1977, Congressional Record. That might save some time.

Basically your own State Department was pretty harsh in its analysis of Panama's economic policy.

Mr. COOPER. When was the memorandum written?

Senator HATCH. October 26, 1976.

Mr. HANSELL. That, of course, was a prior administration.

Senator HATCH. It is still the Department of State, presumably the election here did not change the facts in Panama.

Mr. COOPER. Senator Allen asked me what my role was in the State Department and how long I had been there. One of my roles is to improve the economic competence of the foreign service.

Senator HATCH. You are choosing a very poor way of doing it in my opinion. Nevertheless, let me ask you some more questions.

MASSIVE PUBLIC BORROWING

When did the Government of Panama first begin to borrow massive amounts of money from U.S. and foreign banks? Do you know that?

Mr. COOPER. That is a judgmental questional on "massive." I do not know the answer to the question. Their external borrowing stepped up substantially in 1974.

Senator HATCH. On that point, you are aware that around 1969 when Torrijos took over their debt was what? Do you remember?

Mr. COOPER. No.

Senator HATCH. It was less than $200 million but today it is a minimum of $2.7 billion.

Mr. COOPER. No, it is not $2.7 billion. We went over that before. The best number to think of that is germane here is about $1 billion, a little more than $1 billion. The $2.7 billion includes the banking operations located in Panama.

Senator HATCH. Yes, excuse me, the Congressional Research Service has told us $2.7 billion in total external debt of which $1.7 billion is public debt. But, in any event, you are saying that they began to borrow the amounts of money basically from U.S. and foreign banks around 1974.

Mr. COOPER. There was a big jumpup in borrowing in 1974, 1975.

WHERE DID MONEY GO?

Senator HATCH. What was the money used for? Do you know?

The State Department memo indicates that it was not used as a result of OPEC problems or oil problems. What do you think the money was used for?

Mr. COOPER. Ostensibly the money was used to finance social and economic development. The fact is that, as in the case of many countries, including the United States, a lot of external borrowing was used to finance the consumption of oil.

Senator HATCH. I wonder why they did not clean up the eyesore right across from the Canal on the Avenue of the Americas.

As the treaty indicates, the United States is to assume primary responsibility for the protection of the canal over the next two decades. Why is it necessary for us now to give them $50 million in military aid?

Mr. COOPER. What is the purpose of the $50 million in military aid?

Senator HATCH. Yes.

Mr. COOPER. The Panamanians will be taking on additional security responsibilities as time goes on. We jointly felt that it would be useful if the United States equipped the Panamanian Forces to do that. The sums over a 10-year period are relatively modest, but they do reflect the fact that Panama will be taking over additional security responsibilities. We wanted to be sure that they would do that in cooperation with us and felt that the FMS route is useful for that purpose.

SWISS BANK ACCOUNTS

Senator HATCH. Do you or any of your representatives or associates at the State Department, or anybody, to your knowledge have any indication that leaders in Panama have been transferring funds to Swiss banks?

Mr. COOPER. I have no such knowledge.

Senator HATCH. Do you have any knowledge from any source whatsoever, Mr. Hansell?

Mr. HANSELL. No, sir.

EXCLUDING THE GENERAL'S BROTHER, NO INFORMATION ON DRUG PUSHERS

Senator HATCH. Do you have any information whatsoever that anybody in Panama, other than the general's brother Moise, has been trafficking in drugs?

Mr. HANSELL. No, sir.

Mr. COOPER. I have no such knowledge.

Senator HATCH. Would you check with the State Department and provide us with any information you find in the State Department file anywhere concerning trafficking of drugs?

Mr. HANSELL. I think whatever information there is on that subject has been provided to the Senate Intelligence Committee which has conducted its own investigation on that issue.

44 DEA FILES

Senator HATCH. Have the 44 files that were formerly in the Drug Enforcement Administration, about which Senator Dole talked, that all of a sudden were not there—have they been provided to the Senate Intelligence Committee?

Mr. HANSELL. I have no knowledge.

Senator HATCH. You are aware of Senator Dole's comment on the floor of the Senate Friday 3 weeks ago as well as my comments and those of Senator Thurmond?

Mr. HANSELL. I think the matter of those files is addressed properly to the Department of Justice, this is not a Department of State function.

Senator HATCH. I wonder then why our Embassies abroad have career diplomats serving as drug enforcement coordinators. But, all the same, you are aware, aren't you, that Senator Dole accused the administration of secreting 40-plus files from the Drug Enforcement Administration, moving them from the normal location, rifling through them, and not provided them for the review of the American people?

Mr. HANSELL. I am aware of the accusation.

Senator HATCH. You are aware that he accused Torrijos of being directly involved in the drug trafficking business? You are aware of that? Have you taken time to look into those remarks just to satisfy your own curiosity?

Mr. HANSELL. We have made our own thorough examination of these charges. We have made available to the Senate Select Committee on Intelligence every scrap of information available to the executive branch——

Senator HATCH. Did you ask for the 40-plus files?

Mr. HANSELL [continuing]. That is in fact available.

Senator HATCH. Are you saying those files are not available? Wouldn't that be something that the State Department would want to look into in its work on the intelligence aspects of the negotiations of these treaties?

Mr. HANSELL. Not only have we looked into it, but——

Senator HATCH. Have you read the 44 files?

Mr. HANSELL. I would suggest that perhaps Mr. Beckel who has been very deeply involved in that matter might want to comment in response to your question.

This is Mr. Robert Beckel. He is Deputy Assistant Secretary.

Senator HATCH. Have you read the 40-plus files?

Mr. BECKEL. I have read DEA files, yes.

Senator HATCH. All of these files listed by Senator Dole?

Mr. BECKEL. I am not aware of the files listed by Senator Dole.

Senator HATCH. You are aware that they were taken out of the Drug Enforcement Administration?

Mr. BECKEL. No, not at all.

Senator HATCH. You are assuring us that they were not taken out?

Mr. BECKEL. I have no idea. I work for the Department of State, Senator. No information has come into my hands.

Senator HATCH. Do you want us to provide you with the numbers so you can look them up?

Mr. BECKEL. If the DEA would allow me to go through their files, I suppose, but I suggest you turn that over——

Senator HATCH. This has to do with a tremendous problem for the American people. Don't you think that that is something you should insist upon seeing?

Mr. BECKEL. I think if you have a question about it, you should direct it to——

Senator HATCH. I am directing it to you.

Mr. BECKEL. I do not have access to DEA files. I cannot respond.

Senator HATCH. You just said you read the DEA files. Now you are saying you don't know anything about it?

Mr. BECKEL. I do. I know what the State Department's involvement has been in the allegations against General Torrijos and members of

his family. I was asked to undertake a thorough search of our files on behalf and at the request of the Senate Committee on Intelligence, as well as the Presidential directive to brief the leadership of the Senate and the Intelligence Committee, both the majority and the minority, which was done.

The administration, the State Department, the DEA, the Justice Department, and the Customs Bureau have all been forthcoming in turning their files over to the Select Committee on Intelligence.

I suggest if you have questions, Senator, that that committee is the proper——

Senator HATCH. I am asking you whether anybody in the State Department asked you to look at those files.

Mr. BECKEL. I have looked at those files, yes.

Senator HATCH. You have looked at those files?

Mr. BECKEL. I have looked at the files that were in the Department of State.

Senator HATCH. Have you looked at those files that Senator Dole, the distinguished Senator from Kansas, said were taken away from the Drug Enforcement Administration and secreted elsewhere?

Mr. BECKEL. I would be happy to if I knew what they were, but I have no idea——

Senator HATCH. If we provide you with the numbers and the file headings, whatever they are, would you be happy to look them up and report back to us?

Mr. BECKEL. I would be more than happy to take a list and turn it over to the DEA and ask them if they would respond to you. You see, I am in the Department of State. I simply cannot go through their files.

Senator HATCH. I think the Department of State should be interested in these accusations. These are the people we are talking about having control of a vital, strategic waterway.

Mr. BECKEL. Absolutely. The President of the United States is interested in these accusations. That is why the executive branch and all departments and agencies that have had files on these matters have turned those files over to the Select Committee on Intelligence. I believe that the DEA has turned over all their files. I would suggest that if Senator Dole has some file numbers, then he ought to check with the Select Committee on Intelligence before he makes accusations which I do not think are substantiated.

NOT PROVEN—YET

Senator HATCH. I think it is substantiated.

Mr. BECKEL. It has not been proven yet.

Senator HATCH. That is because they have been secreted and nobody has seen them. That is because Senator Dole's Freedom of Information Act request has been ignored.

Mr. BECKEL. That is a very serious allegation.

Senator HATCH. I suggest it is a very serious allegation. I suggest that it is even more serious that the State Department has apparently not gone and looked into it and gotten those files.

Mr. BECKEL. Senator, I would suggest that the State Department, and the President, and the Secretary of State have taken extraordinary

interest in this matter. I personally have gone through a number of files involving this matter, and I have found none of the allegations that you, and Senator Dole, and others have made to be accurate.

Senator HATCH. Then why hide them? But let me make sure I understand you; in other words, you are seriously saying you do not have any evidence to believe that there is drug trafficking by any of the top leaders in Panama?

Mr. BECKEL. I have seen nothing in the files that I have looked at that would indicate——

Senator HATCH. You have seen nothing that implicates Omar Torrijos' brother, an ambassador in Panamanian service.

Mr. BECKEL. I have not seen anything to which I would have access. There is information in the Justice Department that I would not have access to.

Senator HATCH. So all you are saying is based on the material that you have had access to in the State Department, which is to say that based on that you do not know whether they are involved or not involved.

Mr. BECKEL. The information that I have had access to would lead me to say that Omar Torrijos certainly is not involved. I think that is obviously something the U.S. people, the Congress of the United States, and the executive branch would like to have the answer to.

DEA–GF–TORRIJOS, OMAR

Senator HATCH. So would I. I would like to see the files.

One of these files is entitled "GF–Omar Torrijos." It is a general file.

Mr. BECKEL. Is that a DEA file?

Senator HATCH. Yes. It is not classified. Have you read that?

Mr. BECKEL. Is it a DEA file?

Senator HATCH. It is.

Mr. BECKEL. It is entitled what?

Senator HATCH. "GF-Omar Torrijos." It is a nonclassified file. Have you read that?

Mr. BECKEL. I have no idea——

Senator HATCH. Would you read that and provide us with copies of what is in there?

Mr. BECKEL. I could not provide you with copies of the DEA files.

Senator HATCH. Would you ask them to provide those?

Mr. BECKEL. Let me say this: If you have information on files that have not been delivered to the Select Committee on Intelligence from any other agency or department, the State Department certainly will insist, as the President has, that all information be turned over. Frankly, Senator, I would be amazed if there were any files that were not turned over from the DEA or any other agency.

COVER UP?

Senator HATCH. So would I but that was the accusation. Also there is the problem of completeness, and the problem of deletions, and the problem that one or two files might have been "overlooked." Have you contacted Senator Dole to get the numbers of those files?

Mr. BECKEL. No. I would suggest to you that I am not aware of the statement that was made on the floor. I was aware of the accusation that Senator Dole, you, and other Senators made. I have not been provided a list of specific——

Senator HATCH. You did not read that particular statement in the record?

Mr. BECKEL. No.

Senator HATCH. Would you please contact Senator Dole and ask him for the numbers of the files, obtain those files, read them, and then report back to us?

Mr. BECKEL. I would be happy to contact Senator Dole's office to see which information from the U.S. Government has not been forthcoming.

Senator HATCH. I think he can give you the numbers of the files.

Mr. BECKEL. Fine. We will do that.

Senator HATCH. You will do that, and then we want a report back one way or the other.

Mr. BECKEL. No, Senator, what I will do is to see the list of the files that Senator Dole has asserted have not been turned over to the Congress. If they have not been turned over, I will suggest that they be turned over to the Senate Select Committee on Intelligence.

Senator HATCH. But you will notify us of the files and your request that they be turned over?

Mr. BECKEL. Yes. If I find the files the Senator has listed have not been turned over to the Select Committee on Intelligence and that that is confirmed by the DEA, we would be happy to let this committee or any committee know.

If there are any files that have not been turned over, they certainly will be turned over.

Mr. HATCH. We appreciate that. We hope you do not meet the resistence others have experienced.

CANAL COMMISSION DEBTS

Assuming that the new Canal Commission runs up some debts, and I think that is going to be a pretty fair assumption, what is going to happen to these liabilities at the end of the term of the Panama Canal Treaty?

Let's assume that the liabilities are really incapable of being paid by the Panamanians at the end of the lifetime of these treaties. Whose is going to pay for those?

Secretary COOPER. I am not sure that I caught all of the assumptions that you made. It is possible for us to assume ourselves into a corner from which there is no solution.

However, let me address what I think is your general concern because it is a fair one.

We are engaged in an enterprise here during the life of the treaty which will be passed on as a going enterprise at the end of the treaty. The question is what is the financial structure of that enterprise as it is passed on.

I am now making a guess about management practice. Management practice during the next two decades will be such that any major investment that the Canal Company or the Canal Commission under-

takes will be discussed with the Panamanians, assuming those investments carry on beyond the life of the treaty, and we will reach an understanding before undertaking new, major obligations on how those obligations will be disposed of when the passage of authority from the Commission to the Panamanians takes places around the turn of the century.

NO KNOWLEDGE OF INFORMAL STATEMENT THAT LOANS NEED NOT BE REPAID

Senator HATCH. Do you know if any of the negotiators, or anyone for that matter, has ever advised the Panamanians that they would not have to pay back these debts which are described in your statement?

Mr. COOPER. Which debts are you talking about?

Senator HATCH. I am talking about the $75 million in AID, the $200 million in Export-Import Bank loans and guarantees, and the OPIC.

Mr. COOPER. The assumption on both sides is that those are debts of exactly the nature that they are with any other country and they are fully expected to be repaid. That is our understanding, and that is our understanding of the Panamanian understanding.

Senator HATCH. Yes; but one of the previous witnesses before the committee testified that he understood that the Panamanian negotiators had been advised by our negotiators that they needn't worry about paying back these long-term loans. Do you know anything about that?

Secretary COOPER. I know nothing about that, no.

Senator HATCH. In fact, there have been reports that Ambassador Linowitz may have testified to that effect before the Senate Committee on Intelligence.

Did you or anyone else in the State Department, to your knowledge, ever advise the Panamanians that it would not be necessary to pay back these loans?

Mr. COOPER. No.

Senator HATCH. Have you ever heard anyone at the State Department say that former Ambassador Linowitz or any negotiators ever advised the Panamanians that repayment of these loans could be ignored?

Mr. COOPER. No.

THE CASE ACT

Senator ALLEN. Which of these executive agreements, if any, were filed with the Senate under the Case Act?

Mr. HANSELL. Senator, all the agreements will be submitted when they become effective.

Senator ALLEN. Including the unilateral agreement?

Mr. HANSELL. All those are in fact agreements—and I cannot speak to which ones were so regarded, but I know that we were in close touch with the Senate Committee on Foreign Relations with respect to these documents. We can identify for you which ones were submitted.

Senator ALLEN. Obviously we can get the information from the Secretary of the Senate, but I would like for you to supply the information as to whether the unilateral agreement about which you spoke, providing for the $345 million in loans and guarantees, was filed or not

filed with the Senate under the Case Act and, if filed, the date submitted.

Mr. HANSELL. We will be glad to give you a list of everything that is submitted.[1]

Senator ALLEN. If you would do that for the record, we would appreciate it.

Assuming your premise that the Congress can set the terms for the operation of the canal and the various payments that the Panama Canal Commission could make, legislation presumably could be the place where this $16 million a year interest payment might be continued.

I might point out to you that you state that sometimes the company has not been able to pay the $16 million even though the annuity to Panama is only $2.3 million. What chance do you think there would be of paying the $16 million assuming Congress can require that to be done? What chance do you think there would be of getting the $16 million paid when it came in back of sums of $60 million or $70 million a year in payments to Panama? If the Treasury could not get it when the payment was $2.3 million, what chance does the Treasury have of getting it when the payment to Panama is 35 times that much?

Mr. HANSELL. It would be a function, of course, of future circumstances which I cannot predict, including toll revenues, costs and expenses, canal traffic. I just could not begin to guess what all those would add up to as a net figure in any given year in the future.

NO INCONSISTENT STATUTE

Senator ALLEN. Could the Congress pass any statute in implementation of the treaty inconsistent with the provisions of the treaty?

Mr. HANSELL. I would not think so. You say "inconsistent with." The legislation, of course, that Congress will pass can supersede the terms of prior treaties.

Senator ALLEN. Let's get that again. You say that Congress can pass a law that supersedes the provisions of the treaty?

Mr. HANSELL. Yes, sir. The treaty, of course, as you know, is law under the Constitution. Subsequent legislation enacted by Congress is also law. Within some limitations that I think we would want to articulate in a written response——

Senator ALLEN. I believe you would want to reconsider that answer.

Mr. HANSELL. It is the power of the Congress to enact, subsequent to a treaty, legislation that can affect the domestic legal effect of the treaty.

Senator ALLEN. No, sir, I think you will find that Congress cannot pass a statute which unilaterally would change the terms of a treaty because a treaty under the Constitution becomes the supreme law of the land. It cannot be varied by statute. So the Congress in my judgment could not pass any law inconsistent with the provisions of this treaty. That is where I think your premise that we could work out something through legislation on this interest payment would fall.

Mr. HANSELL. Let me say that I was not contemplating anything that would be inconsistent with the terms of the treaty. I would not regard the kinds of arrangements we were discussing previously to be

[1] See page 467.

inconsistent with the terms of the treaty. Quite the contrary, they would be implementing the terms of the treaty.

Senator ALLEN. If the treaty wipes out the unpaid equity, which testimony indicates is the case, then there would be no occasion for activating this indebtedness. There would be no power in Congress to reactivate the unpaid equity in my judgment.

Secretary COOPER. Are you talking about during the life of the treaty or subsequent to the life of the treaty?

Senator ALLEN. In either case, if the treaty wipes out the unrecovered equity of the United States, Congress could not reinstate that sum.

Secretary COOPER. The implementing legislation to my knowledge has not been worked out in detail, but I don't think there is a suggestion that the equity as such is wiped out.

Senator ALLEN. I understood you to testify exactly that.

Secretary COOPER. During the life of the treaty, no.

Senator ALLEN. When will it be wiped out?

Secretary COOPER. When the Panama Canal as a going operation is passed to Panamanian management—and that would be in the year 2000—this particular equity item would, in effect, be passed with it.

Senator ALLEN. Yes, and undoubtedly unrecovered. But where then is the provision that interest will continue to be paid on this equity investment?

Secretary COOPER. That is not in the treaty.

Senator ALLEN. That is the point.

ANOTHER AMBIGUITY

Secretary COOPER. That is not in the treaty, but I think what Mr. Hansell was saying was that neither in the treaty is it that interest will not be continued to be paid on this investment. That issue is left open.

Senator ALLEN. That is another one of these ambiguities about which we hear.

Mr. HANSELL. I think you are looking for a provision that would not normally be in the treaty, and it is not in the treaty. That is not a subject matter that is covered.

Senator ALLEN. What about the agreement on unrecovered equity? Where is that?

Mr. HANSELL. I think you will find on analysis that this is a matter for the operation of the Canal Commission, its revenues and expenses, and whatever direction it receives as a matter of legislation.

Senator ALLEN. They apparently recognize the obligation now but there is no assurance that the obligation will be recognized after the treaty is approved.

Mr. HANSELL. That is because the Canal Company is in existence. The Canal Commission has yet to be created by legislation.

Senator ALLEN. I understand that. The treaty is silent on the continuation of this obligation. The Commission presumably takes it over but without the assumption of that payment.

Mr. HANSELL. So is the existing treaty silent on the payment of the $16 million. The existing treaty does not provide that.

Senator ALLEN. Yes, but we have full control and no obligation to pay $70 million off the top.

Mr. HANSELL. It is a matter of legislation in the implementation of the functions of the Canal Company. I think you will find there is not a difference in that respect between the existing arrangement and the future arrangement.

Senator ALLEN. It does not carry over. That is the point that I am making. That is your own statement—that it does not carry over. Frankly, the main purpose of this new Commission seems to be to stick the taxpayers with a loss of $319 million in unrecovered equity and a loss of $16 million a year in interest. Otherwise, why would you not have used the existing Panama Canal Company.

We have promised these gentlemen to release them at 12:30 for a prior engagement.

Senator HATCH. I would like to make one closing comment.

We appreciate the testimony that you have given. We will look forward to working with you on trying to solve this drug trafficking problem.

What I am additionally and particularly concerned about is that the State Department is ignoring the appropriations process, in addition to transferring property without the consent of Congress, has done so deliberately. That is what we believe has happened here. I believe the State Department has done so because it knows that it would not only complicate matters but also that it could not get these treaties through the House of Representatives. That assessment may or may not be accurate. I don't know.

What I am concerned about is that we are setting up treaties here that certainly do nothing for the United States monetarily, and maybe nothing otherwise. And we are violating the Constitution in the process.

We are allowing this whole country to rely on what we are doing when we have not gone to the underlying cause of Panama's problem, which is economic. In the process we may be consigning Panama over the long run to the very enemies that we are fearful of. What I am also concerned about is that I think we are doing it in a back way manner. The facts are being hidden from public scrutiny.

I know you represent the State Department, and I think you both have admirably done that.

I am concerned about having a bigger problem with the treaties than we have now. I think because of the approach that has been made, not by you gentlemen but by those who have effectuated these treaties through the years, that we are in a worse problem today than we might have faced. We might have been able to have treaties that really could have been satisfactory to both countries without all the repercussions that we now have going on. That is my particular viewpoint. Any one of us could be wrong on any one of these points. But why these treaties? Why have you not brought to us something the people of the United States can in good conscience support?

All we can do is the best we can sincerely, and I think that is what you gentlemen certainly want to do and that is what I want to do. But I am deeply concerned about some of the points that have been raised, about some of the information that has managed to come to light.

We would appreciate, Mr. Beckle, as much information as we can have.

I would like you also to look over the October 26, 1976, State Department memo, Mr. Cooper, because it says they have a lot of economic problems, and the treaties that are presently negotiated will not solve those problems. We are going to be continually called upon for solutions that are in excess even of these incredible treaties, which go far beyond what I believe the majority of the Americans want us to do.

I think these issues are important issues. Maybe you fellows might be able to help your cohorts there at the State Department wrestle with them * * * for the benefit of our country.

I appreciate your testimony today.

Senator ALLEN. Thank you very much. Secretary Cooper and Mr. Hansel, you have both been most cooperative. You have been forthcoming and most helpful to this committee. We appreciate your indulgence.

The subcommittee will recess to reconvene subject to the call of the Chair.

[Whereupon, at 12:35 p.m., the subcommittee recessed to reconvene at the call of the Chair.]

[The following information was subsequently supplied for the record:]

QUESTIONS SUBMITTED BY SENATOR ALLEN TO HERBERT J. HANSELL, LEGAL ADVISER TO THE SECRETARY OF STATE AND ANSWERS BY MR. HANSELL

Question 1. Your duties as Legal Adviser to the Secretary of State are quite wide-ranging, but would you briefly summarize those responsibilities and state how long you have been in your present job?

Answer. Mr. Hansell is the principal legal officer of the Department of State. He acts as legal adviser to the Secretary of State and to other Departmental officers. He was sworn in as Legal Adviser on April 8, 1977.

Question 2. Were you employed at the Department of State prior to that time?

Answer. Mr. Hansell was not employed at the Department of State prior to that time.

Question 3. Did you give legal advice to our negotiators during the conduct of the negotiations which led to the present proposed Panama Canal treaties? Did you give legal advice in prior negotiations?

Answer. Mr. Hansell did give legal advice on a number of occasions to the U.S. negotiators during the negotiations of the Panama Canal treaties. Two lawyers on his staff served as members of the U.S. negotiating team throughout the negotiations. Mr. Hansell did not give advice during treaty negotiations prior to 1977.

Question 4. Mr. Hansell, are you familiar with a memorandum dated April 8, 1955, prepared by one of your predecessors in the Office of the Legal Counsel, Mr. Herman Phleger, in which Mr. Phleger described the practice on the part of the United States with respect to the annuity then paid to the Republic of Panama, as follows:

"At the present time, the annuity payments made to Panama are pledged to service Panamanian bonds. For many years the payments by the United States have been made, under irrevocable instructions from the Government of Panama, directly to New York Banks."?

Answer. Mr. Hansell was not familiar with the 1955 memorandum prepared by Mr. Phleger, but he is and has been aware of the arrangements under which Treaty payments are made directly to various fiscal agents for the Government of Panama in connection with certain issues of Panamanian Government bonds.

Question 5. The same memorandum reports that the Secretary of State on April 14, 1950, advised the Government of Panama, with respect to the hypothecation of the Panama Canal annuity, as follows:

"[The United States] would have no objection to the pledging of the Canal annuity as security for a new loan, provided it is determined that the refunding

plan assures full protection to the holders of the present external debt of the Republic of Panama to the payment of which this annuity is presently pledged."

Additionally, shortly prior to the signing of the Panama Canal Treaty of 1955, Mr. Phleger advised the Secretary of State by memorandum dated May 3, 1955, as follows:

"As the treaty is drafted, I see nothing that would prevent the hypothecation of the monies to become due to Panama under the 1955 treaty."

Please state to the Committee if similar advice has been given in connection with these proposed treaties?

Answer. Mr. Hansell has not given similar advice in the form of a memorandum to the Secretary of State, as was done in 1955. However, the Office of the Legal Adviser has advised both the treaty negotiators and other Department of State officers that the payments to be received by Panama under the Panama Canal Treaty could be assigned by Panama to its fiscal agents as security for these bonds in the same fashion as the 1955 Treaty payments are currently pledged. Moreover, the Department of State has discussed this matter with both representatives of bondholders and Panamanian officials, and it is understood that Panama intends to hold discussions in the near future with the bondholders and fiscal agents to work out appropriate technical adjustments to their existing arrangements in order to continue the security for these bonds after the new treaties are ratified. The U.S. does not expect to be directly involved in those discussions, however.

Questions 6 and 7. Twenty million dollars is proposed pursuant to these agreements (Note Regarding Economic and Military Cooperation) to go to Panama as loans or loan guarantees to the Panamanian development bank, COFINA. Please state where you find statutory authority for the Overseas Private Investment Corporation to make loan guarantees on interbank transactions of the sort obviously contemplated by this executive agreement. Have such interbank loan guarantees ever before been permitted? If so when and to whom were the guarantees extended?

Answer. OPIC promotes development of private enterprise in the developing countries in various ways including the financing of Intermediate Credit Institutions which, in turn, finance private projects in such developing countries. OPIC's authority to finance ICI's is found in its general guaranty authority under Section 234(b) of the Foreign Assistance Act of 1961, as amended to further the general corporate purposes of OPIC set forth in the Act specified in Section 231.

Section 231 provides that OPIC shall undertake "(b) too utilize private credit and investment institutions and [OPIC's] guaranty authority as the principal means of mobilizing capital investment funds . . ." In the case of COFINA, OPIC would mobilize the funds of a U.S. lender by guaranteeing its loan to COFINA.

When OPIC supports an ICI, OPIC carefully reviews the investments made by it to determine that they promote private enterprise in such countries. In fiscal 1975 OPIC guaranteed a loan to the ICI Confederation of Latin American Credit Unions ("COLAC") in Panama for relending to credit unions throughout Latin America. In the past OPIC has made loans from its direct investment fund ("DIF") to such ICI's as ADELA in Latin America, and PICA and Korea Capital Corporation in the Far East. In fact, OPIC's legislative history evidences consistent Congressional interest that OPIC work closely with ICI's. OPIC's legislation contains no restrictions that prevent it from guaranteeing loans from U.S. lenders to ICI's wholly-owned by a government.

COFINA is an example of an ICI which supports private enterprise in Panama. Before OPIC would approve the proposed loan guaranty, COFINA's operations would be carefully investigated and the guaranty would require approval by OPIC's Board of Directors.

Questions 8 and 9. I was interested in the comment in your prepared statement to the effect that the executive agreement providing for all of these various loan programs is not, in any sense, legally binding on the United States. I would note that the SALT Accord in Vladivostok, the Final Act at Helsinki, the Sinai Accords, the Nixon-Thieu letters, the Soviet oil and grain agreements, and the Paris Agreement on the War in Vietnam were all also handled as executive agreements permitting our negotiators to wheel and deal free of Congressional constraint and that in each case the Department of State found it convenient to avoid characterizing these documents as legally binding, but they have certainly embodied

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major foreign policy decisions and have had a significant effect on our country and indeed on world history. If this particular executive agreement (Note Regarding Economic and Military Cooperation) is not legally binding, it does promise something to Panama, does it not? In legal parlance, is this executive agreement somewhat akin to a promise which cannot be enforced against the promisor because of lack of consideration?

Do you think that Panama should be specifically advised in writing that this document (Note Regarding Economic and Military Cooperation) has no legal effect?

Answer. The United States Note Regarding Economic and Military Cooperation is a unilateral statement to Panama that the United States "is prepared to agree," within the limitations of U.S. legislation and subject to the availability of appropriated funds, to certain economic and military cooperative projects with Panama. It is not legally binding and is not an agreement between the two Governments. The text of the Note stipulates that the United States undertakings "will enter into force upon an exchange of Notes to that effect between our two governments." There will be a legally binding international agreement between the two Governments upon the exchange of Notes, although that undertaking would be fully subject to the qualifications set forth in the Note.

The Government of Panama is completely familiar with the legal status of each of the agreements and other documents related to the Panama Canal Treaties.

Question 10. One of the problems of non-binding executive agreements is that frequently the other side does not understand that these agreements are, in fact, non-binding or at least asserts a lack of understanding to that effect. A perfect example is the Russian position on the SALT Accord signed by President Ford in Vladivostok. Since that Accord was not legally binding, the negotiators for the United States did not put much stock in it one way or another, and President Ford did not seek the advice and consent of the Senate, but the Soviet Union has kept insisting all along during the recent renewed SALT negotiations that the United States has deviated from its word. Don't you think that it would be a good idea for the United States either to have legally binding executive agreements or no agreements whatsoever, or at a minimum to disclaim legal effect in precise language in the document itself? Don't the dangers of misinterpretation otherwise outweigh the advantages of promised but non-obligated performance?

Answer. All executive agreements are legally binding under international law. There are occasions upon which the United States enters into a political or moral commitment that is not legally binding, but in such cases the legal status of such commitment is clearly understood by the parties thereto. For example, at the concluding session in Helsinki of the Conference on Security and Cooperation in Europe, all of the parties, including the United States, agreed that the Final Act of the Conference was not legally binding, and this was reflected in the language of that document. However, the fact that there is no specification in an agreement does not normally lead to misunderstandings or misinterpretations concerning its status.

It is United States practice to have the legal status of its international arrangements clearly understood by all parties to them, including whether they are legally binding agreements or some other kind of arrangement. In any event, specification that a document is not legally binding, or is not a formal agreement, does not preclude governments from asking for compliance with whatever political or moral commitments have been undertaken. This is perhaps best illustrated by the Helsinki Final Act and the practice thereunder.

Question 11. I note again from your response to the questions of the committee that you do not consider this Note Regarding Economic and Military Cooperation to be legally binding. Has this agreement nevertheless been reported to the Congress under the terms of the Case Act?

Question 12. Do you assert that the Case Act requires the reporting only of "legally binding" executive agreements?

Answer. The Note Regarding Economic and Military Cooperation has not been transmitted to the Congress under the Case Act because it is not a legally binding agreement.

The Case Act requires the transmission to the Congress of international agreements other than treaties (executive agreements). The legal view and practice of the United States, as well as of the world community, it is to consider as international agreements commitments that are legally binding.

Question 13. Mr. Hansell, you are undoubtedly familiar with the Department of State Circular #135. As you know, Circular #135 defines the difference be-

tween a treaty and an executive agreement somewhat in this fashion: A treaty is an agreement with a foreign country which is subject to the advice and consent of the Senate and an executive agreement is an agreement with a foreign country which is not subject to the advice and consent of the Senate. In effect, the Department of State asserts absolute authority to decide which agreements are executive agreements and which are treaties. Now, to me, it seems that an agreement to provide some $345 million in aid might be elevated to the status of a treaty when the $345 million directly figures in concurrent treaty negotiations of a plenary nature. But the Department of State, pursuant to Circular #135, has felt free simply to characterize the agreement as an executive agreement and thereafter to have done with the matter, dispensing with the advice and consent of the Senate. Perhaps you could state to the Committee your own definition of the difference between a treaty and an executive agreement.

Answer. Several factors are relevant to deciding whether a particular agreement should be a treaty or an executive agreement. As set forth in the regulations known as Circular 175, these factors are as follows:

"a. The extent to which the agreement involves commitments or risks affecting the nation as a whole;

"b. Whether the agreement is intended to affect State laws;

"c. Whether the agreement can be given effect without the enactment of subsequent legislation by the Congress;

"d. Past U.S. practice as to similar agreements;

"e. The preference of the Congress as to a particular type of agreement;

"f. The degree of formality desired for an agreement;

"g. The proposed duration of the agreement, the need for prompt conclusion of an agreement, and the desirability of concluding a routine or short-term agreement; and

"h. The general international practice as to similar agreements."

Senator Sam Ervin's Subcommittee on the Separation of Powers of the Senate Judiciary Committee, after hearings in 1972 on this subject, wrote:

"American constitutional law recognizes, in the Constitution itself and in judicial opinion, three basic types of international agreement. First in order of importance is the treaty, an international bilateral or multilateral compact that requires consent by a two-thirds vote of the Senate prior to ratification. . . . Next is the Congressional-executive agreement, entered into pursuant to statute or to a preexisting treaty. Finally, there is the "pure" or "true" executive agreement, negotiated by the Executive entirely on his authority as a constituent department of government.

"It is the prerogative of the Executive to conduct international negotiations; within that power lies the lesser, albeit quite important, power to choose the instrument of international dialog."

(93d Con., 1st Sess., Congressional Oversight of Executive Agreements 6 (Comm. Print 1973)).

In the case of the Note Regarding Economic and Military Cooperation, the U.S. wished to assure that our rights under the Panama Canal Treaties would not be contingent upon implementation of the programs described therein. Accordingly, it was not in the U.S. interest to include these programs in the Treaty. The fact that we succeeded in our efforts to obtain Panama's agreement to this arrangement does not imply that the Administration does not intend to press for implementation of the program which we consider to be in the U.S. interest. What it does imply is that our legal rights with respect to the Panama Canal will not be conditioned in any way on the ultimate outcome of this independent undertaking.

Question 14 and 15. Many leading Constitutional authorities on executive agreements, such as Professor Raoul Berger, have disagreed with the position of the Department of State on this subject, but in any event this issue of treaty versus executive agreement is a basic issue of separation of powers between two branches of government and therefore does resolve itself into a question of what action each branch can take to protect its own prerogatives and powers. In that connection, are you familiar with Senate Resolution 24 introduced in this Congress by Senator Church and cosponsored, I might add, in the last Congress by then-Senator, now-Vice President Mondale?

Does the Department of State favor the passage of S. Res. 24?

Answer. The Administration has set forth its position with respect to the proposed S. Res. 24, in a letter to a report to the Chairman of the Senate Foreign Relations Committee dated December 30, 1977. We would be pleased to provide a copy to this Committee.

Statement Concerning Note Regarding Economic and Military Cooperation

At the hearing on November 15, the question was asked whether the Note Regarding Economic and Military Cooperation had been reported under the Case Act. The answer is that that Note has not been transmitted to the Congress under the Case Act because it is not a legally binding agreement.

Questions Addressed to Richard N. Cooper, Under Secretary of State for Economic Affairs

Question 1. Please describe briefly your present duties at the Department of State?

Answer. Under Secretary Cooper serves as the Under Secretary for Economic Affairs. He was appointed by the President by and with the consent of the Senate as stated in PL 92–353. His principal responsibilities consist in advising the Secretary of State on international economic affairs and in carrying out the Secretary's directives in this field. This activity consists in: giving broad supervision to the Department on economic policy issues; coordinating U.S. economic policy with other agencies, consultation and negotiation with representatives of foreign governments, and assuming specific responsibilities as directed by the Secretary of State.

Question 2. How long have you served in your present job?

Answer. Mr. Cooper was sworn into office as Under Secretary for Economic Affairs on April 8, 1977.

Question 3. Were you employed at the Department of State prior to your appointment as Under Secretary of State for Economic Affairs? If so, in what capacity?

Answer. From August, 1965 to August, 1966 Mr. Cooper was Deputy Assistant Secretary for Economic Affairs responsible for international monetary issues. From time to time, over the past several years, he has been a consultant to the Department, and from February 3 to April 8 he served in the Department as a Foreign Service Reserve Officer, Class–1.

Question 4. You participated in certain of the negotiations here in Washington with Minister Nicolas Ardito Barletta, Minister for Economic Planning and Development of the Republic of Panama. When were those meetings held, and how many were there?

Answer. Under Secretary Cooper participated in three meetings of discussions and negotiations with the Panamanian Minister, Mr. Nicolas Ardito Barletta on June 28, 1977, June 30, 1977 and July 13, 1977.

Question 5. Did you participate in any negotiations in Panama?

Answer. Under Secretary Cooper did not participate in negotiations in Panama.

Question 6. At what point in time did you begin to be advised of the specific progress in the negotiations and specifically, when were you given information regarding the proposed loan package later discussed in direct negotiations between you and Minister Barletta?

Answer. Under Secretary Cooper followed the progress in Panama Canal negotiations only at a distance and in general until late June 1977, at which time he was requested by the Secretary to hold conversations with the Panamanians on certain economic issues. He subsequently participated in the meetings with the Panamanians listed in the answer to question 4.

Question 7. Who else attended these discussions on economic aid to Panama?

Answer. These discussions included at various times Under Secretary Cooper, Ambassadors Bunker and Linowitz, Treasury Under Secretary Anthony Solomon, Treasury Deputy Assistant Secretary Arnold Nachmanoff, AID Assistant Administrator Ted Van Dyk, U.S. Executive Director to the World Bank, Edward Fried, U.S. Executive Director to the Inter-American Development Bank, Ralph Dungan, U.S. Executive Director to the International Monetary Fund, Sam Cross, Treaty Economic Affairs Advisor, Richard Camaur, Under Secretary Cooper's Assistant, Jessica Einhorn, and Peter Gosnell of the Eximbank.

Question 8. Please identify all representatives of the United States, whether or not directly employed by the United States, who, on July 16, 1977, discussed with any representative or official of the Republic of Panama any matter involving the financial aspects of the proposed Panama Canal treaties or the economic

aid commitment set forth in the executive agreement dated September 7, 1977, entitled "Note Regarding Economic and Military Cooperation." (Please consult records available to you at the Department of State to provide a full response in the event you do not have personal knowledge of the information sought.)

Answer. A check of records at State, Treasury and Defense indicated that no meeting with Panamanian representatives was held on the date in question regarding economic arrangements.

Question 9. Please identify any private citizen of the United States who, purporting to act on behalf of the United States or appearing to act on behalf of the United States, discussed on July 16, 1977, with any representative or official of the Republic of Panama any matter involving the financial aspects of the proposed Panama Canal treaties or the economic aid commitment set forth in the executive agreement dated September 7, 1977, entitled "Note Regarding Economic and Military Cooperation." (Please consult records available to you at the Department of State to provide a full response in the event you do not have personal knowledge of the information sought.)

Answer. The State Department has no information on any private United States citizen who had any discussions on July 16, 1967, with Minister Barletta regarding either the proposed treaties or the economic cooperation program.

Question 10. Please identify all representatives of the United States, whether or not directly employed by the United States, who, discussed with any representatives or official of the Republic or Panama during the month of July, 1977, any matter involving the financial aspects of the proposed Panama Canal treaties or the economic aid commitment set forth in the executive agreement dated September 7, 1977, entitled "Note Regarding Economic and Military Cooperation." (Please consult records available to you at the Department of State to provide a full response in the event you do not have personal knowledge of the information sought.)

Answer. The following persons discussed with representatives of Panama economic arrangements in July 1977: Ambassador Ellsworth Bunker; Ambassador Sol Linowitz; Undersecretary Cooper; Treasury Undersecretary Anthony Solomon; Treasury Deputy Assistant Secretary Arnold Nachmanoff; Treaty Negotiator Richard R. Wyrough; Ambler Moss, Special Assistant to Ambassador Linowitz; Treaty Economic Affairs Adviser Richard Camaur; State Department Financial Economist Robert Taylor; and State Department Consultant Ely Brandes.

Question 11. Please identify any private citizen of the United States who, purporting to act on behalf of the United States or appearing to act on behalf of the United States, discussed with any representative or official of the Republic of Panama during the month of July, 1977, any matter involving the financial aspects of the proposed Panama Canal treaties or the economic aid commitment set forth in the executive agreement dated September 7, 1977, entitled "Note Regarding Economic and Military Cooperation". (Please consult records available to you at the Department of State to provide a full response in the event you do not have personal knowledge of the information sought.)

Answer. Dr. Ely Brandes, of 554 Madison Way, Palo Alto, California. He is President of International Research Associates and has been engaged as a consultant by the Panama Canal Company and the Department of State. During the negotiations, he was engaged by the Department as a consultant on the treaty's economic arrangements. Dr. Brandes also discussed financial aspects of the treaties with representatives of Panama.

Question 12. On February 24, 1959, the Department of State transmitted a note to the Embassy of Panama at Washington which contained a detailed report of the dispensing of $1,430,000 of the annuity for 1959 to various banks in New York with a balance of $500,000 of the annuity for that year being paid into the National Treasury of Panama. On December 12, 1962, with respect to the 1963 annuity payment, the Department of State advised the Ambassador of Panama that, in accordance with the instructions of the Government of Panama, the annual unhypothecated payment of $500,000, which until that time had continued to go to the Treasury of Panama, would cease to be paid to Panama and would be paid instead pursuant to the irrevocable authorization of Panama to the Chase Manhattan Bank. Certainly, one can understand that one reason Panama would wish an increase in its annuity payment is that Panama apparently never sees

the money—the money, in effect, being paid pursuant to irrevocable authorization direct to various New York banks.

Please explain in detail the present practice regarding these annuities; are the annuity monies paid direct to New York banks pursuant to irrevocable authorizations or do they go into the Treasury of the Republic of Panama?

Answer. Yes, a total of $1,930,000 of the annual $2.3 million payments under the current treaties is made directly to three New York banks, as fiscal agents for the Republic of Panama, in accordance with irrevocable instructions issued by the Government of Panama to the Department of State.

It should be noted, however, that the New York banks who receive these payments are not the parties in interest in these transactions. Rather, they are employed by the Government of Panama as fiscal agents to administer three separate issues of Panama Government bonds. Two of these issues are traded publicly on the U.S. market, and a third is held by the Prudential Corporation. The banks of course receive a fee for their services as fiscal agents, but they have not assumed any liability to the bond-holders.

We have no reason to believe that these agents had anything to do with Panama's desire to receive an increased compensation from the canal. These arrangements do indicate that Panama has applied the money it has received from past Treasury payments for responsible purposes—assuring repayment to holders of its bonds.

Question 13. Bearing in mind that the Library of Congress reports the external debt of Panama to be some $2.77 billion and the external public debt to be $1.7 billion, do you foresee the hypothecation of increased annuity payments or rents which would come due under the terms of the proposed treaties? In other words, do you believe that the money which would flow from Canal operations which, under the proposed treaties, is guaranteed to Panama would be pledged to cover existing indebtedness or would it be pledged to cover increased indebtedness?

Answer. The World Bank's estimate of Panama's total disbursed public debt is $1.1 billion as of year end 1976. We do not know whether Panama will use annuity payments under the new treaty as a means of covering existing indebtedness or to finance new indebtedness.

Question 14. Please state further in detail any arrangement known to you, or reported in the records of the Department of State, which the Republic of Panama has made or proposed to make with any bank or international financial institution respecting the repayment of existing loans from funds thought to be forthcoming under the financial arrangements set forth in the proposed Panama Canal treaties or in the Note Regarding Economic and Military Cooperation.

Answer. With regard to the loans secured by annuities provided for in the present treaty, we understand that discussions will be held between representatives of the bondholders and fiscal agents and Panamanian officials to work out appropriate technical adjustments in existing arrangements in order to continue the security for those loans after new treaties are ratified. The United States Government has acted as a facilitator in this matter, but will not be directly involved in those discussions. We are not aware of any other discussions between the Government of Panama and any lending institution specifically regarding the use of funds to be derived by Panama under the new treaty arrangements or the programs described in the note.

Question 15. Please state further in detail any arrangement known to you, or reported in the records of the Department of State, which the Republic of Panama has made or proposes to make with any bank or international financial institution respecting the extension of additional loans or credits to Panama.

Answer. Besides the proposals contained in the September 7 note regarding U.S. bilateral economic and military assistance, we understand Panama has submitted loan proposals to the Inter-American Development Bank (IDB) for various pre-investment studies, for agricultural development, and for rural electrification, totalling about $20 million. Loan proposals have also been submitted to the World Bank for support for road maintenance and agricultural credit projects which could total up to $23 million. There may be other loan proposals particularly with commercial banks, of which we are unaware.

Question 16. Please provide to the Committee any information you have, or which is available in the records of the Department of State, regarding the exposure of United States banks or their foreign branches in the Republic of Panama.

Answer. We have nothing to add to the information on this subject provided to Senator Proxmire by the Chairman of the Federal Reserve System and the Comptroller of the Currency which can be found in the Congressional Record for October 25, 1977 on pages S17730 and S17731.

Question 17. Do you agree with Minister Barletta's assessment of the cash flow value of the Panama Canal Treaty as some $2,262 billion over its 23-year term for an annual average of about $100 million? If not, please state the basis for your disagreement with this analysis.

Answer. As you know the major part of the annuity payment to Panama is pegged to the flow of Canal traffic and is subject to adjustment on the basis of price changes. Therefore, since a substantial part of the payments is subject to these variables we cannot predict that any specific amount will be the totality of annuity payments to Panama during the life of the treaty. Our own estimates are on the order of $50–60 million per year for the first years but it is possible that total annuity payments could reach $2 billion, over the life of the treaty, depending on the assumptions made concerning the aforementioned variables.

Question 18. These revenues, in any event, are going to be a substantial increase over the present annuity of $2,328,000. So it would certainly be helpful to the Committee to know what percentage of these increased revenues would return to the United States in the form of payments to New York banks on outstanding indebtedness. Do you have any estimate of the percentage of these increased revenues which would be applied annually against debts to the large international banks or to the large commercial banks located primarily in New York?

Answer. The new treaty annuity payment would increase net Panamanian Government revenue by at least $50 to $60 million per year. We are not in a position to speculate on how such revenue might be applied by Panama to existing indebtedness.

Question 19. Your prepared statement and your response to previous questions have been very helpful, but the Committee needs more detailed information regarding the loans promised by this proposed executive agreement entitled "Note Regarding Economic and Military Cooperation." The agreement provides for $200 million in Export-Import Bank loans. What percentage of United States exports go annually to Panama—excluding, obviously, bank loans?

Answer. In CY 1976 the United States exported $354,173,392 of merchandise to Panama, and $113,232,144,778 to the entire world, including Panama. Thus, exports to Panama made up 0.313% of our total exports for that year. The figure for Panama does not include the Canal Zone, which is treated as a separate foreign entity in the United States statistics.

Question 20. How does the percentage of United States exports to Panama compare with the 1.37% exposure of the Ex-Im Bank in Panama which would result from the proposed $200 million in loans to Panama? How does the ratio of that percentage to exposure compare with similar ratios applicable to other countries?

Answer. Based on conversations with the Export Import Bank, we understand the Bank's possible participation in financing of up to $200 million dollars over ten years might be considered unusual if Panama were viewed simply as a small developing country. But the bank's possible participation up to $200 million is not considered unusual in view of the present size of the Panamanian economy and the improved investment climate which is expected to result from the treaties. Thus, large capital investment projects which may well develop over the next five years in Panama for which United States firms will provide goods and services. The bank does not stimulate these projects but reacts to the initiative of others. Thus the $200 million amount is based on an estimate of business which may come to U.S. suppliers and involve the bank from ongoing exports to Panama, and major capital investments for such projects, among others, as copper development and port improvement. If you would like greater detail on this matter the Bank would be pleased to respond to any direct queries.

Question 21. Who would be the principal borrowers in Panama of the Ex-Im Bank loan money? Would they be government corporations or would they be private importers? If private importers, which firms would be the principal firms to benefit? Identify the principal stockholders or owners of each.

Answer. To date, no Ex-Im Bank projects contemplated under the September 7 note have been prepared or approved. By way if illustration, past Ex-Im Bank projects abroad have included financing of both private and public enterprises, such as utilities, port expansion, industrial plants, and power, transportation and communications facilities.

All Ex-Im Bank projects considered as part of the September 7 note will be subject to all of the institution's legislative and procedural requirements.

Question 22. What repayment terms might be typical of those to be negotiated by Ex-Im Bank should this $200 million loan package be permitted? How long a term? At what interest? How will that interest rate compare with the expected rate of inflation? Could the loans be used to rollover existing debt? Would there be any prohibition on such use?

Answer. Export-Import Bank financing is only for U.S. exports and could not, therefore, be used to rollover existing debt. The Ex-Im "package" is not a loan commitment, but a letter of interest in support of up to $200 million as an estimate of business that might develop and be appropriate for the Bank's participation.

This participation would come under the Bank's two principal areas of operation: (1) insurance for short and medium term commercial credits and (2) for guarantees or direct credits for longer terms. Interest rates on Eximbank direct credits vary, but range between 7¾ to 8¾ percent. It is impossible to predict the rate of inflation. In 1976 the consumer price index rose 4.8 percent; in 1977 it rose 6.8 percent. When Eximbank guarantees a commercial loan, the interest rate is set by the commercial lender. Eximbank does not provide credits at interest rates below its own cost of money. This cost is closely related to private market rates.

Question 23. Fifty million dollars in military credits seems exorbitant for an army of 8000 men of which 7000 perform police functions and of which only 1000 are capable of a combat role. Please comment. Please describe the weapons systems to be supplied.

Answer. Since the $50 million is to be loaned in increments over ten years, we believe the Panamanian National Guard will be fully able to make use of the funds to improve its ability to help defend the Canal. We have been working with the Government of Panama to improve the National Guard's Canal defense capabilities, and we look upon the projected FMS loans as a useful tool in developing this defensive capability. Since funds provided under FMS procedures cannot be used to purchase articles or services for civil law enforcement activities, we will not approve the financing of articles or services which might be used in primarily civil law enforcement function of the National Guard.

The list of defense articles and services which Panama may wish to purchase with the assistance of the planned FMS guaranteed loans will be formulated each year in discussions between the Government of Panama and the United States Embassy Military Group in Panama. The list of articles and services, which we expect will be selected for their usefulness in helping improve the National Guard defensive capabilities, will be included in the documentation submitted to the Congress during the annual security assistance budget hearings. The list of articles for the first year has not yet been determined.

Question 24. Who would be the principal borrowers in Panama of the $50 million in military credits? Would it be the Government of Panama or would they be private importers? If private importers, which firms would be the principal firms to benefit? Identify the principal stockholders or owners of each.

Answer. The guaranteed loans would be made available to the Government of Panama and not to private Panamanian organization.

Question 25. What repayment terms might be typical of those to be negotiated should this $50 million military credit package be permitted? How long a term for repayment? At what interest? How will that interest rate compare with the expected rate of inflation? Could this military credit money be used to rollover existing debt? Would there be any prohibition on such use?

Answer. The repayment period for each of these loans probably would be 5–7 years, with interest charged at the standard interest rate being charged during the time the loan is being used. Assuming current procedures were extant the interest charged would be based on the cost of money to the Federal Financing Bank on the day of each individual advance of funds, plus an administrative fee.

The purposes for which FMS loans are made do not include the rollover of debts. While the prohibition of such possible use of a loan is not normally stated specifically in the loan agreement, our general policy has been to refuse to authorize the use of FMS loans for this purpose. Any exception which might be made would require extraordinarily strong justification, would apply only to debts arising from prior military purchases, and would be granted only after full interagency consultation, including the Departments of Treasury, Defense and State, and the Office of Management and Budget.

Question 26. The Note Regarding Economic and Military Cooperation provides for $75 million in AID housing loans or loan guarantees. Who would be the principal recipients of such loans or loan guarantees in Panama? Would they be government corporations or private firms? If private firms, which firms would be the principal borrowers? Identify the principal stockholders or owners of each.

Answer. The Note Regarding Economic and Military Cooperation provides for $75 million in AID Housing Guarantees only. The principal Panamanian beneficiaries would be family groups with incomes below the median level. Funds from the U.S. private sector are channelled through the National Bank of Panama or the National Housing Bank which are both government corporations. These in turn make the funds available to housing cooperatives or other government agencies involved in housing construction or the provision of sites and services to the target group.

Question 27. What repayment terms might be typical of the housing loan guarantees? How long a term? At what interest rate? How will that interest rate compare with the expected rate of inflation? Could the housing loan funds be used to rollover existing debt? Would there be any prohibition on such use?

Answer. Typical terms for housing loans generally include repayment periods of from 20 to 25 years with a five year grace period at prevailing market rates, which have been running at around 9 percent. These rates compare favorably with current and projected inflation rates of between 6 and 7 percent. Housing loan funds must be utilized for the purposes intended and are additive to existing government housing programs. This set of circumstances precludes the utilization of housing loans for debt rollover purposes.

Question 28. The Note Regarding Economic and Military Cooperation provides for $20 million in Overseas Private Investment Corporation loans or loan guarantees to the Panamanian Development Bank. COFINA. What repayment terms might be typical of the loans guaranteed by OPIC? How long a term? At what interest rate? How will that interest rate compare with the expected rate of inflation? Could these funds or loan guarantees be used to rollover existing debt? Would there be any prohibition on such use?

Answer. Loans guaranteed by OPIC generally have a term of 10 to 15 years. OPIC charges a guarantee fee of 2¼ to 3 percent, or an average of 2¾ percent. The interest rate on guaranteed loans is market-related and will reflect market factors, including, inter alia, the rate of inflation.

Question 29. Certainly, a very dangerous precedent might be set by permitting the loans of large international commercial banks to be guaranteed by the United States when such loans are made to non-producing entities, such as the central bank or development bank of a debt-ridden third world country. Please state whether the Overseas Private Investment Corporation has ever before guaranteed interbank loan transactions of the type contemplated in the Note Regarding Economic and Military Cooperation.

Answer. OPIC has in the past financed regional private development corporations, so in that sense the proposed Panama program conforms to past OPIC transactions. The proposed program will be the first time that OPIC has guaranteed borrowings of U.S. private capital by a public development bank.

We anticipate that loans guaranteed by OPIC will be lent on by COFINA to productive enterprises in Panama. We do not believe that inserting COFINA as an intermediary between the guaranteed lender and the ultimate borrower will constitute a dangerous precedent for OPIC.

Question 30. Excluding loans to the Government of Panama and interbank loan transactions, what is the extent of U.S. overseas private investment in the Republic of Panama? What percentage of total U.S. OPIC is in Panama? How does that figure compare with the 8.5% exposure of OPIC in Panama which would result should this executive agreement be implemented? How would that ratio of investment to exposure compare with similar ratios in other countries in which loans have been guaranteed by OPIC?

Answer. (*a*) The total U.S. overseas private investment in Panama is $2 billion.

(*b*) OPIC does not at present have any loan guarantees outstanding in Panama. OPIC does, however, have one outstanding loan for $1.1 million in Panama. OPIC's loans and guarantees in Panama are approximately 0.5% of OPIC's global loan and guarantee portfolio of $215 million.

(*c*) If the executive agreement were implemented, OPIC's loan and guarantee exposure in Panama would increase to 9 percent of the global total.

(*d*) As compared to other countries, Panama's representation in OPIC's portfolio is now very small. If the agreement were implemented, Panama would

have the third largest place in OPIC's finance portfolio, following Indonesia and Korea.

Question 31. The Panama Canal Company was created by statute, is therefore a creature of Congress, and is subject to the Government Corporation Control Act (31 U.S.C. 849). Its sole stockholder is the Secretary of the Army, representing the people of the United States. Please describe for the Committee the plans of the Department of State for the Panama Canal Company should those proposed treaties be ratified. Does Panama understand that Congress could refuse to create a new Panama Canal Commission in the manner specified in the proposed Panama Canal Treaty?

Answer. The recommendations of the Executive Branch with respect to the organization of the Panama Canal Commission will be included in draft legislation submitted to Congress for implementation of the new treaties. Panama clearly understands that the Treaty reserves to U.S. domestic law very broad discretion concerning the organization and structure of the new Canal Commission. In theory, the Congress could, of course, at any time enact legislation contrary to the terms of this or any other treaty and such subsequent, inconsistent legislation would prevail over the treaty terms as a matter of U.S. domestic law. To the extent that such legislation required the U.S. to breach its international obligations under the Treaty, the U.S. would be in violation of international law; based on past experience, we are confident that the Congress would endeavor to legislate in a manner consistent with the international obligations of the U.S.

Question 32. Does the Government of Panama understand that the Congress may elect to transfer the $319 million debt to, or unrecovered equity of, the United States from the Panama Canal Company to the proposed Panama Canal Commission?

Answer. The $319 million you refer to is not a "debt", but a measure, for specific accounting purposes, of the equity of the United States in the Panama Canal. The definition of its equity in the Canal is a function of internal U.S. accountancy and rests wholly within U.S. discretion. This subject has not been specifically discussed with the Government of Panama but we assume Panama has no particular interest in internal U S. accounting practices in this regard.

CHAIRMAN'S COMMENT.—The $319 million is a liability of the Panama Canal Company. The sum ought to become a liability of the proposed Panama Canal Commission. If the Panamanian's have no interest in the matter now, they soon will.

Question 33. Would such transfer be consistent with Article XIII of the Panama Canal Treaty?

Answer. Article XIII does not deal with the right of the United States to define its equity in the Canal. That is wholly a right of Canal management which is vested in the United States under Article III.

Question 34. At present, the Panama Canal Company is authorized by P.L. 86–200 (73 Statutes at Large 428) to borrow $10 million and, pursuant to Section 104 of the Corporation Control Act, the Company is authorized to make contracts obligating the Company without regard to fiscal year constraints. What sort of borrowing authority would the Panama Canal Commission, as a wholly owned U.S.G. corporation, be permitted? What does the Department of State recommend?

Answer. According to Article III, the U.S. has the right to manage, operate and maintain the Canal. Inherent in this right is the power to legislate regarding the financial structure of the new Canal operation. Therefore, the financial aspects of Canal operations will be molded by implementing legislation. To cover the possibility of emergency or unusual traffic conditions, the implementing legislation would presumably grant the Commission the authority for prudent management through continuation of the borrowing authority now possessed by the Panama Canal Company under Section 71 of Title 2 of the Canal Zone Code.

Question 35. Assuming that the new Panama Canal Commission runs up some debts—and I think that is going to be a pretty fair assumption—what is going to happen to these liabilities at the end of the term of the Panama Canal treaties? Will it be another case of the United States taxpayers getting all the liabilities and none of the assets?

Answer. The Panama Canal Treaty grants the United States all the rights necessary to operate the Panama Canal which will be exercised through a U.S. Government agency to be known as the Panama Canal Commission. The Treaty recognizes that the Commission will be constituted by and operate in accordance

with U.S. law. Therefore, Panama has agreed that the U.S. may, in its own discretion, set tolls and manage the enterprise in the manner in which it sees fit.

This concept was one that the U.S. negotiators regarded as essential and fought hard to obtain. Since the U.S. has plenary authority to manage the Canal, it necessarily follows that Panama will not be saddled with deficits which might be incurred as a result of our policies of Canal operation unless it subsequently agrees to commit itself to assume some indebtedness in connection with the Canal. Under this arrangement, then, it will be up to the U.S. to determine how the operation is to be managed to avoid indebtedness in 1999 or to satisfy that indebtedness in an appropriate manner. It is contemplated that the Commission, by adjusting tolls to meet operating costs, will be a self-sustaining entity. The Canal will transfer to Panama in 2000, but not the Canal Commission; as a U.S. agency, its affairs will be closed out in accordance with U.S. law.

Question 36. How would Article XIII of the proposed Panama Canal Treaty affect winding-up the affairs of the proposed Panama Canal Commission at the end of the term of the proposed Panama Canal Treaty? If there are debts, who will pay?

Answer. In 1999, the payments under Article XIII(4) (a) and (b) of the Treaty will have to be made to the extent that there are gross operating revenues in that year sufficient to cover them. However, except to the extent that the net surplus of revenues over expenditures in 1999 was sufficient to cover the entire accumulated unpaid balance from prior years, that balance of 4(c) payments would be canceled; no additional payments to Panama would be required.

Question 37. Please describe the composition of the board of directors of this new Commission the Department of State contemplates asking Congress to set up should the treaties be ratified. Who will be the chief executive officer of the new Commission? Under the proposal of the Department of State, would not control of Canal operations tend to shift from the Department of Defense to the Department of State?

Answer. (*a*) Article III(3) of the new Panama Canal Treaty provides that the Board of Directors will be composed of nine members, five of whom shall be nationals of the U.S., and four of whom shall be Panamanian nationals. The method of selecting the U.S. directors is left up to the internal processes of the U.S.

(*b*) The chief executive officer of the new Commission will be the "administrator". The administrator will be a U.S. citizen through Decemebr 31, 1989. Thereafter the administrator will be a Panamanian with a U.S. citizen as deputy administrator. In either case, however, the administrator will be an employee of the U.S.G. and subject exclusively to USG direction.

(*c*) The matter of the organization of the Canal Commission is presently under review.

We do not anticipate that control of Canal operations will tend to shift to the Department of State, and we believe the Department of Defense will continue to have a major role. The Congress will have the opportunity, in its enactment of legislation implementing the Panama treaties, to make specific provision for a number of organizational arrangements regarding the Panama Canal Commission.

Question 38. I note that Panama, under the proposed Panama Canal Treaties, would be promised a $10 million kicker in every profitable year and, moreover, that this right to a $10 million kicker would be cumulative so that if the $10 million were not paid in one year, it might be recovered in the next as part of a $20 million kicker payment. So profitability, or the appearance of profitability, of the new Commission will be especially important to Panama, but if the Commission is given borrowing authority, who will determine what years are profitable and what years are not profitable? Who is going to have control of this bookkeeping operation? Don't you see some risk that the Panamanians might seek to assert that the Commission has been profitable when it has, in fact, not been profitable? Would the issue be submitted to arbitration? Who would arbitrate?

Answer. It is understood by the Parties that the "expenditures" referred to in Article XIII (4) (c) of the PCT would include all actual costs of operation and maintenance of the Canal. These costs would include the payments to be made to Panama by the Commission pursuant to the other provisions of the Treaty, funding for plant replacement, capital, improvement, and repayment of borrowed funds. The determination of any excess of revenues over costs will be made by the Board of Directors which will have a majority of American members. It

will aso authorize any use of the borrowing authority. The specific accounting system to be utilized by the Commission is to be established by the U.S. The accounting system will be established in such a manner that it will be apparent from looking at the books at the end of the year whether such a surplus exists. Article XIV of the new Treaty provides for settlement for any dispute that may arise.

Question 39. One of the previous witnesses before the Committee testified that he understood that former Ambassador Linowitz had informally advised the Panamanian negotiators that they needn't worry about paying back these long-term loans which would be provided or guaranteed under the Note Regarding Economic and Military Cooperation. In fact, there have been reports that Ambassador Linowitz may have testified to that effect before the Senate Committee on Intelligence. Have you heard such reports, and is there any basis for them in fact? (Please consult records available to you at the Department of State to provide a full response in the event you have no personal knowledge of the information sought.)

Question 40. Have you heard any report that any one of our negotiators, or any person purporting to act or appearing to act on behalf of the United States, ever advised the Panamanians that it would not be necessary to repay these loans? Is there any basis for these reports in fact? (Please consult records available to you at the Department of State to provide a full response in the event you have no personal knowledge of the information sought.)

Answer. Ambassador Linowitz never advised the Panamanian negotiators that the long-term loans to be provided or guaranteed under the Note Regarding Economic and Military Cooperation would not have to be repaid. The question as to the terms of repayment arose early in Mr. Cooper's conversations with Panamanian negotiators. U.S. officials informed the Panamanians that any long-term loans or guarantees would have to be subject to the normal criteria and procedures of each agency involved, would be implemented through existing programs and would not be offered on concessional terms. Repayment would certainly be expected. The Panamanian negotiators understood these conditions.

Question 41. Please briefly describe the amounts and kinds of U.S. foreign aid extended to the Republic of Panama during fiscal years 1977, 1976, 1975, and 1974.

Answer. U.S. economic assistance to Panama has been largely channeled through the Agency for International Development.

The purpose of the Panama-A.I.D. Program is to alleviate those constraints which prevent the rural poor from full participation in the economy. In education, A.I.D. resources are geared to develop a practical basic curriculum and technical training system through the Ministry of Health so that health facilities are more accessible. This effort includes the construction and organization of rural health centers, the training of paramedical personnel and the construction and development of sanitation facilities and potable water systems. In agriculture, A.I.D.'s efforts include development of market towns, cooperatives, marketing facilities and infrastructure, and rural regional integrated development. A.I.D. is also financing low income housing at a number of locations throughout Panama. Total economic assistance (in U.S. $ millions) through FY 1976, the most recent period for which statistics are available include the following:

[In U.S. dollars in millions]

Fiscal year 1974:	
Loans	8.3
Grants	19.6
Total	27.9
Fiscal year 1975:	
Loans	6.7
Grants	14.5
Total	21.2
Fiscal year 1976:	
Loans	21.0
Grants	3.7
Total	24.7

Military assistance (in million of dollars) during the same period comes to the following totals:

Fiscal year 1974:	
Loans	0
Grants	0.9
Total	0.9
Fiscal year 1975:	
Loans	0
Grants	0.6
Total	0.6
Fiscal year 1976:	
Loans	0.5
Grants	0.7
Total	1.2

Question 42. Please briefly describe the amounts and kinds of U.S. foreign aid proposed to be extended to the Republic of Panama during fiscal year 1978.

Answer. For fiscal year 1978 total economic assistance channeled through A.I.D. is estimated at $23.1 million. The basic thrust of the economic assistance program remains essentially as described above, except that two additional development loans amounting to $20 million are contemplated for a Watershed Management project and a Rural Development program. Grants amounting to $1.2 million for population planning and training activities are also contemplated. A PL 480 Title II Grant program of $1.9 million is also programmed.

Chairman's General Comment on Responses of the Department of State to Questions Submitted for the Record

Although the answers of the Department of State are in some respects useful to the subcommittee, I cannot help but note for the record that in many instances the Department appears to have done its level best to provide as little information as is possible without failing to respond entirely. This approach unfortunately typifies the attitude at the Department of State which seems to have prevailed throughout the negotiation of the proposed Panama Canal treaties and the ensuing debate of the treaties. Frankly, I am of the opinion that the treaties are such a bad bargain for the United States and that the negotiations for the treaties were handled so ineptly that the Department of State must feel some embarrassment regarding the entire matter and therefore must feel some need to be less than fully candid with the Congress in discussing the treaties and the circumstances surrounding their negotiation.

APPENDIX D

WILLIAM CRAWFORD GORGAS

GREAT ALABAMIAN WHO MADE

CONSTRUCTION OF THE PANAMA CANAL POSSIBLE

Remarks by Quentin Crommelin, Jr.
Chief Counsel, Subcommittee on Separation of Powers

The State of Alabama has produced many leaders of national and international stature, but few have attained a more deserved fame than that of Major General William Crawford Gorgas (1854-1920), the great American leader in the construction of the Panama Canal. His work in eliminating yellow fever and reducing malaria, first at Havana and later in the Canal Zone, won him enduring renown as an environmentalist and made much of the Isthmus livable and the construction by the United States of the Panama Canal possible.

At a memorable gathering of distinguished authorities in inter-related fields at the Pan American Union in Washington, D.C., on the evening of September 26, 1978, the Gorgas Memorial Institute of Tropical and Preventive Medicine, of which Dr. Jack W. Millar is president, celebrated the 50th anniversary of the founding in Panama City, R.P., of the Gorgas Memorial Laboratory. This laboratory operates under the Institute's direction and honors the memory of General Gorgas. The program was of historical and scientific character and was truly notable.

In addition to the principal participants in the program, the distinguished guests included:

Hon. Tim Lee Carter, U. S. Representative from Kentucky;

Hon. Ambler H. Moss, Jr., U. S. Ambassador to Panama;

Hon. Nander Pitty, Ambassador of Panama to the Organization of American States;

Very Reverend Francis B. Sayre, Jr., Associate Director, the Woodrow Wilson International Center for Scholars;

Hon. Argentina Veal, Charge d'Affaires of Panama in the United States;

Dr. Gail R. Soper and Dr. H. Vern Soper, brothers of Dr. F. L. Soper;

Mrs. John W. Lonnberg, sister of Dr. F. L. Soper, and her husband;

Mr. and Mrs. John M. Gorgas, relatives of General Gorgas; and

Mrs. Aileen Wrightson Cooney, granddaughter of General Gorgas, and her husband, Gerald C. Cooney, Jr.

The scientific and interrelated organizations represented at the meeting were:

Armed Forces Institute of Pathology;

Department of State;

George Washington University;

Johns Hopkins University;

Maryland, University of;

National Institutes of Health, Department of HEW;

Organization of American States;

Panama Canal Company;

Pan American Health Organization;

Smithsonian Institution;

Uniformed Services University of the Health Sciences;

U.S. Army and Navy; and

The World Bank.

The proceedings were well planned and rewarding. The Very Reverend Francis B. Sayre, Jr. offered a prayer, and President Millar then read messages from Jimmy Carter and from the Honorable Charges d'Affaires of Panama. President Millar then paid a high tribute to Senator Lister Hill of Alabama for his long and continued support of the Gorgas Institute.

The first address was by Representative Daniel J. Flood of Pennslylvania. In a tribute to General Gorgas as the great sanitarian of the Isthmus, Congressman Flood emphasized the General's work in health and sanitation which made possible the construction of the Panama Canal, and he commended the present scientific contributions of the Gorgas Laboratory.

The second address was by Dr. Thomas H. Weller, Professor of Tropical Public Health of the Harvard School of Public Health, a Nobel Laureate, and a member of the Gorgas Institute's Advisory Scientific Board. Emphasizing the need for a "new generation of Gorgases," Dr. Weller called for "a renewed global initiative to control, and ultimately to eradicate, tropical diseases."

A third feature of the program was the distribution of the October 1978 Vignette of the Cosmos Club of Washington, D.C., written to honor one of its most famous former members and entitled "William Crawford Gorgas--An Appreciation." This document was prepared by Captain Miles P. DuVal, Jr., a member of the Institute's Board of Directors. It summarizes the highlights of the life and achievements of Gorgas.

The addresses by Congressman Flood and Dr. Weller and the paper by Captain DuVal were all highly informative. Each emphasized that, in the future, it is essential that the vital work of sanitation, so effectively performed in the past, be continued indefinitely with full collaboration by both the United States and Panama and supported by the Gorgas Institute and its Laboratory.

The late Senator James B. Allen of Alabama was a keen student of Panama Canal history and problems and was deeply impressed by the tremendous contributions of General Gorgas. He was proud of the special contributions Alabama made to the construction of the Panama Canal, and he particularly approved the fine work of the Gorgas Institute.

5789

THE WHITE HOUSE

WASHINGTON

September 26, 1978

My congratulations to the Gorgas Memorial Institute on its fiftieth anniversary. The Institute and the Gorgas Memorial Laboratory are fitting memorials to General William C. Gorgas, whose work in controlling yellow fever and malaria contributed so significantly to the building of the Panama Canal.

General Gorgas' career illustrates the primary importance of basic research and of international health research. But we can only build on these advances by cooperation between private institutions, the governments of North, Central and South America and the Pan American Health Organization. Such cooperation is essential to control the diseases endemic to the tropical regions of this Hemisphere and to improve nutrition and general health in these regions.

Again, my warmest congratulations on your accomplishments during the past fifty years and my encouragement as you continue your dedicated efforts.

Jimmy Carter

29-400 (pt. 3) O - 79 - 119

From the Chargé d'Affaires of Panama, Washington, D.C., 26 September 1978.

"On behalf of the Government of the Republic of Panama, I extend best wishes for the future success of the Gorgas Memorial Laboratory as I renew our commitment to work jointly with the Government of the United States; thus the scientific work by all participants of the Laboratory may continue to benefit science in Panama, the Western Hemisphere, and the whole world.

"The occasion of the 50th anniversary of the establishment of the Gorgas Memorial Laboratory by the joint effort of Panama and the United States offers an opportunity to emphasize the values of the activities of private sectors in the human relationships between our two countries.

"Numerous students and scientists from both our nations have learned and worked together at the Gorgas Memorial Laboratory during the past 50 years, subsequently assuming positions of professional leadership in the national and international scientific communities. Today, this Laboratory may well serve as a model for the development of scientific institutions in the countries of the world and as an example of the free exchange of ideas and technologies among nations, uninhibited by political considerations or bureaucratic constraints.

"Dr. William Crawford Gorgas played a significant role in the history of public health in my country. We have not forgotten him nor the lessons which he taught the world. It is appropriate on this occasion also to recall the illustrious Panamanian, Dr. Belisario Porras, a personal friend of Dr. Gorgas , to whose vision and leadership we owe the establishment of the Gorgas Memorial Institute, parent organization of the Laboratory.

"The principles and example bequeathed by President Porras and Dr. Gorgas should be an inspiration in the constant struggle for the development and advancement of the health of our people and our Latin American neighbors. These two men have been the lighthouse which, since its establishment, has guided this noble institution, its knowledgeable personnel, and our own scientists who have worked and still work there today."

DANIEL J. FLOOD
11TH DISTRICT, PENNSYLVANIA

COMMITTEE:
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HEALTH, EDUCATION, AND WELFARE

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MISS HELEN M. TOMASCIK
ADMINISTRATIVE ASSISTANT

WILLIAM CRAWFORD GORGAS: A TRIBUTE

Address By:

Representative Daniel J. Flood
of Pennsylvania

Before The
Gorgas Memorial Institute
of Tropical and Preventive Medicine

September 26, 1978

President Millar, Members of the Board of Directors and Advisory Scientific Board of the Gorgas Memorial Institute, Distinguished Guests, Ladies and Gentlemen:

AS ONE WHOSE INTEREST IN THE PROBLEMS OF THE ISTHMUS OF PANAMA WAS INSPIRED IN EARLY YOUTH AS THE RESULT OF OCCASIONAL VISITS IN MY GRANDFATHER'S HOME IN HAZLETON, PENNSYLVANIA, BY FORMER PRESIDENT THEODORE ROOSEVELT, I DEEM IT BOTH AN HONOR AND PRIVILEGE TO BE A SPECIAL GUEST OF THE SCIENTIFIC ORGANIZATION NAMED IN HONOR OF THE GREAT MEDICAL LEADER WHOSE CONTRIBUTIONS TO HEALTH AND SANITATION ARE MATTERS OF INTERNATIONAL FAME - GENERAL WILLIAM CRAWFORD GORGAS.

IT WAS MY FORTUNE TO HAVE SPENT MANY HOURS LISTENING TO THE FORMER PRESIDENT TELLING ABOUT SOME OF HIS PROBLEMS IN ACQUIRING THE U.S. CANAL ZONE AND LAUNCHING THE PANAMA CANAL. THAT GREAT AMERICAN LEADER NATURALLY BECAME MY YOUTHFUL IDEAL AND INSPIRED IN ME AN ENDURING INTEREST IN THE CANAL SUBJECT THAT HAS INCREASED OVER THE YEARS.

TO PARAPHRASE THE LATE DR. FRANKLIN MARTIN, A CLOSE ASSOCIATE OF GENERAL GORGAS AND A FORMER PRESIDENT OF THIS INSTITUTE, I MAY SAY THAT TO TRY TO DESCRIBE THE DISTINGUISHED CAREER OF GENERAL GORGAS AND ITS CONSEQUENCES IS TO ATTEMPT THE INFINITE. I SHALL NOT MAKE THAT EFFORT FOR THE DETAILS OF HIS BRILLIANT ACHIEVEMENTS ARE HISTORIC AND ARE CARRIED IN THE PRINCIPAL LIBRARIES OF THE WORLD.

THE GORGAS MEMORIAL LABORATORY IN PANAMA CITY, R.P., IS LOCATED IN ONE OF THE MOST OPPRESSIVE CLIMATES AS WELL AS HIGHLY STRATEGIC AREAS OF THE WESTERN HEMISPHERE. ITS CONTRIBUTIONS IN SCIENTIFIC KNOWLEDGE UNDER THE DIRECTION OF THE GORGAS MEMORIAL INSTITUTE HAVE MADE IT AN INDISPENSABLE RAMPART FOR PROTECTING THE COUNTRIES NORTH OF THE PANAMA CANAL, INCLUDING THE UNITED STATES, AGAINST THE DEADLY PERILS OF TROPICAL DISEASE EPIDEMICS OF WHICH THERE HAVE BEEN A NUMBER OF TRAGIC EXAMPLES IN THE LARGEST SEAPORTS OF THE UNITED STATES.

THE WIDELY DISSEMINATED SCIENTIFIC REPORTS OF THE INSTITUTE AND LABORATORY CONCERNING THE TRANSMISSION OF TROPICAL DISEASES WERE KEY FACTORS IN SAFEGUARDING THE HEALTH AND LIVES

OF THE MEMBERS OF OUR ARMED FORCES SERVING IN THE TROPICAL ISLANDS OF THE SOUTHWEST PACIFIC DURING WORLD WAR II, THUS, THEY WERE VITAL CONTRIBUTIONS TO VICTORY IN THAT HARD FOUGHT STRUGGLE.

TODAY, THIS SPLENDID ORGANIZATION WITH ITS LABORATORY IS SPREADING THE BENEFITS OF THEIR SCIENTIFIC ENDEAVORS FAR AND WIDE, ATTAINING UNIVERSAL ACCLAIM. ITS EXPANDING LIBRARY AT THE GORGAS MEMORIAL LABORATORY HAS BECOME A KEY CENTRAL AMERICAN MEDICAL REFERENCE CENTER, SPECIALIZING ON THE DISEASES OF THE TROPICS, THEIR CONTROL AND PREVENTION. ITS VISITING SCIENTISTS AND TRAINEES OBTAIN KNOWLEDGE AND DISCIPLINED JUDGMENT THAT CAN ONLY BE DEVELOPED FROM EXPERIENCE IN A TROPICAL SETTING SUCH AS THAT AT PANAMA.

WERE GENERAL GORGAS TO RETURN TO EARTH TODAY WHAT WOULD HE FIND?

HE WOULD SEE THAT THE LESSONS HE LEARNED AT HAVANA AND APPLIED SO EFFICIENTLY ON THE ISTHMUS HAVE NOT BEEN FORGOTTEN BUT HAVE BEEN GREATLY AUGMENTED.

HE WOULD ENCOUNTER INCREASED RECOGNITION OF THE FACT THAT IT WAS HIS WORK IN HEALTH AND SANITATION IN THE CANAL ZONE THAT MADE CONSTRUCTION OF THE PANAMA CANAL POSSIBLE.

HE WOULD SEE IN PANAMA CITY A LABORATORY THE WORK OF WHICH HAS MADE IT ONE OF WORLD IMPORTANCE, EXPECIALLY FOR THE WESTERN HEMISPHERE.

HE WOULD FIND A GREAT HOSPITAL IN THE CANAL ZONE AT ANCON NAMED IN HIS HONOR STILL FOLLOWING ALONG THE SCIENTIFIC PATHS THAT HE LAID OUT.

HE WOULD SEE HIS NAME PERMANENTLY ENSHRINED IN THE HALL OF FAME FOR GREAT AMERICANS.

HE WOULD FIND IN THE CONGRESS A STRONG SUPPORT FOR THIS VITAL ORGANIZATION - A SUPPORT THAT TRACES BACK TO FORMER CONGRESSMAN MAURICE H. THATCHER, AN ASSOCIATE OF GENERAL GORGAS ON THE ISTHMIAN CANAL COMMISSION THAT SUPERVISED THE CONSTRUCTION OF THE PANAMA CANAL AND GOVERNOR OF THE CANAL ZONE, 1910-13, AND, FINALLY, THE HONORARY PRESIDENT OF THE GORGAS MEMORIAL INSTITUTE TO WHICH HE DEVOTED SO MUCH OF HIS TIME AND TALENTS.

NO BETTER TRIBUTE HAS BEEN PAID TO GENERAL GORGAS THAN THIS POEM BY GOVERNOR THATCHER:

GORGAS

GOD'S OWN SAMARITAN, INTREPID, TRUE;
  WITH CHRISTLY SYMPATHY AND LOVE FOR ALL,
AND WISELY SKILLED, - HE WROTE HEALTH'S PAGE ANEW,
  AND LIFTED FROM THE EARTH ITS FOULEST PALL.

WHERE PESTILENCE AND PLAGUE TOOK DIREST TOLL,
  HIS MAGIC TOUCH BROUGHT LIFE AND STRENGTH AND JOY;
IN ISTHMIAN REALMS, WHERE RIVAL OCEANS ROLL,
  HIS BLESSED ARTS FOR GOOD HE DID EMPLOY; -
AND LO! THE LINK THAT JOINS THE WATERS TWAIN
  (THE WAY TO IND, THRU ALL THE AGES HID!)

GREW INTO FORM, AND STRETCHED FROM MAIN TO MAIN,
  BY REASON OF THE DEATHLESS WORK HE DID. -
AND MORE THAN THIS - THE WONDROUS DEEDS HE WROUGHT,
THE TEXTS BECAME WHEREBY THE WORLD IS TAUGHT!

(October 14, 1936)

Invocation by Dean Sayre

Oh Thou mighty Architect of the mansion of the Universe, we are thankful for the small keys that unlock the great rooms of Thy making. Bless the stewards in Thy house, faithful and true, who through the years serve Thee by opening doors to the comfort of Thy children: to their healing and for their knowledge. Bless those who tend the hearth of kindness, and dig canals for the passage of the Spirit, and who forfend against the enemy.

Bless us this night in our remembrance of courage against the devious assault of sickness and in our celebration of constant devotion through half a hundred years;

Give us strength, Lord, to follow on where Thou hast led the way.

Amen.

50th Anniversary Dinner
Pan American Union
Gorgas Memorial Laboratory
26 September 1978

COSMOS CLUB

Vignette No. 175 October 1978

WILLIAM CRAWFORD GORGAS—AN APPRECIATION

To write of Gorgas is to attempt to write of the infinite.
—Franklin Martin, M.D.

In his essay on "Self-reliance," Ralph Waldo Emerson made this significant statement: "An institution is the lengthened shadow of one man . . . and all history resolves itself very easily into the biography of a few stout and earnest persons." The truth of these words was demonstrated in the life and achievements of William Crawford Gorgas. What are some of their major highlights?

Born on October 3, 1854, in Mobile, Alabama, he was the first child of General Josiah Gorgas, an 1841 graduate of West Point, who, after distinguished service in the U.S. Army, went with the South upon its secession from the Union to serve as the Chief of Ordnance for the Confederate Army; and later became president of the University of the South at Sewanee, Tennessee. His mother was Amelia (Gayle) Gorgas, daughter of former Governor John Gayle of Alabama.

Having lived through the war-time excitement in Richmond, young Gorgas looked forward to a military career. Unable to obtain an appointment to West Point after graduating from the University of the South in 1875 with an A.B. degree, he decided to win a commission in the U.S. Army by the way of its Medical Corps, and in 1876 enrolled in the Bellevue Medical College in New York City, where he made an excellent record. After receiving his M.D. in 1879 and serving as an intern at Bellevue Hospital, he entered the Medical Department of the Army on June 16, 1880, as a surgeon.

In that year, yellow fever, the cause of which was not then understood, was rampant on the Mexican border in Brownsville, Texas. Although Gorgas was not immune to it, he was ordered to Fort Brown for duty with the advance commendation from the Army's Chief Surgeon to the post surgeon: "I am sending

you the most progressive young surgeon under my command."

While at Fort Brown, he contracted yellow fever and recovered, thus becoming immune. It was there that he met Marie Cook Doughty, who was seriously ill with yellow fever but also recovered, and likewise became immune. These two immunes were married on September 15, 1885.

Until the Spanish American War, Gorgas led the normal life of an Army medical officer in various posts—in Texas, North Dakota and Florida. This was at a time when the germ theory of disease was a subject of debate among scientists and physicians.

In 1898, he accompanied the military expedition against Santiago, Cuba, and, because of his experience with yellow fever, was designated as Chief Sanitary Officer of Havana, a position he held from 1898 to 1902.

Yellow fever and malaria had been endemic in Havana for many generations. The prevailing view in 1898 of how to meet the danger was to clean up filth, and Gorgas started his work in Havana with great energy. In spite of all his efforts in sanitation, yellow fever increased. So serious did the situation become that the Surgeon General of the Army appointed a board of physicians to visit Cuba and investigate the cause of the disease.

This body, headed by Major Walter Reed, during 1900 and 1901 made extensive experiments at Havana and conclusively established that the female stegomyia mosquito was the vector of yellow fever, confirming the theory of Dr. Carlos Finlay, the Cuban physician, who had urged it as early as 1881. Gorgas followed the work of the immortal Reed board closely with frequent visits and consultations. As a consequence, he conducted his historic campaign to rid Havana of the stegomyia, which was a house mosquito, by removing its breeding places. The result was dramatic, attracting world attention: a reduction of deaths from yellow fever in Havana from 310 in 1900 to 18 in 1901.

At the same time under his general direction there was a vigorous campaign to eradicate malaria. This involved the elimination from the suburbs of Havana of the anopheles mosquito, the female of which was the vector. The results were similarly effective with reductions in deaths from malaria in Havana from 909 in 1899 to 77 in 1902.

Meantime, the movement for the construction by the United States of an interoceanic canal across the Central American

Isthmus was advancing rapidly. Early in 1902, Gorgas wrote the Surgeon General of the Army about the enormous loss of life caused by yellow fever and malaria suffered by the French during their tremendous effort to construct the Panama Canal, and stressed the necessity for protecting non-immune North Americans working on the Isthmus as had been done at Havana.

The Surgeon General approved the idea and recommended that Gorgas be placed in charge of Isthmian sanitation.

Relieved of duty in Havana in the fall of 1902, Gorgas was ordered to Washington so that he could be in close touch with canal planning. In preparation for his coming assignment, he visited the Suez Canal, which was an entirely different and far simpler problem than that of the Panama Canal. He soon afterward visited Paris to examine information on sanitation in possession of the French Panama Canal Company and collected a great deal of valuable data.

In April, 1904, Gorgas was ordered to report to the U.S. Isthmian Canal Commission as Chief Sanitary Officer and reached the Isthmus in June, following the U.S. acquisition of the French property on May 4, 1904, a day subsequently celebrated in the Canal Zone annually as Acquisition Day.

Then 50 years old, Gorgas was at the height of his physical and mental powers. A southern aristocrat, he was always courteous, kind, and understanding to his subordinates and patients as well as to his superiors. So deeply did he impress those associated with him in Canal construction that, many years later during World War II, some of them, then much older, would recall their observations with the pride of having participated in great achievement.

Because North Americans arriving on the Isthmus were susceptible to infection, the number of yellow fever cases increased so rapidly that in January, 1905, the first Isthmian Canal Commission was forced to resign. Because of the difficulty in securing the approval of requisitions for needed sanitational supplies submitted to Washington, Gorgas was severely frustrated in his efforts.

In fact, in June 1905 an attempt was made by high Canal Commission officials, who did not believe in the mosquito explanation, to remove Gorgas. It was fortunate that President Theodore Roosevelt, of Rough Rider fame, knew about the work of Reed and Gorgas in Cuba. He not only declined to approve the removal of Gorgas but directed that he be supported.

Following the arrival on the Isthmus on July 25, 1905, of John F. Stevens, the great railroad builder, who as Chief Engineer of the Isthmian Canal Commission was to attain great fame as the basic architect of the Panama Canal, the way for Gorgas was cleared. Stevens, who was widely read on canal history and problems, as well as vastly experienced in engineering work in undeveloped Rocky Mountain areas, had accepted the theory of mosquitoes being the vectors for yellow fever and malaria and promptly placed the full force of his high office behind Gorgas, giving sanitation an impetus that lasted throughout the construction era. Moreover, it still lasts and should continue indefinitely.

The last case of yellow fever in the Canal Zone during construction was in May, 1906, and the Isthmus was rapidly transformed from being the pesthole of the world into a model for tropical health and sanitation.

Gorgas never failed to give full credit to Stevens for his support at a crucial time. He later described the tenure of Stevens (1905-07) as the "high-water mark of sanitary efficiency on the Isthmus," with "more sanitation" accomplished than at any time during the construction era. Besides, it was Chief Engineer Stevens who, by his strong support, placed Gorgas on the path to great fame as the one who "made the construction of the Canal possible."

In the reorganization of the Isthmian Canal Commission following the resignation in 1907 of Stevens, Gorgas was made a member of that body in addition to his position as Chief of Sanitation.

Long before Gorgas left the Isthmus, he was widely recognized as the foremost sanitary expert in the world, and honors started being bestowed upon him. The most significant ones were his appointment on January 16, 1914, as the Surgeon General of the Army with promotion to Brigadier General and his election that year as a member of the Cosmos Club.

The non-military work of Gorgas included visits and consultations in South America, the Caribbean and southern Africa, all aimed at the elimination of tropical diseases.

His appointment as Surgeon General was at a crucial period of U.S. history. Promoted to Major General on March 4, 1915, he started preparations for possible U.S. involvement in World War I. The story of those activities is a major chapter in the career of Gorgas.

How were his life's works evaluated by Dr. Franklin Martin, a close World War I associate of Gorgas?

First, in less than eight months, he eliminated yellow fever from Havana where it had been endemic for more than 150 years.

Second, in less than two years he transformed the Isthmus of Panama from a charnel house of death and disease to one of the healthiest spots on earth.

Third, in two years, as Surgeon General of the Army, he organized the greatest medical corps for the largest army in our history from a few hundred to 35,000 officers and 250,000 enlisted.

Fourth, from a few small hospitals, he developed the great base and cantonment hospitals for 4,000,000 men on two continents.

Fifth, he increased his administration headquarters from a suite of three rooms in the old State, War and Navy building to a group of buildings covering two square blocks.

Gorgas retired from active Army service on December 1, 1918, soon after the end of World War I, but did not rest on his laurels. He continued his work in yellow fever research and sanitation on a far wider scale with the International Health Board.

His last undertaking in 1920 was a proposed study of the yellow fever situation on the western coast of Africa but he got no further than Belgium and England. In London in June, Gorgas had what he himself described as a "slight paralytic stroke" and was taken to Queen Alexandra Military Hospital where he received many visitors. Among them was King George V who presented Gorgas the insignia of Knight Commander of the Most Distinguished Order of St. Michael and St. George and expressed his appreciation of his great work for humanity. Soon afterward, on July 4, 1920, Gorgas died. After a state funeral in St. Paul's Cathedral in London, he was buried in Arlington Cemetery, Virginia.

Although Gorgas received many honors during his life time, the most enduring ones came later. They were the creation of the Gorgas Memorial Institute of Tropical and Preventive Medicine that supervises the work of Gorgas Memorial Laboratory in Panama; and the renaming of the Ancon Hospital in the Canal Zone as the Gorgas Hospital. His last significant posthumous honor was election in 1950 to the Hall of Fame for

Great Americans—a movement in which one of its key leaders was his former close associate on the Isthmus—former Gov. ernor Maurice H. Thatcher of the Canal Zone, the last surviving member of the Isthmian Canal Commission under the direction of which the Canal was constructed.

His sanitation work in the Canal Zone and in Panama were natural sequels to the lessons learned in Havana of finding practical applications for the discoveries of Walter Reed and his associates in Cuba. No better description of their significance in eliminating yellow fever and malaria exists than that of Gorgas himself:

> The discovery of the Americas was a great epoch in the history of the white man and threw large areas of fertile and healthy country open to his settlement. The demonstration made at Panama that he can live a healthy life in the tropics will be an equally important milestone in the history of the race, and will throw just as large an area of the earth's surface open to man's settlement, and a very much more productive area.

MILES P. DUVAL ('47)

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APPENDIX E

STATEMENT OF

LELAND L. RIGGS, JR.

FOR THE USE OF THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

Leland L. Riggs, Jr., being duly sworn, deposes and says as follows:

I, Leland L. Riggs, Jr., am a retired Special Agent in Charge of the United States Drug Enforcement Administration. I am familiar with facts involving narcotics intelligence collection in Central America.

I first became a criminal investigator for the U.S. Bureau of Customs in January, 1964, after having spent 8½ years as a highway patrolman. I was first assigned by the Bureau of Customs to duties in California where I conducted narcotics smuggling investigations for a period of 6½ years. Thereafter, I was promoted from Customs Special Agent to Senior Customs Representative and was transferred to Mexico City, Mexico. Inasmuch as I am bilingual and speak Spanish, my assignment to Mexico was deemed to be advantageous to the agency.

While assigned to Mexico City, I had sole responsibility for Customs narcotics intelligence gathering and for conducting follow-up investigations forwarded to me by our domestic offices of investigation. My area of responsibility included not only the Republic of Mexico but additionally all of Latin America. However, 95% of my investigative time concerned either Mexico or the Republic of Panama.

During the time I was in Mexico in 1970 and 1971, I conducted several investigations in Panama. Subsequently, in June of 1972, I was appointed Customs Attache and instructed to establish an office in the American Embassy in Panama City, Panama. This occurred during the period when the entire Bureau of Narcotics and Dangerous Drugs agents force had been expelled persona non grata from Panama. I served as Customs Attache until July 1, 1973, at which time the Drug Enforcement Administration was formed and I then also assumed command of the Panamanian functions of the Bureau of Narcotics and Dangerous Drugs when the Bureau of Customs narcotics functions were merged with those of the BNDD. In short, I became the Special Agent in Charge of the combined office.

I left Panama on June 17, 1974, to become the Special Agent in Charge of the DEA District Office in Brownsville, Texas. Thereafter while on temporary assignment as Project Manager for a special DEA operation in Colombia directed against clandestine cocaine processing laboratories in Colombia, on November 30, 1975, I was attacked, beaten, and pushed off a retaining wall to a street below and suffered several fractured vertebrae, a broken ankle, kidney damage, and assorted cuts and bruises. The DEA subsequently retired me on August 24, 1976, for medical disability reasons.

When I first began conducting investigations in Panama, the BNDD Agent in Charge advised me that we had to be very careful about informing Panamanian government officials concerning our work since they were corrupt and also involved in narcotics trafficking. I soon learned from personal experience that this advice was sound.

During September, 1970, I traveled to Panama to conduct a follow-up investigation regarding a Yolando Sarmiento case involving shipments of heroin from Panama to New York. Although I do not have presently in my

possession intelligence reports prepared by me at that time, I do recall certain aspects of the case. Yolanda Sarmiento reportedly was smuggling approximately 100 pounds of heroin monthly into the United States. This heroin was reported to be stored in the Colon Free Zone in the Republic of Panama.

The Colón Free Zone is a large, fenced-in, heavily guarded section of Colon, Panama, on the Atlantic side where duty-free items are displayed in numerous stores for purchase by persons and businesses based primarily in South America. I was advised by U.S. Canal Zone officials and a confidential source that the Guardia Nacional controlled and guarded this enclosed area. I later did manage to gain entrance with a U.S. Canal Zone official; however, we were only permitted to go into the showcase areas of the various stores. The Colon Free Zone is entered at a gate guarded by uniformed members of the Guardia Nacional. Although the Government of Panama does have a Customs Office and there are Panamanian Customs Agents, Panamanian Customs does not have responsibility for control of the Free Zone.

During 1970, United States Customs Agents in New York were able to effect the arrest of Yolanda Sarmiento, Emilio Diaz Gonzales, and others; however, Yolanda Sarmiento was released on bail, subsequently fled the country, and became a fugitive in Argentina. As best I recall, Emilio Diaz Gonzales escaped from prison in New York and is believed also to have fled the country.

My efforts to continue a follow-up investigation of the Sarmiento case were essentially unsuccessful because of the problems inherent in free movement within the Colon Free Zone resulting from the control of the Free Zone by the Guardia Nacional of the Government of Panama.

During my trips to Panama, I became aware of a BNDD investigation concerning the Panamanian chief air controller, Juaquin Him Gonzales. Juaquin Him was reportedly directing heroin from Panama into Texas and using his official capacity in the Government of Panama to facilitate the movement of this heroin. He was subsequently indicted by a U.S. Grand Jury in Texas and was arrested when he entered the U.S. Canal Zone to attend a softball game. Juaquin Him was tried and convicted for facilitating the transportation of narcotics into the United States.

I understand that the arrest of Juaquin Him caused considerable dissension between the Ambassador and the U.S. narcotics agents in Panama. I experienced similar problems in connection with the Raphael Richard-Moises Torrijos case.

I learned of the Richard-Torrijos case after my assignment as the Customs Attache to the American Embassy in Panama. In fact, I became directly involved in the investigation concerning Moises Torrijos, now Panamanian Ambassador to Spain, and Raphael Richard Gonzales, the son of the then-Panamanian Ambassador to Taiwan. Richard was arrested on the evening of July 8, 1971, at John F. Kennedy Airport in New York in possession of 151 pounds of heroin. Immediately prior to his arrest, he claimed diplomatic immunity and asserted that his suitcase could not be opened and searched due to his diplomatic passport. A U.S. customs inspector advised him that he was accredited as a diplomat in Taiwan, not in the United States, and therefore had no diplomatic status in the United States. Also arrested that evening was Nicolas Polanco, a reported chauffeur-bodyguard of Moises Torrijos. Moises Torrijos was then the Panamanian Ambassador to Argentina, and he is the brother of Dictator Omar Torrijos.

The day following the Richard arrest, Guillermo Alfonso Gonzales was also arrested upon his arrival in New York City from Panama for the purpose of accepting delivery of the heroin Richard had attempted to bring into the country. Others arrested the same day were Jose Francisco Oscar San Martino, an Angentine, and Cesar and Amarico Altanirano, both Panamanians.

Subsequent investigations of the same case led to the indictment of Moises Torrijos by a Grand Jury of the U.S. District Court for the Eastern District of New York. Torrijos was indicted as a co-conspirator with the above-mentioned defendants. Thereafter, a warrant for the arrest of Moises Torrijos was issued by the U.S. Court for the Eastern District of New York. On the basis of the evidence of a warrant, I was instructed to be on the alert to effect an arrest in the event Moises Torrijos traveled from Spain through the U.S.-controlled Panama Canal Zone.

During either late 1972 or early 1973, I was advised that Moises Torrijos, accompanied by his wife, was traveling from Spain to Panama on a passenger vessel. Subsequent information showed that the vessel would dock in Cristobal, Panama, within the U.S.-controlled Panama Canal Zone. Arrangements were therefore made to effect the arrest of Moises Torrijos in the U.S. territory upon his arrival. However, Moises Torrijos was obviously informed of his impending arrest and departed the vessel at Caracas, Venezuela, where he flew by commercial airliner to Tocumen Airport within the Republic of Panama. When the vessel arrived, only Mrs. Moises Torrijos disembarked. Inasmuch as the only parties aware of the planned arrest of Moises Torrijos other than BNDD were the U.S. Department of State and the Central Intelligence Agency, Moises Torrijos could only have been alerted to the planned arrest by United States authorities.

During my tenure as Special Agent in Charge of Drug Enforcement, I did not have another opportunity to effect the arrest of Moises Torrijos. In fact, during my tour of duty as Customs Attache before assuming command of the combined Customs and BNDD forces, I was advised that Washington officials of the Bureau of Narcotics and Dangerous Drugs traveled to Panama, met with Colonel Noriega, Chief of Panamanian Intelligence, and with General Omar Torrijos, and alerted them both to the existence of an indictment and warrant concerning the General's brother, Moises. To the best of my knowledge, the warrant for the arrest of Moises Torrijos is still in existence and presumably, if he touches U.S. soil, he is still liable to arrest.

During my tour of duty in Panama, several cases which were presented to the Panamanian enforcement officials were mysteriously terminated or not given proper attention. Due to my knowledge of their involvement, many cases were not presented to Panamanian enforcement officials so as not to compromise my investigation. Finally, I did not feel that I had the full support of the diplomatic community in the pursuit of my assigned mission in Panama, especially in those matters which tended to implicate officials of the Government of Panama. In any event, due to the eventual assignment of a State Department employee as the narcotics coordinator, I was relegated to a secondary position. Similar conditions now exist in most embassies where Drug Enforcement personnel are assigned, and in almost all cases, the Department of State employee has no narcotics training nor expertise. It is my opinion that Department of State personnel are placed in the position of narcotics coordinator primarily to insulate and protect the activities of the Department of State from any so-called disrupting

incident regarding narcotics enforcement directed against an official of the host government.

Given under my hand and seal on this the first day of December, 1977, in the City of Washington, District of Columbia.

Leland L. Riggs, Jr. (L.S.)

NOTARIZATION:

Subscribed and sworn to by
Leland L. Riggs, Jr.
before me this first day of December, 1977

Donna E. Wood
My Commission Expires
1-1-82

STATEMENT OF

LELAND L. RIGGS, JR.

FOR THE USE OF THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

Leland L. Riggs, Jr., being duly sworn, deposes and says:

On approximately November 21, 1977, I was called at my residence in Texas by Mr. Bill Link, Special Assistant to Mr. Peter Bensinger, the Administrator of the Drug Enforcement Administration. Mr. Link advised me that the Attorney General's office was reviewing investigative reports of mine written while I was stationed in Panama and that within a few minutes the Attorney General's office would call me and that I was free to discuss these reports or answer any questions asked of me. A few minutes later, a Mr. Bushong called and stated that he was reading a report written by me concerning plans to attempt the arrest of Moises Torrijos in the U.S. Canal Zone. Mr. Bushong stated that my report advised that Moises Torrijos, who was enroute from Spain by vessel to the Panama Canal Zone, had suddenly disembarked in Caracas, Venezuela, and was flown to Tocumen Airport in the Republic of Panama where I had no jurisdiction, leaving his wife on board the vessel to travel to the Canal Zone. Mr. Bushong asked for my opinion as to how Moises Torrijos was advised of his impending arrest which caused him to change his travel plans. I stated

that I felt the Government of Panama, and hence Torrijos, was advised of the planned arrest either by the United States Department of State or by the Central Intelligence Agency.

Given under my hand and seal on this the first day of December, 1977, in the City of Washington, District of Columbia.

Leland L. Riggs, Jr. (L.S.)

NOTARIZATION:

Subscribed and sworn to by
Leland L. Riggs, Jr.
before me this first day of December, 1977

Donna E. Wood
My Commission Expires
1-1-82

APPENDIX F

REPORT TO THE SENATE

OF

SENATOR BIRCH BAYH, CHAIRMAN

SELECT COMMITTEE ON INTELLIGENCE

The interest of the Select Committee in intelligence activities in Panama goes back for more than a year. It was clear to the Committee from earlier oversight activities that intelligence activities intended to support important negotiations could, under some high risk conditions, achieve the opposite. Under some circumstances they could undermine, taint or otherwise endanger the intended outcome of negotiations. When it was clear negotiations were underway in earnest in Panama, the Select Committee decided to review our intelligence activities in Panama with a particular focus on whether there were any high risk activities that if disclosed might affect adversely the outcome of treaty negotiations. We also studied the question of how the treaties might affect intelligence operations in the future.

The Select Committee concluded that U. S. intelligence activities had no adverse impact on terms of the Canal treaties. Here is what led to that conclusion:

After briefings on intelligence activities in Panama, and a review of material in Washington, members of the Committee staff visited Panama in February, 1977, to survey intelligence operations in the field, including some of great sensitivity.

Just prior to its departure for Panama, the Select Committee staff was informed that one sensitive intelligence operation was believed compromised. But the staff complied with a request not to discuss the matter in Panama, because the possible compromise was still under investigation.

The Select Committee learned more details about the compromise last June when it received substantial documentation for a Select Committee study of espionage law. These are the key details of the case:

A U.S. military person stationed in the Canal Zone was found to be passing intelligence information to the Panamanians. The investigation ultimately disclosed that, among other things, this person had passed to the Guardia Nacional information on U.S. intelligence operations, including copies of sensitive intelligence from one of these operations.

Later last summer, in connection with briefings on other intelligence questions, the Select Committee was provided with sensitive intelligence reports of high reliability relevant to the treaty negotiations. This intelligence information led the Select Committee to initiate an investigation. During both this investigation and a second investigation which is described later in this report, the Select Committee received unprecedented access to records and executive branch personnel at all levels. The Select Committee views this access as a significant step forward in congressional oversight of the intelligence community.

In the course of that investigation, which began in September, 1977, the Select Committee received access to personnel and documents of the following agencies: the State Department; the CIA; the National Security Agency; and the Department of Defense. All told, several thousand pages of documents were reviewed, and we questioned for the record or received sworn testimony from numerous witnesses, including:

-- Ambassadors Ellsworth Bunker and Sol Linowitz

-- Admiral Stansfield Turner, the Director of Central Intelligence

-- Admiral Bobby Inman, the Director of NSA

-- Dr. Zbigniew Brzezinski, the President's Assistant for National Security Affairs

-- Mr. Theodore Sorensen

In addition, we interviewed or received testimony from other individuals at the National Security Council, the State Department and NSA, and held two hearings in executive session. We investigated in depth a series of events that occurred in Panama and Washington on July 15 and 16, 1977. I would now like to recount these events in some detail as we have reconstructed them.

On Thursday, July 14, 1977, Ambassador Sol M. Linowitz attended a breakfast meeting with reporters hosted by Godfrey Sperling to discuss the treaty negotiations. Ambassador Linowitz believed the event was not for attribution. He stated his assessment that the Panamanians were being unrealistic in their economic demands, and also described the U.S.

rights to defend the Canal unilaterally under the neutrality treaty -- which had been largely negotiated by that time. But, the Ambassador told our Committee, he was careful to avoid using the term "intervention" because the word is highly inflammatory in Panama. Within about 24 hours, however, newspaper accounts of the press breakfast had triggered a flap. Press reports which contained the word "intervention" as well as comment about the Panamanian economic demands were published in the United States and Panama and were attributed to Ambassador Linowitz by name. By Friday afternoon, July 15, Ambassador Linowitz learned from the Panamanian Ambassador that the Panamanian government was deeply concerned by the comments.

The next morning, the State Department and NSC received copies of an important intelligence report of the highest quality, which also had to be evaluated against the possibility that it was intended to exert leverage on the U.S. Government. This is a very important incident so I will describe it in some detail.

The report said that the Panamanians were preparing for a major press conference the following week in Washington. According to the report, at that press conference, the Panamanians would allege that high level members of the

executive and legislative branches had asked for payoffs in return for arranging increases in the annuity to be paid to Panama under the Panama Canal Treaty. The Panamanians planned also to reveal their knowledge of U.S. intelligence operations in Panama.

This intelligence report was received at the White House and State Department on Saturday morning, July 16th.

Ambassador Bunker saw the report Saturday morning, but we know of no one at the NSC who recalls seeing it then. At approximately noon, Saturday, however, the Panamanian concern about the press coverage of Ambassador Linowitz's statements was brought to the attention of Dr. Brzezinski. He received a telephone call in the White House from Theodore Sorensen, who was in Panama representing a client on a business matter. Mr. Sorensen, who was acquainted with General Torrijos, had been asked to Farallon -- General Torrijos's home and office -- to meet with General Torrijos. There he larned first-hand of the Panamanians' concern. Mr. Sorensen told the Select Committee staff that the Panamanians were particularly incensed over the word "intervention". Mr. Sorensen telephoned Dr. Brzezinski and the two discussed the problem and agreed to issue a White House press statement characterizing press accounts as inaccurate.

Dr. Brzezinski said that he did not recall having seen the report at the time he talked to Mr. Sorensen. Mr. Sorensen told the Select Committee staff that General Torrijos did mention plans to hold

a press conference, but said there was absolutely no indication that the Panamanians planned to make disclosures that would be embarrassing.

In any event, Dr. Brzezinski, after consultation with Jerold Schecter of the NSC staff, arrived at the text of a press statement which said:

> "The Los Angeles Times News Service story of July 15 on the Panama Canal negotiations is incorrect in major details with regard to the U.S. and Panamanian proposals and the negotiations."

But while the White House was issuing the press statement without discussing it with anyone at the State Department, Ambassador Bunker and Ambassador Linowitz were acting independently to calm the situation, unaware of the White House actions. Ambassador Bunker talked to Panamanian Ambassador to the United States Gabriel Lewis shortly after noon, and a meeting of Ambassadors Linowitz, Bunker and Lewis was arranged for that afternoon.

The Select Committee has determined that before the two U.S. negotiators arrived, Panamanian representatives were instructed to forget about the plan to hold the press conference because the Panamanians had already resolved the matter -- apparently through the press statement issued by the White House.

Shortly thereafter, Ambassadors Bunker and Linowitz met with the Panamanians and we have three accounts of that meeting: the recollections of Ambassadors Bunker and Linowitz and later reports on Panamanian versions of the meeting. Most of the meeting was devoted to discussion of the press account and explanations of the workings of the Washington press corps.

But the Panamanian perception of the meeting was that President Carter wanted to make compromises, particularly on economic questions, which could come into effect after the signing of the treaty.

The Panamanians also perceived that they might get "simulated" or "self-liquidating" loans from the United States which Panama would not be required to repay.

Ambassador Linowitz said to the Select Committee that he had emphasized to Panamanian Ambassador Lewis at the meeting that the Panamanians should not try to incorporate other U.S. offers of economic aid directly into the treaty. Ambassador Linowitz said that he told them if they agreed to a treaty this would improve the chances for other economic benefits. He told the Committee that this was a reiteration of a point he had made repeatedly in negotiating sessions.

The negotiating records are consistent with Ambassador Linowitz's story. It was a key U.S. negotiating point that the side economic benefits should be separate from the treaty and subject to independent Congressional approval. The Panamanians had

urged that the two packages be combined. Similarly, there was under discussion at that time a "self-liquidating loan" which would have been secured through a complex mechanism involving Canal revenues. That approach was still being considered on July 16, but was ultimately dropped.

In sum, the package of economic benefits which the Panamanians believed was alluded to by Ambassador Linowitz turned out not to be new benefits, or a so-called compromise, but actually a summary of the side economic package that had been discussed the preceding week. We have been able to trace each economic item mentioned in later reports on Panamanian perceptions to official discussions which occurred prior to July 15. The memoranda of earlier negotiating meetings confirm Ambassador Linowitz's recollection that he recapitulated earlier economic discussions and did not enter into any new substantive negotiations at the Saturday afternoon meeting.

That is an outline of what occurred that weekend as we have reconstructed it in our investigation. We also engaged in an exhaustive study of any possible relationship between intelligence activities and the neutrality treaty, the Panama Canal Treaty and the economic benefits set forth in the side notes. We have come to several conclusions:

(1) Although the Panamanians dropped their planned press conference, we cannot trace any treaty concession or other

change to any event that occurred that weekend. We have examined this as carefully as we can and concluded that during that weekend the Panamanians received a short press release and a lot of reassurance, nothing else.

(2) The treaty terms did change in the weeks after July 16 as the two sides reached agreement. But it is the Panamanians who abandoned their principal economic demands and accepted with relatively few modifications the U.S. offer that was under discussion in the week prior to July 15.

(3) Because of our inquiry into the espionage case, we know which intelligence operation the Panamanians could have disclosed. But we have not -- despite intensive investigation -- turned up substantiation about the alleged payoffs which were supposed to have been sought by the executive and legislative branch officials. We requested and received the results from a massive search of intelligence files for any further reference to the subject. There were none. We asked Ambassador Bunker, Ambassador Linowitz, Admiral Turner, Admiral Inman and Under Secretary of State for Economic Affairs Richard N. Cooper under oath what they knew about the alleged payoffs; they had no such knowledge. The allegation about payoffs has been referred to the Attorney General.

In summary, the Select Committee on Intelligence could find no evidence that any intelligence activities, in particular the espionage case, or the events of July 15 and 16, 1977, caused changes

29-400 (pt. 3) O - 79 - 121

in the Panama Canal Treaty, the neutrality treaty or the separate economic assistance package.

A staff report and supporting documentation describing these events in greater detail is available to the Members of the Senate under provisions of S. Res. 400.

The second investigation concerning intelligence activities in Panama on which I have been asked to report is nearing conclusion, but such findings as I will summarize are still tentative. This investigation, like the first one, is based upon highly sensitive intelligence information.

On October 6, 1977, Attorney General Bell informed the leadership of the Select Committee on Intelligence and the majority and minority leaders that the Drug Enforcement Administration had intelligence information purportedly linking prominent Panamanians to illicit drug trafficking and that one Panamanian official had been named in a sealed indictment. The Select Committee was asked by the leadership to investigate the quality of this information and the impact, if any, of intelligence activities in the narcotics trafficking field upon the Panama Canal treaties and negotiations.

The Select Committee, in carrying out this investigation, was very mindful of its specific mandate. The Committee's duty is to investigate intelligence activities, not to pass judgment on questions of general foreign policy or to second-guess the

judgments of judges or prosecutors. Our investigation, therefore, focused upon the four following questions:

(1) What intelligence regarding narcotics trafficking by Panamanian officials was collected? What was the quality of this intelligence and how was it used?

(2) In what ways, if any, did foreign policy considerations affect intelligence activities in this field or the use of intelligence?

(3) In what ways, if any, did U.S. intelligence activities in this area affect narcotics enforcement efforts and in what ways did both intelligence and the enforcement efforts based upon that intelligence affect U.S. foreign policy?

(4) Did U.S. intelligence activities in this area affect either the Panama Canal treaty negotiations or the eventual terms of agreement?

Thus far, in this still uncompleted investigation, the staff of the Select Committee has reviewed documents from the National Security Council, the Drug Enforcement Administration, the Central Intelligence Agency, the Department of State, the Department of Justice, the National Security Agency, the Department of Defense, and the Bureau of Customs in the Department of the Treasury. We have also interviewed personnel from these agencies.

The Select Committee has found no evidence that U.S. narcotics intelligence activities affected the terms of the Panama Canal agreements. In the early 1970s, however, narcotics

intelligence and enforcement activities may have affected the timing and atmosphere of the Canal negotiations by occasionally impairing relations between Panama and the United States and by generating Panamanian distrust of U.S. policies and objectives.

To see how this came about, let me briefly summarize what the Select Committee has found regarding each of the four questions we are investigating.

Intelligence on narcotics trafficking in Panama was voluminous, particularly from 1971 through 1973. The intelligence contained numerous reports of markedly varying quality regarding the activities of over a dozen current and former Panamanian officials, including high ranking ones. Information was collected by the intelligence community, the Bureau of Narcotics and Dangerous Drugs (which later was incorporated into the Drug Enforcement Administration), and the Bureau of Customs. The information ranged from rumors reported by small-time drug dealers, who were hoping for a lighter sentence, to eyewitness accounts by competent observers.

Three examples will illustrate the variety of intelligence information which was collected. Let us start with Moises Torrijos, Panamanian Ambassador to Spain and brother of General Omar Torrijos. In 1971, a Panamanian named Guillermo Gonzales, a long-time associate and former employee of Moises Torrijos, was

arrested in New York along with the son of a Panamanian diplomat for smuggling drugs. Gonzales identified Moises Torrijos as the person who had facilitated passage of the drugs through Panamanian customs. This report was corroborated by other sources, although they were not eyewitnesses. Moises Torrijos was the subject of a sealed indictment in 1972.

A much smaller quantity of intelligence was collected alleging narcotics activities of a high official in the Guardia Nacional. One informant named this official as having "overall operational control" of officially-sanctioned drug trafficking in Panama. The informant provided no examples, and did not claim to have witnessed anything. Moreover, the informant was a political opponent of the Torrijos regime who had been exiled for participating in an unsuccessful coup d'etat attempt against General Torrijos. Nearly four years later, an informant found persons who said that the Guardia Nacional official directed narcotics operations between Cuba and Panama. Because the Guardia Nacional is responsible for narcotics enforcement in Panama, the official had sometimes been blamed for Panamanian actions which frustrated U. S. enforcement efforts. The DEA reports that in recent years this official and the Guardia Nacional have cooperated in DEA narcotics control efforts.

Intelligence linking General Omar Torrijos to drug trafficking has been largely second-hand and of varying reliability. For example,

over the years, several drug dealers have alleged that they were friends of feneral Torrijos, that he was one of their customers, or that he protected them. Friends or associates and, as we have seen, relatives of General Torrijos have been tied to narcotics trafficking, and informants have alleged that General Torrijos received a cut of the profits. Some sources have provided intelligence which we view as reliable and which we believe suggests that General Torrijos knew about narcotics trafficking by government officials and did not take sufficient action to stop his brother's activities. Intelligence reports also contain other allegations asserting that General Torrijos assisted his brother. However, our investigation has turned up no conclusive evidence that could be used in a court of law.

The Committee has had difficulty in coming to conclusions in its study of intelligence reporting concerning Panamanian narcotics trafficking. This is because narcotics intelligence is not the same thing as evidence which could be used in any effort to indict or to convict a person. Intelligence collection involves the gathering of many disparate pieces of information, some of which come from persons whose reliability is poor or untested and others of which come from sources of proven reliability.

We can say that there was evidence against Ambassador Moises Torrijos, for he was indicted by a grand jury. The

Committee cannot say, however, on the basis of narcotics intelligence information alone, that a given Panamanian official has, or has not, engaged in narcotics trafficking. The most that we can do is to report our estimate of the import of the intelligence reporting, taking into account the fact that some of these reports appear more credible than others.

How has intelligence on Panamanian narcotics trafficking been used? It has been used to brief policymakers, to aid enforcement efforts, and to support diplomatic initiatives aimed at improving narcotics enforcement. Thus, on July 15, 1971, BNDD officials briefed State Department personnel on their findings. On July 28, they provided the State Department Country Director for Panama with a memorandum which listed the "intelligence data" on fifteen prominent Panamanians. The memorandum treated as facts all of the uncorroborated allegations by political opponents of General Torrijos, without indicating the sources of these allegations. A similar briefing was later given to two NSC staff members.

Narcotics intelligence was used by BNDD Director John Ingersoll when he met with officials in Panama in September and November of 1971. The goal in these meetings was both to increase U.S.-Panamanian cooperation on narcotics enforcement and to convince General Torrijos to take action regarding the Guardia Nacional officer referred to earlier. During that period, very little progress was made on either front.

Intelligence was drawn upon by Director Ingersoll for several congressional briefings. For example, on December 19, 1971, he appeared in closed session before Congressman Murphy's Panama Canal Subcommittee and described his frustration with Panamanian officials.

Intelligence reporting also led to Ingersoll to request, on January 10, 1972, that his staff prepare a set of options to deal with a Guardia Nacional official. The options considered in January and February of 1972 included the following: linking the official to a fictitious plot against General Torrijos; leaking information on drug trafficking to the press; linking his removal to the Panama Canal negotiations; secretly encouraging powerful groups within Panama to raise the issue; and "total and complete immobilization." At the time that Ingersoll ordered preparation of the options paper, he was under White House pressure to be more aggressive in international narcotics control. The most extreme options were immediately rejected, but some were put into action. A Department of Justice inquiry in 1975 concluded that no illegal activity resulted. Our own continuing inquiry corroborates the Department of Justice finding.

U.S. intelligence activities in Panama and relations between Panama and the United States necessarily influenced each other over the years. Let me highlight a number of the most important events.

On February 6, 1971, BNDD agents arrested a Panamanian official named Joaquin Him Gonzales in the Canal Zone. Panamanians thought that the official had been lured into the Canal Zone, and this provoked a serious diplomatic incident. This led the State Department to insist that BNDD personnel not enter Panama without coordinating their activities with the U.S. Ambassador. Panamanian intelligence officials insisted upon similar coordination.

In March, 1972, Jack Anderson published a column based on Director Ingersoll's testimony to a closed session of Congressman Murphy's House Panama Canal Subcommittee. The column included charges against Panamanian Foreign Minister Juan Tack. This provoked another diplomatic incident and the expulsion of BNDD personnel from Panama. The Government of Panama quickly agreed to accept new BNDD personnel after strong United States Government protests which said that to fail to do so could have adverse consequences.

In June of 1972, at the direction of the White House and with the concurrence of concerned agencies, Director Ingersoll met with General Torrijos and informed him of the sealed indictment against Moises Torrijos.

In December of 1972, a State Department official, under instructions apparently originating from the White House, alerted General Torrijos that the United States was aware that his brother Moises was about to enter U.S. jurisdiction in the Canal Zone. Moises was on a ship bound for Cristobal, where Customs agents were preparing to arrest him. General Torrijos, acting on the information provided by the American official, contacted Moises, who then left the ship at an earlier stop. Moises Torrijos flew into Panama City where, a month later, he was briefed by BNDD officials on his indictment.

Intelligence on Moises Torrijos continued to come in during 1973. After that, however, with the arrest of some major international narcotics traffickers and an increase in U.S.-Panamanian cooperation on narcotics control, Panama reportedly became less important as a narcotics transshipment point. By the beginning of 1976, the CIA had de-emphasized narcotics as an intelligence requirement for Panama. The Committee has been unable to find further allegations regarding Moises Torrijos's narcotics activities.

How did U.S. narcotics intelligence activities affect the Panama Canal negotiations? The Government of Panama interpreted

U.S. pressure on narcotics questions in 1972 and the press leak of a Murphy Subcommittee report based in part upon BNDD testimony as efforts to influence the Canal negotiations. They may also have known of BNDD efforts to neutralize the Guardia Nacional official referred to above. Panama responded both with anger and eventually, as events turned out, with better cooperation on narcotics enforcement. Although U.S. Government officials considered using narcotics intelligence as a lever in the Canal negotiations, we have found no evidence that any U.S. agency was behind this leak. Neither did we find any other use of narcotics intelligence to influence the negotiations.

The Committee found no evidence that narcotics intelligence activities affected the final terms of the Panama Canal accords. Our overall conclusion is that the effect of these intelligence activities was only upon the atmosphere surrounding the negotiations in 1972; that it was negative, but temporary; and that it was no longer of significance by the time the accords were drafted and negotiated in 1977.

APPENDIX G

DEPARTMENT OF THE NAVY
OFFICE OF LEGISLATIVE AFFAIRS
WASHINGTON, D C 20350

IN REPLY REFER TO
LA-54-126:maw
27 February 1978

Dear Senator Helms:

In response to your request for an unclassified fact sheet regarding Galeta Island, Panama Canal Zone, the attached material is forwarded.

Sincerely,

J. E. KNEALE
Captain, U. S. Navy
Director
Congressional Committee Liaison
Division

Honorable Jesse Helms
United States Senate
Washington, D. C. 20510

Enclosure

US NAVSECGRUACT Galeta Island Canal Zone

1. Status and Command Relationships: The US NAVSECGRUACT (NSGA) Galeta Island is a shore activity in an active operating status under a Commanding Officer and under the command of COMNAVSECGRU (Commander, Naval Security Group Command). Operational control of tactical cryptologic functions, as a specific element of command, has been delegated to Commander in Chief U.S. Atlantic Fleet. NSGA Galeta Island is subject to the area coordination authority of the Commanding Officer, U.S. Naval Station, Panama Canal Zone.

2. Major Function: The mission of the Naval Security Group Activity Galeta Island is to operate a high frequency direction finding facility and to provide communications and related support, including communications relay, communications security, and communications manpower assistance to Navy and other DOD elements within the area. As such, NAVSECGRUACT Galeta Island provides valuable support to search and rescue operations.

3. Personnel Manning:

Officer	- 2
Enlisted	- 45
Civilian	- 4

4. Locale Description: NSGA Galeta Island, Canal Zone is located near the Atlantic entrance of the Panama Canal, approximately 55 miles northwest of the City of Panama, Republic of Panama and Balboa, Canal Zone. The area surrounding this activity consists of dense mangrove swamp and heavy tropical lowland jungle unsuitable for farming or commercial purposes.

5. Base Support: The following activities provide support as indicated to NSGA Galeta Island:

a. US Army 193rd Infantry Brigade, housing, messing, berthing and recreational facilities.

b. US Naval Station Panama Canal Zone; Administrative, general Public Works support.

c. Panama Canal Zone Company; road maintenance and repairs, water and power services.

d. Security is and will continue to be provided by the US Marine Barracks Canal Zone.

6. Under the terms of the proposed Panama Canal Treaty, the US Navy would not be required to relinquish Galeta until the year 2000. The installation will be classified as a US Defense Site for the duration of the new Panama Canal Treaty. As a Defense Site, the facility will be under complete US control throughout the life of the Treaty.

JESSE HELMS
NORTH CAROLINA

APPENDIX H

United States Senate

WASHINGTON, D.C. 20510

June 5, 1978

Dear Colleague:

President Carter and General Omar Torrijos are preparing to exchange the instruments of ratification of the Panama Canal treaties next week, even though Panama has officially repudiated the key Senate changes in the treaties.

On April 25, the Panamanian foreign ministry issued a communique to the Panamanian people which repudiates six key Senate changes either outright or by interpretations diametrically opposed to the intentions of the United States Senate. The formal communique was specifically authorized by Torrijos and Panama's President, Demetrio B. Lakas.

The six amendments in question are the very ones accepted by the Administration in order to get enough votes to win two-thirds approval for the treaties. The amendments in question are the DeConcini Reservation, the Nunn Reservation, the Hollings-Heinz-Bellmon Reservation, the Brooke Reservation, the Cannon Reservation, and the Danforth Understanding.

I have written to President Carter, respectfully asking him to seek the withdrawal of the communique, with written assurances that Panama understands the Senate's intentions, before the instruments of ratification are exchanged.

Other alternatives would be a Panamanian plebiscite on the Senate text of the treaties, or a return of the treaties to the Senate for reconsideration with Panama's interpretations.

I am enclosing a copy of the speech which I made on the Senate floor today, which analyzes the legislative history of the Senate's intentions and quotes the relevant portions of the Panamanian communique. The full text of the communique appears at the end as an Appendix.

Sincerely,

Jesse Helms

JESSE HELMS:lks
Enclosure

PANAMA REPUDIATES SENATE CHANGES IN CANAL TREATIES

STATEMENT OF

U.S. SENATOR JESSE HELMS OF NORTH CAROLINA

ON THE SENATE FLOOR

JUNE 5, 1978

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STATEMENT OF U.S. SENATOR JESSE HELMS OF NORTH CAROLINA
ON THE SENATE FLOOR, JUNE 5, 1978

PANAMA REPUDIATES SENATE CHANGES IN CANAL TREATIES

MR. HELMS. Mr. President, President Carter and General Omar Torrijos are making plans to exchange the instruments of ratification of the Panama Canal treaties about ten days from now; yet Panama has put itself on public record as repudiating virtually all the substantive changes which the United States Senate voted to add to the treaty documents.

This repudiation took the form of a 25-page official communique issued by the Panamanian Foreign Ministry on April 25. It is a formal statement analyzing the various amendments, reservations, and understandings one by one. Although superficially addressed to the Panamanian people, it is evidently the declaration of Panama's stand on the treaties which Torrijos promised to President Carter in their exchange of letters on March 15.

Although virtually unpublicized in this country, the document was published in Spanish on April 26 in the Panamanian newspaper La Estrella De Panama. It was translated into English and published as a supplement to the Foreign Broadcast Information Service, published by the Department of Commerce, on May 1.

In the communique, Panama sharply criticizes five reservations and one understanding--the very Senate amendments which most observers have credited with winning over the additional five or six supporters which the treaties needed for approval. Panama's repudiation ranges from outright rejection to elaborate "interpretations" which are diametrically opposed to the Senate's intention in passing the amendments.

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Therefore, even if Panama "accepts" the amendments by signing the protocols of ratification, Panama has put the world on notice that she "accepts" them only according to her own interpretation--an interpretation that virtually empties the Senate changes of any significant content. The differences between the Senate's intent, as expressed in the treaty debates, and the Panamanian interpretation is so great that the potential for disputes, acrimony, and dissension will be vastly increased by ratification of the treaties. Once Panama assumes sovereignty over the Canal, the United States will either have to acquiesce in Panama's demands, or withdraw early. We will be mousetrapped.

Indeed, the communique itself speaks of further struggles, further negotiations to shorten the life of "the relationship" with the United States.

Ironically, the treaties could not have passed without the very Senate amendments which Panama now repudiates. Most of the Senate sponsors of these changes announced publicly that their support of the treaties was conditioned upon acceptance of the changes in question. Without the votes of the sponsors, there would have been five or six fewer votes for the treaties themsleves. And of course, it is a matter of record that each treaty passed with only one vote to spare.

The communique thus calls into question Panama's good faith in proposing to sign protocols of ratification when the parties are so far apart in their understanding of the obligations imposed. It places a special burden on President Carter to resolve the differences before any irrevocable steps are taken to ratify the

treaties. It is a settled point of international law that the exchange of instruments of ratification is a discretionary act on the part of the President. As is well understood, Senate approval of a resolution of ratification does not constitute ratification; the exchange of instruments constitutes ratification. Even after the Senate approves its resolution, the President still may withhold ratification if, in his judgment, circumstances warrant such a grave step.

President Carter, however, is reported to be taking an additional step, one without precedent: He is said to be planning to exchange the instruments of ratification with their effective date postponed until March 31, 1979. This action, too, is contrary to the Senate's intention in approving the reservation of the distinguished Senator from Massachusetts, Mr. Brooke. The President's proposed action is precipitous, and, as I will demonstrate in my discussion of the Brooke reservation, seems calculated to conform with Panama's interpretation, rather than with the Senate's intention.

The President's proposed action is unnecessary at this time, and deprives him of the leverage necessary to resolve the differences between the interpretation of Panama and the intention of the Senate. Nothing in the treaty or in international law requires a hasty exchange of ratifications. On the contrary, the President is supposed to judge the situation on present circumstances. Since the Senate action, the following events have occurred:

1. Immediately after the Senate approval of the Panama Canal Treaty, a coalition of the suppressed political groups in Panama stated publicly that, when they returned to power, they would reject the treaties approved by the Torrijos regime.

2. The dictator Torrijos, in well-publicized statements issued at the same time, announced that, if the Treaties had not been ratified, the National Guard was planning to sabotage the Canal installations. This confirmed information which had circulated in the Senate prior to treaty approval. It demonstrates conclusively that Torrijos was negotiating in bad faith; and it decisively increases the probability that Torrijos will resort to violence in the future to undermine or destroy the treaties.

3. The Foreign Ministry communique repudiates some of the basic conditions imposed by the Senate, and speaks of new negotiations and struggles after ratification to shorten the treaties' term. It repeats the threat of violence against the Canal if Panama's desires are not fulfilled.

These conditions point to a fundamental failure of the negotiating and ratification process. They leave the President with few prudent options. President Carter can send the Senate version of the treaties back to Panama and ask for a second plebiscite to ensure popular acceptance of the Senate changes. He can send the treaties back to the Senate for reconsideration with Panama's interpretations. Or he can withhold ratification until further negotiations produce a protocol of ratification which concretely rejects the disputed Panamanian interpretations. Mere formal acceptance of the Senate text is not enough as long as Panama

maintains the Foreign Ministry communique as its official interpretation of the treaties for the Panamanian people.

Although no option is without its disadvantages, the worst option would be to proceed with the proposed exchange of ratifications next week, as along as a fundamental disagreement exists in interpretation. If we accept Panama's signature under the circumstances, it means that we accept Panama's interpretation.

The communique itself outlines Panama's view of the legal status of the treaties at the present time:

> "We can assert that, regardless of the term used, what matters is if the condition, reservation, amendment or declaration made by one party to the other modifies or changes what has been agreed to by the plenipotentiaries. If that change has not been made, it is unquestionable that the treaty has not been ratified but, rather, that a counteroffer has been made by one party which the other is at liberty to reject, modify, or approve. Only if it approves the counteroffer is the consent or perfecting of the wish of both parties to obligate themselves realized."

Mr. President, a careful reading of the Panamanian Foreign Ministry communique demonstrates conclusively that Panama has not given consent to the changes imposed by the Senate. Rather, Panama regards the Senate changes as a "counteroffer" which Panama is at liberty to reject, modify, or approve." Now of course, Panama is absolutely correct; Panama is at liberty to reject, modify, or approve the Senate changes. The communique constitutes Panama's own counteroffer to the counteroffer. It becomes an integral part of Panama's understanding of the terms. The President must act to remove the fundamental disagreement, to send the treaties back to the Panamanian people for a plebiscite, or to send them back to the Senate for reconsideration. Only under such conditions,

to quote the Panamanian communique, "is the consent or perfecting of the wish of both parties to obligate themselves realized."

II. THE COMMUNIQUE'S REJECTION OF SIX CHANGES

The communique of the Panamanian Foreign Ministry is 25 pages long, and contains long passages which present an extraordinarily strident tone for a diplomatic instrument. Nevertheless it is an instrument which must stand as part of the official documentation of the treaties. In any interpretation of the treaties, or in any subsequent dispute over intention or meaning, the communique will stand as a pivotal document.

Mr. President, I ask unanimous consent that the communique of the Panamanian Foreign Ministry be printed in the Record at the conclusion of my remarks.

Mr. President, a careful reading of the document is required, because it attempts to be, on its face, an officially authorized statement by the government explaining its stand with regard to the Senate-authorized changes. But more importantly, it is an attempt to limit the scope of the Senate changes and their juridical effect through restrictive interpretations and outright rejection of some elements of the Treaty. The communique says:

> "With the completion of the Senate's proceedings in the United States, the Foreign Ministry, complying with orders from His Excellency President Demetrio B. Lakas and His Excellency Chief of Government Brig. Gen. Omar Torrijos Herrera, now undertakes to fulfill its duty of explaining to the citizenry the juridical scope of the resolutions of the Senate and setting forth its stand concerning the Senate's decision."

If Panama were in complete agreement with the actions of the Senate, there would be no need for "setting forth its stand."

The plain fact is that Panama is rejecting the Senate's significant changes precisely because they are significant. The key points rejected by Panama are as follows:

--The Nunn Reservation to the Neutrality Treaty, modifying Article V so as to permit negotiations for the stationing of U.S. troops in Panama after the year 2000; Panama says, "With total emphasis, the Foreign Ministry declares that Article V cited previously has not been changed."

--The DeConcini Reservation to the Neutrality Treaty authorizing U.S. troops unilaterally to enter Panama to put down a threat to the neutrality of the Canal. Although the subsubsequent leadership amendment to the Panama Canal Treaty merely restated long-standing U.S. policy on intervention, Panama says: "It is necessary to stress that the Senate's definition of U.S. policy in this reservation covers both treaties, which are mentioned specifically in the reservation, so that there would not be the slightest doubt that the DeConcini amendment added to the Neutrality Treaty would not continue in force."

--The Hollings-Heinz-Bellmon Reservation to the Panama Canal Treaty, providing that the U.S. is not obligated to pay any outstanding balance under the annual $10 million contingency payment (Article XIII, 4, c)when the Canal is turned over in the year 2000. Administration officials testified that the contingent payment would not be included in the estimated toll base, would never be earned, and never paid;

Panama states it to be her understanding that the contingent payment would be included in the toll base, would be paid in subsequent years if not earned in a particular year, and that "Paragraph 4 C is not symbolic or worthless; the two countries, in good faith, must give it practical content."

--The Brooke Reservation, providing that the instruments of ratification be exchanged effectively not earlier than March 31, 1979, and the treaties not enter into force prior to October 1, 1979, unless the implementing legislation is passed earlier; Panama says that October 1, 1979, instead of being the earliest possible date, is "the deadline for the treaties' entry into force."

--The Cannon Reservation that the Panama Canal Commission reimburse the U.S. Treasury for interest on investment and amortization of assets. Although all financial studies have shown that the Canal cannot generate enough revenue to make such payments, Panama says that "this reservation does not alter what was agreed upon. To the extent that the United States does not violate the principle of honoring the treaties in good faith, Panama cannot present claims to the United States.

--The Danforth Understanding that toll rates need not be set at levels to cover payment of the contingency payment. Panama threatens violence if the Danforth Understanding prevails: "To the extent that the Panamanian people are satisfied with the canal administration due to the products

they derive from it, they will continue protecting their canal. But if a stingy spirit prevails, aggravating the injustice suffered by Panama since 1903, then a circle of friendship will not have been built around the canal, but rather one of hatred, with possible grave consequences if a crisis occurs,which the national government would be the first to deplore."

Mr. President, the attitude of Panama on any one of these points would be enough to invalidate the agreement. I repeat that Panama has a right to reject the agreement if she so desires; but the President has no right to ratify on the basis of Panama's conditions without once more sending it back to the Senate. With Panama's understanding of the treaties now on the record, it is clear that these are not the treaties which the Senate approved. Either the Panamanian people must agree to the Senate version by plebiscite, or the U.S. Senate must agree to the version of the Panamanian Foreign Ministry.

As already pointed out, the communique is a carefully premeditated statement by Panama's legal experts, issued only after authorization by the President and the Head of State of Panama. These contradictions cannot be allowed to stand without resolution, or the future operation of the Canal and our continuing relationship with Panama will be placed in grave jeopardy. The issue is important enough to analyze each of the affected Senate amendments, the legislative history, and the context of Panama's objections.

A. THE NUNN RESERVATION TO THE NEUTRALITY TREATY

The Nunn Reservation was passed by the Senate on March 15, 1978, by a vote of 82-16, as an amendment to the resolution of ratification of the Neutrality Treaty. The substantive portion reads as follows:

> "Nothing in this Treaty shall preclude Panama and the United States from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate their performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or maintenance of defense sites after that date in the Republic of Panama that Panama and the United States may deem necessary or appropriate."

The Nunn Reservation was deemed necessary because of Article V of the Neutrality Treaty, which reads as follows:

"ARTICLE V

> "After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory."

On its face, Article V prohibits the stationing of any military forces not maintained by Panama; obviously that would include U.S. military forces as well. Although the Neutrality Treaty is of permanent duration, i.e., in perpetuity, the Treaty would have to be re-negotiated and re-ratified to enable the United States to maintain military forces in Panama, even if the Panamanian government so desired. The Nunn Reservation would avoid that uncertain and unsettling process, allowing a mere government-to-government agreement. As such, it was a considerable softening of the iron-clad language of Article V.

1. THE INTENT OF THE NUNN RESERVATION

The Nunn Reservation was regarded as a significant change, both by its sponsors and by the treaty floor managers. On March 14, Senator Nunn said:

> "I have sought to strengthen the treaties through amendment. As I stated last November, I could not support the treaties as originally submitted to the Senate last November. The Treaties' vague and equivocal language concerning U.S. defense rights beyond the year 1999 and the priority passage of U.S. vessels in times of emergency would have laid the foundation for conflicting interpretations....
>
> "Accordingly, I join many of my colleagues in cosponsoring the amendments of Senators Byrd and Baker....
>
> "I am also dissatisfied with article V of the Neutrality Treaty, which prohibits the United States from retaining any military installations in Panama beyond the year 1999. In my view, a small but select U.S. military presence in Panama beyond 1999 would be highly desirable for both of our nations and for all who use the canal....
>
> "Accordingly, I have sponsored a change in the treaties specifying that the United States and Panama in the future, could, by mutual consent begin negotiations for an extension of a U.S. military presence in the Canal Zone beyond the year 1999. I have been assured by both the leadership of the Senate and the executive branch that this significant change is now acceptable...."

On March 15, the distinguished assistant treaty manager, Mr. Sarbanes, responded in kind:

> "The reservation he has offered does provide the opportunity that would be to some extent closed under the existing language of the treaty because then to accomplish this objective you would have to have actual amendments to this treaty or a new treaty; whereas, the reservation which the Senator from Georgia has offered would make it possible to act by mutual agreement other than a treaty arrangement."

On the basis that it was a significant change, many Senators voted to approve the treaty.

Indeed, the Nunn Reservation was co-sponsored by many Senators who had expressed doubts about the Treaty, as well as by some who strongly favored the Treaty. The sponsors with Senator Nunn were Senators Bellmon, DeConcini, Brooke, Talmadge, Heinz, Randolph, Chiles, Jackson, Zorinsky, and Bayh. Senator Nunn said:

> "I think the American people are clearly concerned over the total U.S. military pullout mandated by the Neutrality Treaty. I believe that the vast majority of Americans who are aware of this treaty and have studied this treaty want changes which would grant both the United States and Panama greater flexibility on this issue.... So to me, Mr. President, this is a very important improvement.
>
> * * *
>
> "I certainly think this amendment is in the best interests of the relationship between the United States and Panama, and it eliminates a part of my problem with the treaty."

Similarly, the distinguished Senior Senator from Georgia, Mr. Talmadge, said:

> "I think the Senator has made a great improvement in this treaty. I commend him for offering this amendment. think that it is a definite improvement over the Panama Canal Treaty, because I share with my colleague the view that before the year 2000, if the working relationship between the U.S. Government and the Panamanian Government is such as we hope and expect, they may desire to have a future military presence on the part of the U.S. Government in the Canal Zone...."

Senator Heinz, after reading a portion of an amendment he had intended to offer himself, said:

> "The language I just read the Senator comes from my own reservation I had intended to propose. I think the Senator's reservation accomplishes precisely the same goal and, as the Senator well knows, I support his reservation."

Clearly the Senate was not just going through an exercise; the Senate thought it was doing something important.

2. NECESSITY FOR PANAMA TO ACCEPT THE NUNN RESERVATION

In the light of Panama's rejection of the proposition that Article V was modified by the Nunn Reservation, it is important to note in the legislative history that the Senate held extensive debate concluding that the Treaty could not be ratified unless Panama accepted the Nunn Reservation. Both opponents and proponents of the treaties were in complete agreement on this point: The instruments and ratification cannot be exchanged unless Panama agrees to the Nunn Reservation--and of course, by implication, with any and all reservations. The exchange began with Senator Dole on March 15:

> "Mr. DOLE. I guess the question is, what if the Senate approves the ratification and Panama rejects? What if the Senate wants to establish this treaty and the Panamanian people refuse to conclude a protocol and the change called for in this reservation, would the ratification of the treaty thereby be vitiated?
>
> "Mr. NUNN. The Senator from Georgia stated very clearly that legally, as the reservation itself expressed, unless Panama agreed to this reservation the instruments of ratification of the treaty would not be exchanged. This reservation also specified that it has to be done by the conclusion of a protocol of exchange to be signed by the authorized representatives of both governments. So, the Senator from Georgia understands that unless the reservation is accepted by the Government of Panama, there will be no treaty. ...If the floor manager has any different interpretation, I certainly think he should make it known now because that is my understanding.
>
> * * *
>
> "Mr. SARBANES. No; I do not differ with the response which the able Senator from Georgia has given....The language of the reservation makes it clear that this is a condition precedent to the exchange of the instruments of ratification, and therefore is a prior condition that has to be met before you can proceed to the conclusion of the treaty arrangement between the two nations.

"The reservation, incidentally, as was indicated in yesterday's debate, does have binding effect and therefore it is a matter of consequence.

* * *

"Mr. DOLE. Will the protocol come back to the Senate for debate and approval? How is that handled?

"Mr. SARBANES. No, the protocol of exchange would not come back to the Senate. But the condition we have attached is that the instruments of ratification shall not be exchanged except upon the conclusion of such a protocol of exchange which shall, include among other things, the reservation offered here by the Senator from Georgia."

Mr. President, as the distinguished Senator from Maryland pointed out, the Senate does not have another chance to act upon the protocol of exchange, a situation that makes the present situation extremely delicate. What is the Senate to do if the President of the United States ignores the objections and conditions officially raised by Panama, yet he goes ahead with the protocol of exchange anyway? The language of the Protocol might contain a superficial acceptance of the Nunn Reservation or any other of the reservations; yet Panama has already put forward her understanding of those reservations an understanding which differs remarkably from what the Senate agreed to. Because the Senate will not have a chance to examine the protocol of exchange, the President is morally bound to send the treaties themselves back to the Senate for further debate. If there is no true agreement, then the protocol of ratification should not be signed, as pointed out by the distinguished Senator from Massachusetts, Mr. Kennedy , who began

the following exchange:

"Mr. KENNEDY. If I could have the attention of both the Senator from Georgia and the Senator from Maryland, is it my understanding that, if Panama does not accept this reservation, the treaty itself will fail?

"Mr. NUNN. As I understand it, the execution of this protocol of exchange which would contain this reservation is a condition precedent to the effectiveness of the treaty.

"Mr.KENNEDY. And that is the understanding of the Senator from Maryland as well?

"Mr. SARBANES. Yes.
Will the Senator yield?

"Mr. NUNN. I am glad to yield.

"Mr. SARBANES. I am now quoting from Charles G. Fenwick, International Law:

"'Since the signature of a treaty represents a meeting of minds of the several parties upon specific provisions involving reciprocal obligations, any changes or amendments inserted by one party as a condition of ratification must be accepted by the other party if the treaty is to come into legal effect.'

"I ought to point out that ever since 1922, the technique which the Senate has used to alter the legal effect of provisions contained in a treaty, in exercising its advise-and-consent function, or the primary technique, has been through amendments to the articles of ratification as reflected in reservations. Those, of course, then have to be agreed to, or accepted by the other party to the treaty if, in fact, there is to be a treaty."

Mr. President, this colloquy can leave no doubt in any person's mind that there must be a true meeting of minds, if a treaty is to have binding effect. I cannot believe that a single one of my distinguished colleagues would disagree with that point, no matter what their position on the treaties themselves. If Panama officially rejects the Senate's interpre-

tation of the treaties, and then signs the Protocol of Exchange with the United States, then it means by implication that the United States accepts the Panamanian interpretation, and we are bound thereby.

3. PANAMA'S REJECTION OF THE NUNN RESERVATION

If the Nunn Reservation does not change the scope of Article V, then no reservation can be said to have any effect upon any treaty. The whole nature of a reservation is to make a substantive change. The fact that a reservation is an amendment to the resolution of ratification and is to be incorporated into the protocol of exchange, rather than into the Article V itself does not change its practical effect. Therefore, the judgment of the Foreign Ministry's communique on the Nunn Reservation can be considered as nothing other than a rejection of the effect of the reservation:

"With total emphasis, the Foreign Ministry declares that Article V cited previously has not been changed."

The communique goes on to add the following cryptic note:

"All states have the power to negotiate without limitations except those imposed by the UN Charter."

But negotiation is not the issue in the Nunn Reservation; the issue is whether Article V permits agreements for U.S. troops to remain in Panama after 1999 without negotiation of new treaties. If Article V does not permit such non-treaty agreements, then we could face a serious confrontation on an issue which is of prime importance to the Senate, an issue which indeed could have defeated the treaties. If Panama does not accept the Nunn Reservation as a substantive change in Article V, there should be no

treaty.

Panama's reaction is particularly disturbing because it runs contrary to the information given to the Senate as to Panama's attitude. The Senate had been led to believe that the Nunn Reservation was consistent with the negotiations and our understanding of Panama's attitude. Even the Senate leadership was under that impression, as was evident in the following exchange on March 15:

> "Mr. KENNEDY. May I ask the Senator, again the floor manager, whether there has been any indication from the Panamanian Government as to the acceptability of this particular reservation?
>
> "Mr. SARBANES. I would have to say to the Senator in response to that question that we have no definitive indication.
>
> "Mr. KENNEDY. But it is the Senator's position that this reservation is completely consistent with the other provisions of the treaty and with the understandings and negotiations which have taken place between the United States and Panama?
>
> "Mr. SARBANES. I respond to that in the affirmative...."
>
> * * *
>
> "Mr. KENNEDY. In the amendment of the Senator from Georgia, it is very clear that the purpose is to maintain the regime of neutrality established in the treaties. Those words have great weight in terms of establishing both the purpose and tone of this reservation.
>
> "As I understand from the debate yesterday and from the statements today, that is the purpose of this reservation. Without this particular reservation, without other treaty arrangements--even with the agreement of the Panamanian Government and the Untied States--this treaty would preclude the opportunity for joint agreement to U.S. military presence for the purpose of maintaining the neutrality of the canal. This is really the purpose and the focus of this reservation.
>
> "Do I understand the Senator from Georgia correctly?
>
> "Mr. NUNN. The Senator from Massachusetts is correct."

The Nunn Reservation imposes no additional burden upon Panama. However, it significantly alters the effect of Article V to permit an exception to Article V in the future, if both parties agree. For the Panamanian government now to declare "with total emphasis" that Article V "has not been changed" is to make a mockery of the Senate's proceedings. Indeed, it is more than that; it is a repudiation of the reservation itself.

B. THE DeCONCINI RESERVATION TO THE NEUTRALITY TREATY

Mr. President, the DeConcini Reservation No. 83 was passed by the Senate on March 16 by a vote of 86 to 13, as an amendment to the resolution of ratification of the Neutrality Treaty. The substantive portion of it was as follows:

> "Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the Canal or restore the operations of the Canal, as the case may be."

Although this Reservation is entirely consistent with the purposes of the Neutrality Treaty and the responsibilities of the United States under that Treaty, the Amendment made explicit a point that was before only implicit. Panama chose to take offense at the Senate's action and the Senate's debate, and the partisans of Panama felt it necessary to sponsor a so-called "leadership amendment" to the Panama Canal Treaty restating United States policy.

The Senate passed the "leadership amendment" to the Panama

Canal Treaty on April 18, by a vote of 73 to 27. Cosponsored by the distinguished Majority Leader, Mr. Byrd, the distinguished Minority Leader, Mr. Baker, and by Senators DeConcini, Church, Sarbanes, Sparkman, Javits, Leahy, and Gravel, the substantive portion read as follows:

> "Pursuant to its adherence to the principle of non-intervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of this Treaty and of the Neutrality Treaty and the resolutions of advise and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity."

There is, on the surface, no conflict between the language of the two reservations. Both are limited solely to actions designed to open the Canal or to keep it open, pursuant to the regime of neutrality which both nations are pledged to maintain. The scope of the DeConcini resolution is limited to actions taken "to reopen the Canal or restore the operations of the Canal." Although the DeConcini reservation authorizes the United States to "take such steps as it deems necessary," the authority thereby granted is not unlimited, but rather is strictly constrained by the stated purpose, namely, "to reopen the Canal or restore the operations of the Canal."

Indeed, if anything, the leadership amendment to the second treaty goes beyond anything the DeConcini reservation threatened, for it goes beyond the question of keeping the canal "open" and adds three new substantive grounds for action, namely, keeping

the Canal "neutral," "secure," and "accessible." It is thus far more wide-ranging in offering motives for action, gives a far broader range for interpretation of any given set of circstances affecting the Canal's operations, and offers a blank check for anything the United States may wish to do. For if the logic of the leadership amendment is examined closely, its plain meaning is that both parties have agreed in advance that any United States action, including intervention in Panama's internal affairs, shall not be interpreted as "intervention" so long as such intervention has as its purpose keeping the Canal open, neutral, secure and accessible.

Thus the leadership amendment to the second treaty in no way cancels or amends the original DeConcini reservation. Although it appears to offer a legal fiction to redefine intervention as "non-intervention," it does nothing to make the DeConcini reservation inoperative in any way. And,especially, it leaves intact something in the DeConcini reservation that is of the utmost importance to the legal status of any action, including military action, that the United States may wish to take in the future for the purpose of keeping the Canal open.

It leaves intact the DeConcini reservation's use of the word "independently." The DeConcini reservation says that the United States and Panama "shall each independently take such steps as it deems necessary." On this key word hinges the right of the United States to take unilateral action to fulfill our responsibilities under the treaties. Without that word, our security rights with regard to the Canal are worthless.

Without that word, the withholding of consent by Panama is sufficient to make any action we take illegal.

The Administration constantly maintained that the right of independent action was implicit in the treaties. When doubts arose, the Administration maintained that the right of independent action was implicit in the so-called "leadership amendments" to the first treaty. When the argument of implicitness was still not enough to secure the last two or three votes needed for approval, the Administration permitted the distinguished Senator from Arizona to use the word "independently" in his reservation, thus making explicit at last the central issue in the defense arrangements.

It is therefore vital that Panama accept the DeConcini reservation for there to be a meaningful agreement on central treaty issues. But Panama insists that the DeConcini reservation is somehow cancelled by the reservation made to the second treaty. The Panamanian Foreign Ministry communique states flatly:

> "It is necessary to stress that the Senate's definition of U.S. policy in this reservation covers both treaties, which are mentioned specifically in the reservation, so that there would not be the slightest doubt that the DeConcini amendment added to the Neutrality Treaty would not continue in force."

If the President of the United States does not uphold the full force and effect of the DeConcini reservation for "independent" United States action to maintain the neutrality of the Canal, then he will be breaking the very commitment upon which the treaty structures were approved by the Senate.

1. THE NEED FOR A UNILATERAL RIGHT TO DEFEND THE CANAL

The central issue with regard to United States defense rights in the Panama Canal treaties is the question of the unilateral right to defend the Canal. From the very beginning, the negotiators were faced with a basic contradiction: The key issue for Panama was the reversion of the sovereign rights exercised by the United States; the key issue for the United States was the right to defend the Canal unilaterally.

The difference in size, stability, and military power between the two nations was the practical problem that made solutions difficult. Even Panama had to admit that she did not have the capability to defend the Canal, nor could Panama be given the capability. Yet the unilateral right to exercise military force is the most fundamental of sovereign rights. Despite the fine structures of international law and multilateral treaties, no nation is truly independent, that is truly free from conquest, unless it has the power to defend itself without recourse to another, or has an unshakeable ally to protect its independence. But what happens if the only feasible ally is the very nation that nationalistic pressures claim to be the oppressor?

International law holds that each nation has the right to make decisions over all internal affairs without outside interference, and that no other nation has a right to violate its territorial integrity. This is summed up in the doctrine of sovereignty, that is,the exercise of supreme power or dominion over a defined territory.

Although the doctrine of sovereignty had its origins in the theory of the medieval monarchy, which considered all power to rest in the person of a living sovereign, the concept of the sovereignty of nations did not develop until the late eighteenth century began to transfer the actual power from the living monarch to representational government, with power theoretically flowing from "the people." The doctrine of sovereignty held that it was immoral and "unlawful" to interfere with the will of the people.

However, the theory of inviolate sovereignty was first applied to nations with republican and/or democratic structures. The extension of inviolate sovereignty to despotisms of various sorts, or to situations of anarchy,was honored more in the breach than in the observance. Even today, the notion that the sovereignty of despotic countries may not be violated has not really been accepted by the mass of the American people. Despite the sophistication of opinion makers and establishment leaders, who would like to pretend that all nations should be treated as equals, many, if not most Americans doubt the wisdom of scrupulous observance of the dictates of sovereignty when it comes to communist regimes or "tin horn dictators" whose power is based on force. They reason that if sovereignty is based upon the will of the people, how can we respect the sovereignty of nations where the will of the people has been suppressed?

The United States negotiators chose, for political reasons, to sidestep the issue of sovereignty in the Canal Zone. Apparently, they made a decision that it would be easier to begin negotiating from the premise that the United States did not hold sovereignty

in the Canal Zone. By denying that the United States had ever held sovereignty, the negotiators apparently thought that it would be easier to sell the finished treaties to the American people, and easier to come to practical terms with the Panamanians.

The negotiators failed on both counts. The prestigious poll taken by Opinion Research Corporation, of Princeton, New Jersey, showed that half-way through the treaty debates, 72% of the American people still opposed giving up ownership and control of the Panama Canal. Even other polls, which purported to show a shift of opinion, admitted that any such shift turned on the issue of adequate defense. When the question of adequate defense was put to the people by Opinion Research, it was found that acceptance of adequate defense turned upon whether the United States would have the unilateral right to defend the Canal.

As for coming to terms with the Panamanians, the negotiators never solved the central problem of unilateral defense. The original drafts signed by the President were deemed to be unacceptable by the Senate leadership because of the ambiguities of our defense rights. Not even a clarifying statement issued jointly by the President of the United States and the Panamanian dictator was deemed sufficient; the leadership insisted that the statement be incorporated into the treaties as amendments if two-thirds of the Senators were to be won over to support. As a desperate move to secure the final two or three votes needed, the Senate leadership agreed to the DeConcini reservation, giving both nations the right to act "independently."

But apparently, this is precisely what the Panamanians still

refuse to accept as part of the treaty instruments. If President Carter accepts the Panamanian understanding that the DeConcini reservation does not continue in force, by his act of signing the protocol of exchange, then he will have made a major concession that was not in the mind of the Senate.

What the negotiators have done by sidestepping the issue of sovereignty is to continue the fatal ambiguity of the 1903 Treaty. For many experts far more competent in the field of international law than I have concluded that the 1903 Treaty conveys the substance of sovereignty, the attributes of sovereignty, indeed, the total exercise of sovereignty. By the same treaty, Panama surrendered the same substance, the same attributes, the same exercise of sovereignty. It is a reasonable conclusion of law that sovereignty was conveyed; but the treaty is unique in that it is silent on the crucial point.

During our years of construction and operation, the United States possessed a position of strength. If sovereignty is the exercise of supreme power in a defined territory, then the United States exercised full sovereignty. Panama complained, but she had no position either in law or in power to complain. The United States never once acknowledged that Panama possessed sovereignty concurrently with the United States; even the notion of residual sovereignty meant only the claim of Panama to reassume sovereignty if we ever gave it up.

Despite Panama's complaints, the creation of the Canal Zone set up the only practical solution to the exercise of military power by the United States without being subordinated to Panama.

So long as Panama did not exercise sovereignty within the Canal Zone, Panama could not object in law to any action that the United States took in defense of the Zone. It set up a defined territory where the United States had freedom of action.

In the beginning, when Panama was first independent, the United States undertook to be guarantor of Panama's independence. Indeed, this was a condition demanded by Panama; it was not popular in the United States. The United States had further extra-territorial rights outside of the Canal Zone, rights (such as sanitation) that in fact conferred great benefits on Panama. As the doctrine of non-intervention grew, however, the United States, in deference to Panama's wishes, receded from any extraterritorial rights. We agreed that we had no right to act within Panama's territory without Panama's permission. In practice, however, the Canal Zone was treated by both countries as United States territory.

Thus in 1947, the United States and Panama had negotiated a defense treaty that allowed the United States to keep a number of World War II military bases outside of the Canal Zone and within Panamanian territory. When the treaty was put to the National Assembly for ratification, organized mobs, provoked according to the U.S. State Department by Communist agents, filled the galleries and surrounded the building, threatening death to any deputy who voted to ratify. The agreement was defeated.

However, even though the United States felt that Panama had reneged on a defense commitment in the 1936 Treaty, and

even though the United States felt that the rejection was made by duress and did not represent the will of the Panamanian nation, all United States troops then in the territory of Panama were withdrawn in a matter of hours. They were withdrawn precisely because of the respect of the United States for the sovereignty of Panama.

The logic of sovereignty is inescapable. A nation has the right to determine its internal and external affairs without outside interference. The movement of foreign troops within its territory is an internal affair, even when regulated by treaty. The interpretation of treaties, particularly as the treaties affect its own territory, is also an internal affair. Because of the inviolability of sovereignty under international law, no outside nation can assert its foreign interpretation of such treaties in contravention of the sovereign's interpretation.

Thus, even if we believe that Panama has violated the Panama Canal treaties, even if we believe that Panama has violated the regime of neutrality, we have no right to use military force to remove what we interpret to be a violation. Once we surrender the exercise of sovereign rights, we must act only in concert with the new sovereign, or we face check-mate. Our only legal alternative is mediation, conciliation, arbitration; but Panama is not obliged to accept the results of any of those processes.

So long as the United States exercises sovereign powers in the Canal Zone, Panama has no legal right to object to our actions in that territory. Conversely, once Panama exercises sovereign powers in that territory, we have no legal right to object. The logical box is air-tight.

That is why it was important, in my judgment, for the United States to maintain that the 1903 Treaty was a cession of sovereignty en bloc, as well as a transfer of territory. Without the successful assertion of such rights, we would have no grounds for the successful operation and defense of the Canal.

Similarly, once the negotiators began with the premise that sovereignty was to be conceded to Panama, the United States shifted to a position of weakness. The best that could be hoped for was an explicit concession by Panama to the United States of the unilateral right to defend the Canal. This, in itself, would be a dubious base for defense, because it would be a concurrent assertion of sovereignty by two different nations over the same territory. It involves a fundamental contradiction, even if the primary sovereign accedes to such a concession by treaty. The primary sovereign would still have a right to renounce the treaty, or to contest an action under the treaty. The only advantage to the United States is one of pragmatism: the United States could act first in an emergency, and then sort out the legal consequences later.

Such a concession must be explicit, rather than implicit. If it is merely implicit, there is no agreement in law. Anglo-Saxon legal traditions are inclined to supply meaning to the law to make it work, if explicit sanction is missing; but Latin American legal traditions, based on code law, presume exactly the opposite rule of interpretation. If agreements are not spelled out exactly, the courts cannot supply a solution, no matter how logical in the implications of the language. When different cultural traditions govern the same negotiators, a collision is inevitable.

The method the negotiators chose was to carefully avoid making any explicit recognition of a unilateral right of defense. The rights of both nations were stated in parallel form, as though both would always operate concurrently and cooperatively. The treaties simply omitted considerations governing the operation of these rights if it should happen that they would be exercised in opposition to each other. The negotiators apparently hoped that such disagreements would never arise; or perhaps they simply allowed for the legal effect of the doctrine of sovereignty, namely, that the will of Panama would supersede the rights of the United States.

The proponents of the treaties constantly interpreted the parallel rights language of the treaties as a unilateral right; but they assiduously opposed any attempt to have unilateral rights written into the text. The desperate acceptance of "independently" in the DeConcini reservation, however, smoked out Panamanian discontent over any legal commitment to United States unilateral rights.

2. LEGISLATIVE HISTORY OF UNILATERAL DEFENSE RIGHTS

The struggle over the question of unilateral United States defense rights for the Canal began in 1975. Up until that time, the Department of Defense had insisted upon the retention of a Canal Zone under the new treaty that would leave the United States with a defined territory of jurisdiction, if not sovereignty, similar to other overseas bases. The State Department negotiators insisted, however, that Panama would never accept such a concept. Instead, the State Department began negotiating with the Department of Defense and the National Security Council, developing the notion of "combined defense" of the Canal, in which United States and Panamanian forces would work cooperatively in all aspects of defense, with the Zone itself being dismantled into operational units.

The then Deputy Secretary of Defense, Mr. William P. Clements Jr., was delegated to go to Panama to discuss this with Torrijos. Mr. Clements testified before the Armed Services Committee on February 1, 1978, as follows:

> "In September of 1975, General Brown and I went to Panama and spent 2 days there and met with General Torrijos and his staff. Assistant Secretary of State Rogers went with us and we had a thorough, ongoing discussion while we were there, as you can imagine. We were joinged by the President of Panama, President Lakas, and also by the U.S. Ambassador to Panama, Mr. Bill Jordan.
>
> "This was a fruitful trip in the spirit that we impressed upon Mr. Torrijos that the singlemost thing in any treaty negotiation had to be the security of the canal and as it affected our national security and our strategy on a worldwide basis.

"General Torrijos understood this; he agreed that the security aspects of this had to be clear, and that the rest of the treaty could be accommodated to this basic building block.

* * *

"Subsequently, a security clause acceptable to the Pentagon was evolved. The Department of Defense attorneys helped significantly in this. Ben Forman was the drafter of that particular clause. It was processed through the Interagency Group, including the State Department and the NSC staff at the White House, and that particular clause was included in the then existing draft of the treaty.

"I would like to insert in the record that particular clause that was included, and I will read it to the committee:

"'In the event of any threat to the neutrality of the Canal, the Parties shall consult concerning joint and individual efforts to secure respect for the Canal's neutrality and security through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each Party shall take such other diplomatic, economic or military measures as it deems necessary in accordance with its constitutional processes.'"

Mr. President, the first sentence in the Clements clause is merely a face-saving device; the real operative part is the last sentence. It is both prospective and retrospective; that is, it covers either threats which have occurred or which could occur. It is not limited to peaceful methods of conciliation, which obviously would be too time-consuming in a crisis. If such methods "would be inadequate" then each Party can take such steps--and the operative phrase is "military measures"--"as it deems necessary."

Thus without using the word "unilateral" the clause would have given unilateral rights. In the questioning which followed, I asked Mr. Clements the following:

"Mr. HELMS. Does that clause...give the United States

the unilateral right to intervene in Panama to protect the Canal?

"Mr. CLEMENTS. Yes,sir, I was told by the legal counsel of the State Department and by our counsel in the Department of Defense, that this clause, 'it deems necessary,' it, referring to the United States, gave us all the rights that we needed. That gives us that unilateral right.

"Mr. HELMS. Now, General Torrijos was in agreement with this at that time; is that correct?

"Mr. CLEMENTS. Yes, sir, he was."

Nevertheless, when the treaties were finally unveiled by President Carter last September, the Clements language, with the right of unilateral action, was missing. In its place was a vague,general statement, based upon the parallel rights theory. Article IV of the Neutrality Treaty read as follows:

"ARTICLE IV

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

The general consternation created by this weak statement was so great, even among treaty proponents, that President Carter and General Torrijos, when they met in Washington on October 14, 1977, were forced to issue a joint statement to clarify, or perhaps amplify, Article IV. However, the statement was not a signed agreement. Suspicions about the efficacy of the statement--apart from its content--led to a demand that the statement be made a part of the treaty. This suspicions were heightened when the State Department steadfastly rejected every suggestion that the statement be included in the treaty.

Nevertheless, concern over United States defense rights remained so high that the Foreign Relations Committee, despite an almost solid front of Treaty support, voted to put the language in the Treaty. But Panamanian sensitivities were already high on the defense issue, already indicating that there was no meeting of minds on the most crucial issue. The Committee voted to include the language as a new title, a move which raised an uproar from Panama. The new title gave entirely too much prominence to the United States defense rights; the Committee thereupon reversed itself and broke the statement in two parts, attaching them as "interpretations" to Articles IV and VI. The Committee report tells the story:

> "The Committee had originally voted to include the Joint Statement in a single amendment which would have added as a new article IX to the treaty. Upon being advised by the State Department--contrary to previous advise--that this placement could require a new Panamanian plebiscite, the Committee voted to reconsider the proposed article IX and voted instead to recommend the addition of that same material in two parts, to articles IV and VI. This did not represent a 'flip-flop'...The difference is purely one of cosmetics. If a negligible change in form, with no change whatsoever in substance, could obviate the need for a new plebiscite--an eventuality which could complicate vastly the ratification process--then the Committee concluded that it could happily oblige."

The Committee did not explain why no new plebiscite would be needed in Panama as a result of the change; it merely stated that "the Committee is informed by the Department of State that the Government of the Republic of Panama has concluded that no new plebiscite will be required for the approval of the two amendments." Although neither the Joint Statement nor the two amendments appeared on the ballots used in the plebiscite, the

Joint Statement did appear in the newspapers, and was read by General Torrijos to the people of Panama on live television three days before the plebiscite. "It thus is clear that the Panamanian people were fully apprised of the Joint Statement prior to the plebiscite, and were accorded a full opportunity to consider its provisions before approving the treaties."

That position, of course, is a non-sequitur. The Panamanian people might very well have considered the Joint Statement as just so much rhetoric, and not legally binding. They might have been able to accept the Joint Statement as meaningless grist for the political mill in the United States, so long as it did not appear as an integral part of the treaty. Indeed, it is a fair conclusion that the Government of Panama also feared another plebiscite on the Joint Statement, because of its sensitivity to the unilateral defense rights question. That fact that the Government of Panama would take the unprecedented step of requesting the Foreign Relations Committee to submit a lower profile for the amendments indicates how anxious Panama was to avoid testing the feelings of the Panamanian people on this issue.

When the amendment is read carefully, however, it does not explicitly spell out unilateral defense rights; it merely elaborates on the parallel rights concept, making no provisions for resolution of a conflict between the rights of the two parties. Moreover, it goes beyond the exposition of parallel rights to deny, explicitly, interference in the internal affairs of Panama. Since everying within Panama's territory is an internal affair, including disputed treaty interpretations, the rights of Panama

are thus made paramount. That is a correct interpretation of international law; but it does not give the United States the unilateral rights of defense that, from a practical point, is absolutely necessary for the security of the Canal.

The substantive part of the amendment reads as follows:

> "Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against peaceful transit of vessels through the Canal.
>
> "This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

The language of the amendment says that each party had the right to defend the Canal against "any threat." But if the United States perceives the threat to be the Government of Panama, then the amendment means that the United States has the right to use force against Panama, which reduces the treaty to absurdity. Astonishingly, the Committee Report boldly asserts that the United States has such a right, in language more provocative than anything later spoken on the Senate Floor. The Report says:

> "It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its own constitutional processes. What steps are necessary

> to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate."

This statement is sheer nonsense, because any treaty is subject to the rule of sovereignty. Unless there is a total cession of sovereignty to another nation, every concession of a treaty is subject to the continuing will of the sovereign nation, and that nation's interpretation of the treaty. The Committee argues that

> "the prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal--it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end in itself; and it would not be carried out for the purpose of taking Panamanian territory. The concepts of the territorial integrity and political independence of Panama are, in short, an integral part of the treaty...."

The Committee's rationalizations simply set forth the Committee's interpretation of hypothetical actions; but under the doctrine of sovereignty, it is Panama's interpretations that would be controlling. Panama need not, indeed, could not, accept the interpretation of the United States regarding military actions on Panamanian territory, particularly if those actions interfered, even temporarily, with the acts of the Panamanian government. The poverty of the Committee's argument is demonstrated by the assertion that the concepts of the territorial integrity and political independence of Panama are an integral part of the treaty, yet

on the very same page, the Committee sweeps away its own statement by saying:

> "Finally, even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against 'any...threat directed against the Canal", there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must be construed as controlling."

In one breath the Committee asserts that Panama's integrity is an integral part of the Treaty, yet in the next breath Panama's integrity cannot prevail against United States intervention. At the very beginning of the Canal debate, the Committee thus attempted to assert a right of armed intervention far more absolute than any statement made on the floor; it is all the more shocking because the assertion is not in the least supported by a fair reading of the text, or by basic principles of equity and international law.

When the debate on this amendment, Amendment No. 20, began, the distinguished Majority Leader, Mr. Byrd, was far more temperate in his assertions, and far less absolute. Yet he once more interpreted the contradictions of the Joint Statement as guaranteeing to the United States "unilateral" defense rights. He stated on March 9:

> "It is also clear from this amendment that the United States has the right to act on its own, if need be, to protect the Canal. This amendment states that each country shall, in accordance with its constitutional processes, defend the Canal, and shall have the right to act against any aggression or threat.
>
> "This language is definitive; it is specific; it is clear. It does not state and it does not imply that the two countries must consult, or that they must act in concert, or that one country has veto power over the

actions of the other.

> "It is to be hoped and anticipated that the two countries will, indeed, act on a cooperative basis, with consultation and concerted action. I believe that the approval of these treaties will increase the likelihood of cooperation between the United States and Panama. So while cooperation is possible and desirable, this amendment does not preclude unilateral action."

The statement of the distinguished Minority Leader, Mr. Baker, also seized on the amendment as a guarantee of unilateral rights for the United States:

> "The treaty must be amended to provide the guarantee that the United States may , by the words of the treaty, unilaterally act to insure that the Panama Canal remains both secure and open. By this amendment to the treaty... it becomes the explicit position of the United States and Panama that the United States may act to meet any threat to the regime of neutrality whether it originates from without or within Panama. It should be clearly understood that a Panamanian decision to deny use of the Canal to any nation constitutes as much a threat to the regime of neutrality as would an invasion of Cuban troops.
>
> "By this amendment we admittedly are guarding against the worst scenario we could envision--one in which we would be forced to take action to keep the canal secure and open in the face of an action or even a failure to act by the Government of Panama."

In an attempt to make explicit the very concerns raised by the distinguished Majority and Minority leaders, I offered as a substitute to their amendment the language developed by former Deputy Secretary Clements, language agreed to by Torrijos, but which explicitly gave each nation power to act as it saw fit. Only by some such language as Mr. Clements devised, could the Treaty make clear that the United States had a unilateral right of defense.

The purpose of offering the Clements language as a substitute was to draw the issue clearly between what rights we would have by law under the treaty, and what rights we would have by our interpretation only. The Report of the Committee on Foreign Relations, and the speeches of the distinguished Majority and Minority leaders all emphasized that the United States would have the right of unilateral action. Yet the text itself did not specify that each nation could take the steps which it deemed necessary. The silence of both the leadership amendments and the treaty itself on the right of unilateral action leaves our rights to be governed only by the context, namely, the context of Panama's sovereignty.

The fundamental problem is that the United States apparently wants to appear to be giving back all sovereign rights to Panama, but, at the same time, keep some of the rights of sovereignty by subterfuge. The use of force within a specified territory is an exercise of sovereignty. Such force can only be used with the consent of the sovereign. If that consent is not expressed specifically in a treaty or other agreement, then the consent cannot be presumed. The fact that a treaty permits the United States to take some defense actions within the territory of another sovereign does not permit us to take any action, particularly when the treaty contains clauses preserving the ultimate sovereign rights of the nation. Such an interpretation would be contrary to international law and to other international agreements that we have signed.

In particular, as I pointed out in defense of my proposed substitute, such an interpretation would be contrary to the UN Charter, to the Rio Pact, and to the Charter of the Organization of American States. Insofar as we recognize the sovereign equality of all nations we must bow to the treaty interpretations of other nations when the use of force within their territory is involved. The UN Charter is very specific:

"Article 2

"The Organization and its Memebers...shall act in accordance with the following principles.

"1. The Organization is based on the principle of the sovereign equality of all its Members.

* * *

"3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security...are not endangered.

"4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

In the Senate debate on March 10, I pointed out that the phraseology of Article 2, Paragraph 4 was incorporated in the Leadership amendment--a fact which made the Committee Report's language that our right of intervention was absolute even more incredible. Should any dispute arise over whether United States military actions in Panama were directed towards maintaining neutrality or towards interfering with Panamanian internal affairs, the United States is bound to refrain "from the threat or use of force."

Moreover, Article 103 of the UN Charter, the so-called "supremacy clause", provides that

> "in the event of a conflict between the obligations of the Members of the United Nationas under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

Thus, clearly, any dispute arising out of interpretation of the Canal treaties is subject to the rules of the UN Charter. We cannot unilaterally assert our interpretation of treaty rights, particularly by using force. We cannot use force in the territory of Panama and maintain that the force is not directed against the territorial integrity of Panama if Panama is objecting to that use of force. We cannot even maintain that the treaties permit us to use force to keep the Canal neutral in the face of Panamanian objections.

The UN Charter authorizes the use of force only in one situation, described in Article 51, namely, for

> "the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations."

By no stretch of the imagination could we justify the use of force in Panamanian territory as the inherent right of self-defense. Nor could it be considered "collective" self-defense if the territory being attacked, namely, Panama, objected.

But these objections would be mitigated if the treaty specifically spelled out unilateral defense rights for the United States. Specific language would be equivalent to advance permission for such action as we thought necessary. It would amount to the

reservation of a specific sovereign right at the time of the general transfer of sovereignty. It is true that Panama could still seek to renounce the treaty, or could protest a specific exercise of the defense right. But Panama could not assert that the right had not been given.

The Senate in its wisdom rejected the substitute, with its specific language, and adopted the Leadership amendment, with its evasive language. Perhaps the mood was that we should not test the will of the Panamanians on a matter which went directly to the heart of the transfer of sovereignty; perhaps some of my colleagues preferred to sidestep the issue in the hope that it would never have to be confronted in practical terms, trusting to the generosity of the treaties to provide a basis for a firm cooperative partnership with Panama. Others, perhaps, trusted in the Committee Report's optimism that sheer naked force would override Panama's sovereignty should a crisis arise.

One Senator, however, who was not satisfied was the distinguished Senator from Arizona, Mr. DeConcini. On March 16, he stated on the Senate Floor:

> "For the last 3 months, I have argued that the treaties as drafted did not appear to contain sufficient safeguards for the United States... Until recently I believed that it would be possible for the Senate to make some constructive amendments to the treaty that would satisfy the needs of Panama--but not at the sole expense of the American people. However, as every member of this Chamber knows, the administration was unwilling to accept the slightest changes in the text of the agreement.
>
> "Because of this recalcitrance, I suspect that a number of potential supporters of the treaty were lost....When it became clear that no amendments except the so-called leadership amendments would be accepted, I began to search for alternatives that would accomplish the desired objectives."

The major problem that bothered the distinguished Senator was the problem of unilateral United States defense rights. His concerns were expressed when he introduced his reservation:

> "The purpose of this amendment is quite simple, Mr. President. It is designed to establish a precondition to American acceptance of the Neutrality Treaty. That precondition states that regardless of the reason and regardless of what any other provision of the Neutrality Treaty might say or what interpretation it might be subject to, if the Panama Canal is closed, the United States has the right to enter Panama, using whatever means are necessary, to reopen the Canal. There are no conditions, no exceptions, and no limitations on this right. By the terms of the amendment, the United States interprets when such a need exists, and exercises its own judgment as to the means necessary to insure that the Canal remains open and accessible."

The Senator's explanation is considerably more moderate than the assertions in the Committee Report with reference to the Leadership amendment. He was, however, expressing a very strong sentiment of the American people, going beyond any interpretation that could be supported by the text of his own amendment. He expressed his concerns very pointedly:

> "I have been...bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly governemnt; political riots or upheavals--each of these alone or in combination might cause a closure or the Canal."

The distinguished Senator's analysis was exactly right. He had put his finger upon the contradiction in the Administration's position in trying to distinguish between the internal affairs of Panama and threats to the neutrality of the Canal. The Administration failed to face the very real possibility that there might be no distinction between the two.

Moreover, the Senator from Arizona also put his finger upon the crucial issue that had been sidestepped:

> "The amendment contains a very specific reference to the use of military force in Panama. I believe these words are absolutely crucial because they establish the American right--which I am not convinced is adequately provided for either in the body of the treaty or the leadership amendment--to take military action if the case so warrants. It further makes it clear that the United States can take military action on Panamanian soil without the consent of the Panamanian Government.
>
> "The question of consent is also crucial. Since the main thrust of this amendment is directed toward situations in which the Canal is closed because of internal difficulties in Panama--difficulties like a general strike, a political uprising, or other similar events, the consent of the Panamanians to take action would not make sense. If America is to have any rights at all under this treaty, it must have the right to act independently to protect the Canal and to keep it open."

In other words, the DeConcini reservation made explicit what was only implicit before. In accepting the DeConcini reservation, the distinguished Floor Manager of the Treaty, Mr. Church, sought to minimize the scope which the Senator from Arizona had claimed by reading the language in a very restricted fashion; but he also repeated the interpretation that the leadership amendment already gave the United States the right of unilateral military action:

> "Now, Mr. President, this reservation restricts the use of American military force, should that ever be necessary in the future, to two purposes: The reservation clearly reads "If the canal is closed or its operations are interfered with."
>
> "In either of those two cases, Mr. President, the regime of neutrality, the objective of keeping the Canal open, neutral, accessible, and safe obviously would be thwarted.

"When the leadership amendment to the treaty was adopted, the United States reserved the right to act unilaterally, in accordance with its constitutional processes, to defend the Canal against any threat to the regime of neutrality and consequently, to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"Any interference with the operation of the Canal, any stoppage, any closure, would clearly prevent the peaceful transit of vessels through the Canal and clearly contradict the regime of neutrality to which both the United States and Panama are committed.

"Therefore, this reservation must be considered, in my view, in part as a restatement, in part as an elaboration of the amendment already adopted by the Senate to Article IV of the Neutrality Treaty.

"As such, it is acceptable and I hope that the Senate will adopt it."

Despite the attempts of the distinguished Senator from Idaho to limit the force of the amendment, his repeated use of the adverb "clearly" did not solve the basic contradiction. The circumstances surrounding the use of military force are seldom "clearly" manifested to parties on both sides of a dispute. His admission that the DeConcini reservation was an "elaboration" of the Leadership amendment is a telling admission indeed; for the first time the "unilateral"rights which had existed in self-serving interpretation only, now existed in black and white. The reaction of the Panamanians was already beginning to demonstrate that Panama did not agree with the granting of unilateral defense rights to the United States at all. It was beginning to become evident that the negotiators' handiwork was fatally flawed from the beginning.

3. RESPONSE TO PANAMANIAN OBJECTIONS

As early as March 16, the day on which the DeConcini reservation was passed, newspaper reports began to circulate that the Panamanians strongly objected to it. Even before the debate on the DeConcini reservation began, the distinguished Senator from Michigan, Mr. Griffin, raised the issue:

> "Mr. President, I was interested to learn of a report this morning by CBS Radio--and television, I take it, about the fact that the Ambassador of Panama called at the White House on yesterday and let the President and Secretary Vance know that General Torrijos is extremely upset over Senate additions to the treaties, as I understand the report.
>
> "I also understand, on the basis of the report that the President called General Torrijos on yesterday and attempted to calm him down and to assure him that, really, what the Senate was doing here was not making any significant changes in the treaty.
>
> "I can only read between the lines, Mr. President, but I suspect that the concern is not only about what the Senate already has done but also what the Senate may be about to do this afternoon. I refer , in particular, to an amendment to be offered by the Senator from Arizona, (Mr. DeCONCINI)....
>
> "This, of course, would fly in the face of the Panamanian interpretation of the Neutrality Treaty, which is that the United States cannot come in with military forces to defend the neutrality of the Canal unless it is with the permission of the Republic of Panama.
>
> * * *
>
> "The public press reports now are that President Carter --I do not know if it is true or not--has agreed to go along with this amendment by the Senator from Arizona, which obviously would be a significant change in the treaty as it has been interpreted and understood in Panama.
>
> * * *
>
> "I would think that, in light of the stituation in the Senate, it would not be unreasonable to ask the White House to inform the Senate if it is true, as reported by CBS, that General Torrijos and top Panamanian officials have expressed their outrage about the action taken in the Senate and about to be taken today, and whether such an exchange of views

took place on yesterday. Also, how about informing the the Senate, so that we can intelligently decide our responsibility?"

Unfortunately, the profound warning of the distinguished Senator from Michigan was not heeded. No reply whatsoever was given to the Senator. The DeConcini reservation was proposed and accepted, and the Neutrality Treaty itself was approved as though all were well. The Senate had no warning from the leadership or from the Administration that Senator Griffin's perception was correct, and that the reservation was "a significant change in the treaty as it has been interpreted and understood in Panama."

Had that information been officially delivered to the Senate, or at least officially confirmed, the DeConcini reservation might have failed, and with it the approval of the Neutrality Treaty itself. Senators of opposite philosophical persuasions might have changed their votes on one or the other, judging by their reactions. Treaty approval had come and gone on March 16, without a hint of trouble ahead.

It was only on March 17, the day after approval of the Neutrality Treaty, that evidence of Panamanian discontent was produced. In a long colloquy between Senators Allen and Griffin, sharp criticism of the withholding of the letters developed:

"Mr. GRIFFIN. However,a matter that disturbs this Senator very much relates to an exchange, within the last 48 hours, of telephone calls and an exchange of letters between the President and General Torrijos relating to the reservations that were being considered in the Senate. I find now by reading the morning papers--not from any information provided by the White House--that a letter was received at the White House yesterday from General Torrijos, apparently sent in response to a letter sent by President

Carter to General Torrijos on Wednesday, and that these letters pertain directly to the matter under discussion in the Senate. Despite the fact that this Senator, early in the debate on yesterday, following a CBS report by Phil Jones, called upon the White House to provide us with a report as to previous telephone conversations and the letter sent by President Carter, no information was provided to the Senate.

"I find it rather disturbing that the exchange of letters between the two heads of Government was not made available to the Senate yesterday before the vote. I do not know precisely what was in the letters. In the news reports this morning I find strong indications that the President apparently was seeking to assure the Panamamanians that the reservations and amendments being adopted in the Senate are meaningless and will not change the treaty.

"Mr.ALLEN. Is the Senator talking about the amendments to the resolution of ratification?

"Mr. GRIFFIN. And certain reservations, particularly the one offered by Senator DeConcini.

"Mr. ALLEN. In other words, agreeing to something here that he was assuring Torrijos did not mean anything, is that right?

"Mr. GRIFFIN. Obviously, until we see the letters, it is difficult to say what is in them....But there is every reason to be concerned that while Senators were being assured, on the one hand, that their amendments were meaningful in order to get their vote, there were assurances being given to the Panamanians or General Torrijos that the same amendments would not change anything."

As the debate continued, more and more Senators became involved. The distinguished Minority Leader, Mr. Baker, joined in the call for the letters to be produced. Shortly thereafter, the distinguished Majority Leader, Mr. Byrd, came to the Floor, and while he was engaged in colloquy, a messenger handed him copies of the Carter-Torrijos exchange. With all due allowances made for the rhetorical flourishes of diplomatic correspondence, the letters confirmed the attempt to downplay the meaning of the Senate alterations in the Treaty.

Under date of March 15, the day before the DeConcini reservation was accepted, President Carter wrote:

> "In the Senate debate, we have fortunately been able to prevent any amendments to the Treaty other than the so-called "Leadership" amendments to Articles IV and VI. These incorporate exactly the terms of the Statement of Understanding published after our conversation of October 14.
>
> "In considering its Resolution of Ratification of the Treaty, the Senate will almost certainly attach a number of reservations, conditions or understandings reflecting certain of its concerns. We have made every effort and have been successful to date in ensuring that these will be consistent with the general purposes of our two countries as parties to the Treaty. I hope you will examine them in this light."

When one considers that the Executive Branch and the Legislative Branch are two coordinate branches of the United States government, the President's letter to Torrijos is a demeaning instrument, expressing contempt for the Constitutional obligations of the Senate. It contains the bold assertion that the Presidency controls the actions of the Senate, and is able to vitiate any actions not conformable with the Presidential will. Whether that actually happened or not, it is astonishing for a President to boast in such manner to another head of State, with the strong implication that he has rendered the Constitution meaningless.

The substance of the telephone conversations has never come to light. Yet some hint of the representations which the President made to Torrijos is contained in Torrijos' letter of reply. He wrote, under the same date of March 15:

> "In your letter and conversation you informed me that the Senate will introduce some reservations, but that they will not alter nor detract from the content

of what was agreed upon in the Neutrality Treaty and in our Declaration of October 14, 1977. In this respect, I wish to inform you that the Government of Panama will proceed to study carefully these reservations and will take its position once the Senate has voted on both Treaties. The situation is thus because in the plebiscite held in Panama the Panamanian people voted for the two Treaties together and not in separate form.

"I do wish, nonetheless, to point out that such a study will be based on the following concepts: For Panama any reservation would be unacceptable which blemished our national dignity, which altered or changed the objectives of the Treaty or which were directed at hindering the effective exercise of Panamanian sovereignty over all of its territory, the transfer of the Canal, and military withdrawal on December 31, 1999. For that reason, I received with great gratitude your words that these objectives will absolutely not be changed by means of amendments or reservations. This reaffirms my estimate concerning the great morality and honesty which characterizes you as a political leader and as a person.

"The Panamanian people would not accept words, misplaced commas, or ambiguous sentences which had as their objective, or which might signify, occupation in perpetuity disguised as neutrality or intervention in their internal affairs."

Of course, this contains Torrijos' version of the conversation, but the White House issued the letter voluntarily, and without comment. The assertions of Torrijos were never denied.

What did Torrijos assert to be his understanding of the promise to him of President Carter?

1. He asserted that the President had promised him that there would be no substantive changes in the Treaties.

2. He asserted the President had promised him that Panama's "objectives will absolutely not be changed by means of amendments or reservations," i.e., any such amendments or changes would be meaningless.

3. He stated that Panama would not accept an amendment that permitted "occupation" in the disguise of neutrality--a veiled

reference to the DeConcini reservation.

4. He stated that Panama would "take its position" as to whether any amendments were"unacceptable" after both Treaties had been voted on.

The threat to refuse to accept the DeConcini reservation was thus manifest even before it was voted it on. The threat that Panama would not accept any substantive changes was stated bluntly before the Treaty was voted on. In short, Torrijos, as dictator of Panama, was refusing to accept the Constitutional processes of a democracy. It is quite clear under our system of government that the nation is not commited to the final draft of treaties, and that the Senate has the right and the responsibility to make such changes as it sees to be in the interests of the nation. Torrijos was negotiating in bad faith if he did not accept the principles of our democratic form of government. The many references to his dictatorship during the Senate debate were perfectly proper. The implied threats of a dictator indeed had a derogatory effect on the democratic process in the United States. It is unfortunate that the President saw fit to conform to the habits of a dictatorship.

Finally, the threat that a study would be made of the "acceptability" of the Senate's work would be made when both Treaties had been voted on was carried out; the Foreign Ministry communique is of course the result.

4. THE LEADERSHIP AMENDMENT TO THE SECOND TREATY

Despite the assurances which the President gave to Torrijos, dissatisfaction continued to increase in Panama, according to numerous news reports. Then, on March 28, the Panamanian ambassador to the United Nations sent a letter from Torrijos to the heads of state of all UN members. In a letter to the UN Secretary General, the Ambassador, Jorge E. Illueca, explained why the letter had been sent:

> "General Torrijos's letter and the documents enclosed make reference to the vote which took place on 16 March 1978 at the United States Senate on the Resolution of Ratification of the Treaty concerning the Permanent Neutrality of the Panama Canal. In this resolution, approval to the ratification was granted subject to a number of amendments, conditions, reservations and understandings, inserting among them a pre-condition to American acceptance of the Neutrality Treaty, known as the 'DeConcini Amendment.'
>
> "According to its proponent, the 'DeConcini Amendment' is intended to give to the United States of America the unilateral and perpetual right to "take military action on Panamanian soil without the consent of the Panamanian Government," pretending that said amendment must be construed to permit the United States to intervene in Panama in the event of labour unrest strikes, a slowdown, or under any other pretext labeled as interference with Canal operations....
>
> "Not only does the amendment make no reference to the regime of neutrality, but, as stated by Senator Edward Kennedy, who opposed the DeConcini Amendment, 'Panama had waited 75 years since its independence to end American occupation of its heartland. I must wait another 22 years before it achieves full control over its national territory." Now Panama is asked, in Kennedy's words, "to accept an amendment which has the ring of military interventionism--not just during this century, but for all time."

The Panamanian action shocked supporters of the Treaty, with its pointed adoption of the views of the distinguished Senator from Massachusetts, Mr. Kennedy. The amendment had not faced serious opposition; in fact, Senator Kennedy's views were

not even presented on the Floor, but were printed in the Record under the "bullet" rule. Yet the Panamanian statement came close to repudiating the Senate action.

By the time of the Senate's Easter recess, Panamanian criticism had escalated to mini-crisis proportions. The pro-Panama media in this country took up the cry, and began to deliver savage attacks upon the motives of the distinguished Senator from Arizona.

Meanwhile, informal negotiations resumed with the Panamanian regime in an attempt to find a formula that would mollify Panamanian objections. Former Assistant Secretary of State for Latin American Affairs William Rogers made a special trip to Panama to discuss possible solutions. In Washington, the team seeking a solution was led by the distinguished Majority Leader, Mr. Byrd.

The problem, of course, was that the Panamanians were demanding more than could be resolved by logic. The United States negotiators had hoped to squeeze through by a carefully constructed semantic ambiguity, which would not concretely resolve the issue of unilateral defense. Apparently they hoped that the text would be vague enough so that the dictator could assert to the Panamanian people that they were receiving full sovereignty, but that actually would leave to the United States a toe-hold to violate that sovereignty if circumstances should develop where military force was absolutely necessary. The strategy was to get over the ratification hurdle by enveloping the contradiction in semantic double-talk. When the Senator from Arizona quite properly called their hand by demanding that the contradiction be resolved,

the deception was unmasked.

Senator DeConcini was puzzled that the storm of controversy arose over his action, and he had good reason. On April 18, he told the Senate:

> "What puzzles me, Mr. President, is that suddenly the public debate has focused on whether it is appropriate for the United States to retain the right to keep the canal open regardless of the reasons that may lead to its closure. Frankly, I believed that there was no disagreement in principle on this point. I believed that it was accepted by the Foreign Relations Committee and the Senate leadership. It has come as quite a shock to me that this is apparently not the case.
>
> "Let me be more specific, Mr. President. On February 3, the Senate Foreign Relations Committee ordered its report on the Panama Canal treaties to be printed and distributed to Members of the Senate to aid them in their consideration of the treaties. Since only Senator Griffin dissented from the report and appended minority views, I must assume--as I believe all of us assumed--that the rest of the Foreign Relations Committee agreed with the report.
>
> "As it turns out, Mr. President, a number of Senators who are fairly senior members of that committee have publicly raised serious questions about the principle behind the DeConcini amendment. The reason why this is perplexing, Mr. President, is that the Senate Foreign Relations Committee Report on the treaties endorsed that principle....The Foreign Relations Committee..,asserts broader rights than were asserted in the DeConcini amendment. In other words, the Foreign Relations Committee report goes beyond the rights asserted by my simple clarification."

Of course, the distinguished Senator was exactly right. I have already pointed out the sweeping and absolutist claims made by the Foreign Relations Committee for the leadership amendment, claims that pointedly asserted the supremacy of United States unilateral defense rights over Panamanian internal affairs and territorial integrity.

Senator DeConcini went on:

> "I know there is nothing in my reservation that goes beyond the words of the Foreign Relations Committee, and I believe those words reflect the intent of the Congress. My only quarrel today as well as in the past has been what I perceive as ambiguity in the drafting of the leadership amendment. The Foreign Relations Committee report believes that the leadership amendment accomplishes the stated objectives; I do not. However, I assert no new right, but neither will I accept any changes in those words that derogate from the rights we have clearly established in our action on the Neutrality Treaty."

The Senator's final words set the tone for the debate on the "solution" to the problem of Panamanian discontent. The issue was whether the new leadership amendment derogated or changed the original DeConcini reservation or not. In proposing the new amendment, the distinguished Majority Leader, however, carefully avoided coming down on this point; he merely made the record that the amendment had been cleared with the Panamanian dictator:

> "The final text of the amendment represents a consensus which developed out of those discussions with the many Senators on both sides of the aisle.
>
> "On this Sunday, the past Sunday, together with the distinguished floor managers of the treaties, Mr. Sarbanes and Mr. Church, met with the Panamanian Ambassador, Mr. Gabriel Lewis, in the company of Warren Christopher, the Deputy Under Secretary of State, and showed to the Panamanian Ambassador the proposed text of the amendment.
>
> "Following our discussion, Ambassador Lewis relayed the contents of the proposed amendment to his government. Later in the day, Mr. Sarbanes and Mr. Church, and I were informed through the State Department that the Panamanian Government considered the amendment to be a 'dignified solution to a difficult problem.'"

Nevertheless, proponents of the new leadership amendment, were very careful to maintain that it did not diminish or limit

the DeConcini reservation, as the following exchange between Senator Javits and Senator Laxalt makes clear:

> "Mr. LAXALT. Is the Senator saying to all of us then that the effect of this reservation is to diminish the effect of the DeConcini reservation?
>
> "Mr. JAVITS. Not at all. On the contrary, it is to lay down the ground rules by which it should be used, and which are the only ground rules that are practicable for a nation like our own.
>
> "What concerned me about the original DeConcini reservation is that it was susceptible to abuse, and this, the ground rules here laid down, it seems to me, removes that danger.
>
> "Mr. LAXALT. To the extent then this is a limiting factor, a moderating factor, certainly at least to that extent then it has to diminish the thrust of the DeConcini amendment or do I misunderstand the observations of the Senator from New York?
>
> "Mr. JAVITS. I think the Senator does misunderstand my observations. It diminishes nothing. It increases our stature, but it diminishes absolutely nothing about what the purpose of the agreement between Carter and Torrijos, which was incorporated in the previous treaty, was intended to attain, and that is, under any circumstances, even if it means stepping upon the territory of Panama, under any circumstances, even if it means guerrillas or organized troops who are operating out of Panama, we have the obligation to keep that canal open, neutral, accessible and secure."

Thus, the distinguished Senator from New York makes clear his understanding that the United States has the power to send troops to Panama, even if it means fighting guerrillas or organized troops, and that the new leadership amendment does not abridge that right in any way.

Similarly, an exchange between the distinguished floor manager, Mr. Church, and the distinguished Senator from Utah, Mr. Hatch, nailed down the fact that the new leadership amendment did not in any way undo the DeConcini reservation:

"Mr. HATCH. Does this reservation mean that the United States may not use military force to defend the Canal?

"Mr. CHURCH. No.

"Mr. HATCH. Does the United States have the unilateral right, pursuant to this reservation, to send troops to keep the canal open under this reservation, or must the Panamanians agree to such sending of troops?

"Mr. CHURCH. Each country, under the treaty, has the obligation to keep the canal open and, in accordance with the terms of the leadership amendments as well as the terms of the pending reservation, that choice can be made by each government.

"Mr. HATCH. Can it be made unilaterally is my question; and can we, without Panama's permission, send in the troops?

"Mr. CHURCH. I think I answered the question.

"Mr. HATCH. Specifically, I think I interpret your answer to be that we can.

"Mr. CHURCH. The Senator is correct.

"Mr. HATCH. If the Canal were to be closed and the Panamanians were to be opposed to an effort to sent in the troops, would this amendment prevent us from sending such troops?

"Mr. CHURCH. This reservation does not undo the previous action of the Senate."

Mr. President, this statement, by the distinguished Floor manager of the treaties, the statement that "this reservation does not undo the previous action of the Senate," is critical to our present inquiry. It demonstrates without any doubt that the new leadership amendment, to the second treaty, did not in any way cancel or undo the DeConcini reservation to the Neutrality Treaty. It shows the clear understanding of the Senate that the United States must have the unilateral right to defend the Canal.

Moreover, that interpretation is not merely the understanding of the Senate itself; it is also the understanding of the President of the United States. In a letter to the distinguished Senator from Massachusetts, Mr. Brooke, under date of April 17, the President said:

> "It is abundantly clear, therefore, that the United States can, under the Neutrality Treaty, take whatever actions are necessary to defend the Canal from any threat regardless of its source.
>
> "The correlative part of the Memorandum of Understanding, embodied in the leadership amendment to the Neutrality Treaty, makes it quite clear that action of this character must be confined to the stated objective alone, and that it will not be interpreted as a right of intervention in the internal affairs of Panama."

In this letter, the President manfully adheres to the basic contradiction imposed upon him by the circumstances, a contradiction which demands that any intervention in the internal affairs of Panama will not be interpreted as intervention in the internal affairs of Panama, if those internal affairs happen to be the threat to the neutrality of the Canal. The President seems to be saying that, if we do intervene to protect the Canal, such intervention "will not be interpreted as a right of intervention." In other words, we will take the action, but we will not interpret it as our right.

Nevertheless, the phrase "from any threat regardless of its source" is new language for the President, language as sweeping as the absolutist language of the Foreign Relations Committee report. Logic dictates that "any threat regardless of its source" includes the notion that the Panamanian government, or lack of government, could itself be the threat. The DeConcini reservation still lives.

5. PANAMA'S APRIL 25 REPUDIATION OF THE DeCONCINI AMENDMENT

It can be seen from the legislative history that the DeConcini reservation was important to the United States Senate's approval of the Neutrality Treaty, a treaty whose ratification is linked legally to the approval of the Panama Canal Treaty as well. Moreover, it is also clear that approval of the Panama Canal Treaty was fundamentally based upon the concept of unilateral United States defense rights for the Canal, the very point which the DeConcini reservation made explicit.

Moreover, there was very little disagreement between opponents and proponents of the treaties on this point. Both accepted the fundamental principle of unilateral defense rights; the debate concerned whether or not these rights were properly protected by the treaties and the accompanying reservations. It is unquestionably clear that neither treaty would have been approved if there had been any doubt that the treaties gave us unilateral defense rights.

Moreover, no one reading the legislative history can claim that the DeConcini reservation was in any way modified, cancelled, repudiated or superseded by the new leadership amendment. When the DeConcini reservation was first passed, the speech of the distinguished Senator from Arizona made clear that he considered it to cover only threats to the Canal, not Panama's internal affairs. The distinguished Floor leader made the same point.

The new Leadership amendment merely restated what was already in the treaties, without resolving the issue of what happens when Panama's internal affairs become the threat to the Canal's opera-

tions. However, the implication of the language of the new leadership amendment, and the legislative history quoted earlier, show conclusively that the United States believes that it has a right to move in to protect the Canal from any threat, without Panama's consent.

Any attempt by Panama, therefore, to repudiate the DeConcini amendment, to minimize it, or to reject its force therefore strikes a blow to the heart of the understanding which the Senate believed to exist between Panama and the United States. Yet this is what Panama said in the Foreign Ministry's communique:

> "This is what has commonly been called the DeConcini reservation. Obviously its scope departed from the Torrijos-Carter declaration because it eliminated the obligation of the United States not to intervene in the internal affairs of Panama and to respect the political independence and territorial integrity of Panama.
>
> * * *
>
> "As abominable as the DeConcini reservation were the baseless explanations of the same senator, who seeks to revive U.S. intervention in the internal affairs of Panama. Fortunately, the Senate approved the 18 April resolution... which reaffirms respect for the principle of nonintervention in the internal affairs of the countries of America....
>
> "With this last Senate resolution, it is evident that the United States has reaffirmed its international commitments in light of the UN and OAS charters. With it the DeConcini reservation has been rid of its imperialistic and interventionist claws, and the enforcement of the prinicple of nonintervention has been reestablished.
>
> * * *
>
> "Panama experienced moments of patriotic indignation following the introduction of the so-called DeConcini reservation. Via diplomatic channels the national government firmly expressed its rejection of that amendment as something harmful not only to U.S. relations with Panama but its relations with the entire continent. President Carter and the Senate leaders quickly understood this. The Senate then pointed out that a major tenet of U.S. policy is its

> adherence to the principle of nonintervention. And this adherence also pertains to the neutrality treaty which is of an indefinite duration. It is necessary to stress that the Senate's definition of U.S. policy in this reservation covers both treaties, which are mentioned specifically in the reservation, so that there would not be the slightest doubt that the DeConcini amendment added to the neutrality treaty would not continue in force. What continues in force are the legal commitments of the United States to the UN and OAS charters that forbid intervention."

The Foreign Ministry communique says explicitly that "the national government firmly expressed its rejection of that amendment." It states the firm belief that the addition of the new leadership amendment to the Panama Canal Treaty impacted retroactively on the Neutrality Treaty, so that there would not be the slightest doubt that the DeConcini amendment "would not continue in force."

Mr. President, the Record shows conclusively that the Government of Panama does not accept the condition added to the Neutrality Treaty by the Senate, a condition that was added as a means of obtaining passage of the resolution of ratification. Moreover, this condition merely made explicit a principle that all factions in the treaty debates agreed to, namely, the right of unilateral military action against any threat to the Canal, even if that threat arose from the internal affairs of Panama itself. Neither the DeConcini reservation itself, nor any Senator in the debate demanded a right of intervention per se; but the whole Senate did demand the right to act to protect the Canal against any threat. In rejecting the DeConcini reservation, Panama has rejected the foundation upon which the treaty structure was built.

C. THE HOLLINGS-HEINZ-BELLMON RESERVATION TO THE PANAMA CANAL TREATY

The Hollings-Heinz-Bellmon Reservation was passed by the Senate on April 17 by a vote of 90 to 2, as an amendment to the resolution of ratification of the Panama Canal Treaty. The substantive portion reads as follows:

> "Any accumulated unpaid balance under paragraph 4 (c) of Article XIII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date."

Paragraph 4 of Article XIII of the Treaty reads as follows:

> "4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:"

Subparagraph (c) reads as follows:

> "(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed."

The terms of the treaty, then, provide that, in addition to other payments, the United States shall pay to Panama an amount of up to $10 million out of any surplus available; moreover an obligation remains to pay in succeeding years any part of such a sum not paid in the year it was due. The problem emerges at the end of 1999, when the Canal is turned over. What happens to the

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C. THE HOLLINGS-HEINZ-BELLMON RESERVATION TO THE PANAMA CANAL TREATY

The Hollings-Heinz-Bellmon Reservation was passed by the Senate on April 17 by a vote of 90 to 2, as an amendment to the resolution of ratification of the Panama Canal Treaty. The substantive portion reads as follows:

> "Any accumulated unpaid balance under paragraph 4 (c) of Article XIII at the termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the Treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any such unpaid balance which shall have accrued before such date."

Paragraph 4 of Article XIII of the Treaty reads as follows:

> "4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:"

Subparagraph (c) reads as follows:

> "(c) An annual amount of up to ten million United States dollars ($10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed."

The terms of the treaty, then, provide that, in addition to other payments, the United States shall pay to Panama an amount of up to $10 million out of any surplus available; moreover an obligation remains to pay in succeeding years any part of such a sum not paid in the year it was due. The problem emerges at the end of 1999, when the Canal is turned over. What happens to the

accumulated "roll-over" of payments which were not made if a surplus was never or seldom earned? Conceivably, there could be an outstanding obligation of as much as $220 million in 1999.

The interpretation of this part of the treaty is complicated by Paragraph 1 of Article XIII:

> "Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree."

The issue therefore is whether the phrase "free of liens and debts" includes the treaty obligations under Article XIII (4) (c). A reasonable argument can be made that Article XIII (4) (c) is an obligation of the United States, and not of the Panama Canal Commission; and that, furthermore, (4) (c) clearly says that payment in any year is due only to the extent that "revenues exceed expenditures." The implication is that if no surplus is earned by 1999, no payment is ever due.

On the other hand, an equally reasonable argument can be made that any accumulated unpaid balance is an obligation that must be paid under Paragraph 1 of Article XIII. The very fact that Paragraph (4) (c) was included in the Treaty suggests that the United States expected to pay something under its provisions, and Panama expected to receive something.

Yet the testimony of Administration officials made it very clear that the United States never expected to pay anything under this provision of the Treaty, an attitude which has angered the Panamanians.

1. THE AMBIGUITY OF ARTICLE XIII, PARAGRAPH (4)(c)

The problem with Article XIII, Paragraph (4) (c) is not so much the legal ambiguity itself, but the contrast in expectations. When Governor H.R. Parfitt, Governor of the Canal Zone and President of the Panama Canal Company, testified before the Armed Services Committee, he pointed out that alí the economic assumptions excluded the $10 million contingency payment from their calculations. He was questioned by the distinguished Senator from New Hampshire, Mr. McIntyre:

> "Senator McINTYRE. Governor, it is my understanding that our Government is of the opinion that the $10 million contingent payment is not to be included in the toll base, and you mentioned this in your statement, correct?
>
> "Governor PARFITT. That is correct, sir.
>
> "Senator McINTYRE. Further, I understand that the Panamanians expect this payment; is this true?
>
> "Governor PARFITT. As recently as Sunday I was advised to this effect by several Senators who were visiting with the Panamanian Government.
>
> * * *
>
> "Senator McINTYRE. How would you suggest this problem be resolved? I understand that Torrijos or somebody down there is saying that if they don't get the $10 million by the year 2000, they will expect 22 times $10 million, or $220 million in payment. Do you know of this?
>
> "Governor PARFITT. I think that alludes to the fact that the treaty does say in any given year to the extent you don't pay the surplus it rolls over to the next year, and he is assuming then at the year 2000 it no longer rolls over, it is then paid off. It has been our negotiator's position that since the treaty says these funds will be paid to the extent earned, and if they aren't earned they are not a liability of the U.S. Government and they would not be paid.
>
> "Senator McINTYRE. It is obvious from your testimony today that you do not feel that if the $10 million contingency payment is not included in the toll base, it will be very unlikely that we will have a $10 million surplus running around.

"Governor PARFITT. I feel very definitely if it is not included in the toll base, it will not be generally earned."

The gap between expectation and reality will thus be affected by manipulation of the toll base. If the Panamanians are expecting the toll rates to be set high enough to earn a surplus, then there will be a feeling of betrayal and of being cheated if the United States deliberately sets the rates at a level where no surplus will be earned.

Moreover, there is the additional problem of defining what a surplus is. Accountants have ways of manipulating balance sheets so that a "surplus" can disappear with sleight of hand. The study prepared by American Management Systems, Inc., for the Armed Services Committee,took pains to point this out:

"What constitutes a surplus? Under the treaty, the Commission is required to pay as much as $10 million per year to Panama, to the extent that such monies can be paid out of surplus. During implementation, specific agreements are needed to define exactly what constitutes a surplus. Some of the points that should be covered include:

"--Precise definition of how much depreciation is allowed as an expense. Any increase in current depreciation rates is likely to become controversial.

"--Determination as to whether and under what conditions previous year deficits can be applied against subsequent surpluses....

"Determination as to whether to permit temporary toll surcharges (for additional capital expenditures or for covering deficits) which do not enter the surplus calculation. Such a device appears likely to cause controversy."

Such devices, even though legitimate in accounting practice, are all likely to increase the danger of frustrated expectations, a feeling that the United States was not negotiating in good faith when the treaties were written.

The contention of the Administration was that no ambiguity existed, and that the United States incurred no liability if a surplus were never earned. At the hearings of the Foreign Relations Committee, the distinguished Senator from Ohio, Mr. Glenn, raised the point with Ambassador Bunker. Senator Glenn asked:

> "In the event there is a balance owing at the end of the year 1999, what will be the obligation of the United States to pay that balance?
>
> "Ambassador BUNKER. No. There will be no obligation after the treaty expires, Senator.
>
> "Senator GLENN. There will be no obligation.
>
> "Ambassador BUNKER. No."

However, the difference between the Panamanian perception of the impact of Article XIII, Paragraph (4) (c), and the United States perception was underlined in a statement made by Panama's Economics and Planning Minister, Dr. Nicholas Barletta, in San Francisco. Superficially, his answer to a question from the audience at a Commonwealth Club meeting would appear to agree with the position of Ambassador Bunker; but clearly, his expectations were different. Dr. Barletta said:

> "If there is an accumulated deficit by the time the treaty ends, in 1999, that's it, the U.S. is not committed to make it up if such amount has not been able to be collected from the revenues of the canal operation. We do not hope in our interpretation of this clause of the treaty, that the U.S. is committed to pay any such deficit that might have accumulated. However, I would like to say, that, in our estimation, the revenues of the Canal and all the projections and studies that have been made should be able to cover this second $10 million that should come to Panama if revenues permit, so I don't forsee much of a problem in respect to deficit."

Dr. Barletta's statement that "all the projections and studies

that have been made" support his estimate that there will be sufficient surplus earned can only be based on economic fantasy. Indeed, none of the consultants hired by the United States government, or by Congress, suggest that the $10 million can be regularly earned. Governor Parfitt, who directs the day-to-day operations of the Panama Canal Company,is the one man in the world who is most intimately acquainted with Canal finance. His expectations, based on realism rather than on politics, have already been quoted in his exchange with Senator McIntyre. In response to further questioning by Senator Bartlett, he went even further:

> "Senator BARTLETT. I believe you told Senator McIntyre that the Canal Commission would expect to set its toll revenue to meet its cost and that if this contingent payment was not included in the plan for setting tolls, there would be little surplus to pay the Panamaninas since the Commission is not a profitmaking organization.
>
> "Governor PARFITT. That is correct, sir.
>
> "Senator BARTLETT. So what we would have here is a situation in which we have promised to pay the Panamanians out of any surplus which the Commission earns, but the Commission is not expected to have any surplus.
>
> "Governor PARFITT. Under a situation which we now forecast, which is one of ever-increasing demand for additional tolls, we would not be generating surpluses, at least in very significant amounts.
>
> "Senator BARTLETT. And if we include the contingency payment in the estimate of operating costs, we increase the chance of the Canal Commission running into debt, and we have said to the Panamanians that we will turn the canal over to them free of debt.
>
> "Governor PARFITT. That is correct, sir."

However, the intent of the Department of State and of the Administration generally is most clearly shown in the draft im-

plementing legislation submitted to Congress in response to earnest requests from both treaty supporters and opponents. As was carefully pointed out in an analysis of this legislation by the Comptroller General, Mr. Elmer Staats, the legislation does not provide for the toll base to include the contingency payment. In his "Comparison of GAO Concerns and Draft Implementing Legislation for Panama Canal Treaty," Staats writes:

> "Contingent payment of surplus to Panama, provides method of calculation not included in toll base; no mention of carryover beyond 1999, sec. 203, pp. 10-11, sec. 232, pp. 20-21."

Clearly, Panama's expectations will not be fulfilled.

2. SENATE ATTEMPTS TO CLARIFY THE AMBIGUITY

Although the leadership sought to maintain that there really was no ambiguity, the feeling that there was an ambiguity persisted. It was pointed out that the statement of Panamanian Planning and Economics Minister Barletta stood in isolation as a personal opinion, expressed informally in response to a question from his audience in San Francisco. There was no guarantee that it was anything more than a personal opinion which did not commit the Panamanian government.

Indeed, the distinguished Senator from Oklahoma, Mr. Bartlett, sought to elicit an official statement from General Torrijos by telegram on February 1 and again on February 22. Finally on March 6, the Panamanian Ambassador to Washington sent Senator Bartlett transcripts of the Barletta statements, saying that they would "answer your question." Senator Bartlett protested on April 7 that it did not really answer the question at all:

"This leaves, of course, a lot of doubt as to what the President of Panama really does think and how he does interpret the ambiguities that exist in Article XIII."

Senator Bartlett, as a result, then offered an amendment to clarify the ambiguities. The distinguished Senator from Iowar, Mr. Church, strongly opposed that amendment:

"In the first place, we believe that the language of the Treaty does not present an ambiguity. Therefore no amendment is necessary.

"Second, the interpretation of this particular provision by the American Government and the Panamanian Government is not in conflict. Both governments understand the provision alike, which lays additional emphasis on our contention that no amendment is necessary.

"Third, if, for any reason, Senators still believe some clarification is called for, the proper way for the clarification to be made is by way of amendment to the articles of ratification, not by way of an amendment which would force a change in the text of the treaty itself, thus introducing the possibility of either having to renegotiate the treaty or having to submit the amended treaty to another plebiscite in Panama.

"For these reasons, we feel it would be most unwise for the Senate to adopt this amendment."

The amendment, like all other amendments opposed by the leadership, was defeated by tabling, 40 to 33. But the doubts were not subdued. A group of Senators did feel that it was necessary to amend the articles of ratificaiton. It is signficant that the three co-sponsors of the amendment were favorably disposed towards the treaties, ultimately voting for both: Senators Hollings, Heinz, and Bellmon. Senator Hollings made the case for eliminating any possible ambiguities and false expectations:

"Imagine nearly a quarter of a century down the line, when those in charge of policy get out their copies of the treaty and start the debate all over again. Imagine the confusion, the disagreement, and the possibility for ill-will. Arguments like that at the time of the turnover

could cancel out many of the other advantages accorded us by these treaties.

"How much simpler then--and wiser, too--to deal forthrightly with the situation now. We can do so easily and effectively in the Resolution of Ratification. Then there can be no doubts at century's end. The Panamanians will know--we will know--what the terms of the treaty provide and what they do not provide.

"There will be no possibility of false expectations in Panama or anywhere else. Instead of debate and discord in the year 2000, the transition can be consummated in an aura of friendship and cooperation that is the whole purpose of these treaties."

This time, the leadership indicated that they were willing to accept such an amendment to the resolution of ratification. The Senate agreed overwhelmingly, by a vote of 90 to 2. Everyone believed that there was unanimity of agreement on interpretation between the Senate and the Panamanian government; but that was before the April 25 communique.

3. PANAMANIAN EXPECTATIONS IN THE COMMUNIQUE

The statement of Dr. Barletta was continued and amplified in the Foreign Ministry communique. And although the communique agrees with the technical aim of the amendment, at the same time it demonstrates a deeper and much more profound disagreement with the United States assumptions behind the reservation. The Panamanians are emphasizing not so much what happens in 1999, as what happens year by year under Article XIII:

"Panama has always understood, and so explained to the citizenry at the time, that the budget containing revenues from and expenditures for the operation of the Canal would be so drafted as to make the Canal Commission capable of paying to Panama the sum stipulated in Article XII, Paragraph (4)(c). If for unforeseen reasons this sum were not paid in a certain year, Panama understands that the United States will make an effort to cover that sum in subsequent budgets. Paragraph (4) (c) is not symbolic

or worthless. The two countries, in good faith, must give it practical content.

"For this reason, Panama does not foresee the accumulation of unpaid balances in the year 2000. However, if they did exist, the United States would not be obligated to make such payment to Panama. In summary, there is a clear understanding between the U.S. Senate and the Republic of Panama in this area."

Unfortunately, it is plain that there is no clear understanding between the U.S. Senate and the Republic of Panama in this area. From a practical standpoint, it is absolutely clear on the record that the United States does not intend that the Panama Canal Commission will earn enough to make Article XIII, Paragraph (4)(c) a reality. And because it does not intend to earn a so-called "surplus", the question of what happens in 1999 is very important. It is for this reason that the United States Senate overwhelmingly went on record that the U.S. Treasury will not owe anything in 1999.

But Panama's point of view is that the contingency payment clause "is not symbolic or worthless." Panama "understands" that "the United States will make an effort" to "give it practical content." This contrasts sharply with the United States point of view that Article XIII , Paragraph (4) (c), has no practical significance whatsoever because the United States intends to make no effort at all to earn the necessary surplus to give it practical content. So the superficial agreement on the technical point of what is owed in 1999 masks a far more important and more fundamental disagreement over what the paragraph means at all.

The consequences of this disagreement is bound to increase tensions and bitterness between the two countries. For the

pathetic cry of Panama on this point is the cry heard from every victim of the shell game. To put it bluntly, Article XIII, Paragraph (4)(c) is a tactic that is unworthy of a great nation. It is not the opinion of the Senator from North Carolina that Panama came into the game with clean hands; indeed, it appears that the U.S. negotiators and the Panamanian negotiators both came together in an effort to swindle the other. But a cheap victory on this clause is small recompense for the imbalance of the terms of the whole treaty, terms which unnecessarily surrendered truly vital points to a nation too small to preserve the Canal.

Our negotiators went into the talks on this point knowing full well that the Canal operations could not support the $10 million contingency payment. If they did not know it, they were totally incompetent. But they also know that the U.S. Senate would never approve a treaty that required the U.S. Treasury to subsidize payments to Panama up to annual amounts of $10 million. They also knew that the definition of expenditures could be manipulated to soak up any so-called surplus. Yet they made the pretense of holding out to Panama the chance of an additional $10 million per year; then by sleight of hand they inserted an escape clause in the apparently innocuous "roll-over" provision.

The Senate quite properly sought to make the escape clause explicit by approving the Hollings-Heinz-Bellmon reservation. The protection in that reservation aimed not at Panama but at the unnecessary problem created by the negotiators. By making

the problem explicit, the U.S. Senate alerted Panama to the duplicity of the U.S. negotiators. The only way in which Panama's expectations can be satisfied at this point is to raid the United States Treasury--that is, to get the money from the U.S. taxpayers. Even under the Treaty, Panama has no claim on that money; Panama admits that she has no claim on that money. But psychologically, Panama expected that money; and this fundamental disagreement brought out by the Hollings-Heinz-Bellmon reservation will undoubtedly poison the whole atmosphere of cooperation, and destroy the supposed climate of "good will" that the proponents of the treaties extolled exceedingly.

There is no proper way that the United States can fulfill the expectations which our negotiators raised among the Panamanians with regard to this clause, without further costs to the United States taxpayers. If the taxpayers are charged for the $10 million, then the Administration would have to back down on every assurance given to the American people with regard to costs. Although we are not technically liable to pay those amounts, the fundamental disagreement underlying the issue is a time bomb waiting to go off.

D. THE BROOKE RESERVATION TO THE PANAMA CANAL TREATY

The Brooke Reservation was passed by the Senate on April 17, 1978, by a vote of 84-3, as an amendment to the resolution of ratification of the Panama Canal Treaty. The substantive portion reads as follows:

> "Exchange of the instruments of ratification shall not be effective earlier than March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979."

The effect of the Brooke reservation was to modify both treaties, because the ratification of both treaties was linked together. Article II of the Panama Canal Treaty states:

> "This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification."

Parallel language appears in Article VIII of the Neutrality Treaty.

It will be seen from Article II that no calendar date is set for either ratification or entry into force; the only time frame established is that entry into force occurs six months after ratification (ratification, of course, being the Executive action, not the date of Senate approval). Thus, under the treaty as it stood before the Brooke amendment there

was no obligation whatsoever even to ratify the treaties. Even the Panamanian communique agrees on this point: "In international law there is no obligation to proceed to the exchange of the instruments of ratification of the treaties even if the treaties have been ratified. This is a political decision that is properly made by the body which manages foreign relations."

However, to make the Panama treaties work requires very complicated implementing legislation. Many treaties require, at most, the authorization and appropriation of funds to make them work. The Panama Canal Treaty, however, requires legislation to eliminate the Panama Canal Company, create the Panama Canal Commission, establish accounting and rate-making procedures, alter our defense arrangements and installations, change pension arrangements, transfer property, and so forth. To put a time deadline on that process would be to fly in the face of Congressional jurisdiction and procedures.

It is noteworthy that the implementing legislation for the 1955 Treaty was infinitely less complicated than that needed for the present treaties; yet the 1955 implementing legislation took three years.

The problem, therefore, is that the President has it within his power to start the clock running on the six months between his act of ratification and the treaties' entry into force. If he ratifies the treaties, that is, if he exchanges the instruments of ratification, then Congress would be confronted with

the need for a forced-draft schedule to hold hearings in several committees in both Houses of Congress, hold debate, have a conference, and have a second conference if necessary. Then the process has to be repeated for any appropriations necessary.

If the Panama legislation were ordinary legislation it would still have a hard time becoming law on such a schedule. But the Panama legislation is so complicated, requiring so many kinds of expertise, that it is difficult to believe that good legislation could be passed in six months. Moreover, it would require Congress to set aside other legislative projects which might have higher priorities. Congress eannot overlook the fact that the Administration promised a draft of the implementing legislation last October, a promise that was supposed to be fulfilled in a few weeks. By February, during the Treaty debates, Congress was still demanding the legislation, since parts of the treaties could not be interpreted properly without seeing what the Administration had in mind to implement vague sections. Not until March did a rough draft appear, with the Administration's apologies for being so late. The apologies stated that the job was far more complicated than had been expected.

A final draft still has not been presented; but what has been presented is already controversial, with the Comptroller General stating that it has failed to meet GAO concerns on several key points. The concepts in the bill have already been sharply criticized by many Senators durying the treaty debates, so it is doubtful that it will have an easy time in passage.

Therefore, if the President should start the clock running

on the implementing legislation through rash action, a tragic confrontation might ensue. In the first place, Congress might not have time to do a proper job, leaving either a botched piece of work--or leaving no legislation at all. In the latter case. the United States would be confronted with a situation in which the treaties would go into effect so far as they could be effective without legislation. That is, all jurisdiction would return to Panama, all properties would revert to Panama, the U.S. would have no authority in Panama, and we would immediately owe Panama payments without any way to pay them; yet we would have no way to operate or protect the Canal.

The dimensions of potential conflict are enhanced by the attitude of the House. During Senate debates, the Senate and its leadership emphatically rejected the claims of the House of Representatives to participate in the disposition of United States property under Article V, Section 3 of the Constitution. The Senate attitude has highly disturbed the House of Representatives. Some 240 House Members, led by Merchant Marine Committee Chairman John Murphy of New York and Congressman George Hansen of Idaho, have co-sponsored resolutions insisting on the House right to vote on the transfer of property before the property is transferred. The co-sponsors include the chairman of half of the leading committees and subcommittees, as well as the ranking Minority Members of those committees, directly concerned with the Panama Canal legislation.

Although the resolution is presently being held in committee, 190 Members--only 24 short of the necessary majority--have signed a discharge petition to bring the resolution to the House Floor for a debate.

Finally, it should be pointed out that the House has acted three times in the past month in a manner that can only be interpreted as hostile to swift passage of the implementing legislation should the President take actions to ratify or initiate ratification of the treaties. On May 9, under the leadership of Mr. Hansen, the House added an amendment to the first concurrent Budget legislation to prohibit the use of any funds to be used to implement the Canal treaties. On May 24th, also under the leadership of Mr. Hansen, a similar amendment was added to the Defense authorization bill. On May 31, Mr. Hansen once again was successful, by a vote of 203 to 163, in adding the amendment to the Foreign Relations Assistance Authorization bill.

The fear that the President might be tempted to put Congress under the gun was the motivating force behind the Brooke reservation. The effect of the Brooke amendment was to prevent the ratification of the treaties before March 31, 1979, unless the implementing legislation were enacted earlier. In other words, the President could not start the clock running for nearly a year; but once he did so, Congress would still be under the gun.

Yet the Brooke amendment still gives Congress only about 17 months to act, about half as much time as was taken in 1955.

And there is no guarantee that Congress will act, given the attitude of the House. A prudent President would not ratify the treaties at all until it was clear that Congress had acted or until all the difficulties had been satisfied. The Brooke amendment is supposed to guarantee at least 17 months for action, but if the President should ratify at the earliest possible date (March 31, 1979), Congress might still not be able to complete the legislation successfully. The literal effect of the Brooke amendment was to guarantee some time for the Congress to act; but the intended effect was to warn the President of rash and preciptate action. The intent was to warn the President that March 31, 1979 was the earliest possible date, and that if he were wise, he might wait until much later. Unfortunately, the Brooke reservation contains one ambiguous word, "effective," speaking of the effective date of the exchange of instruments of ratification. By an extraordinary interpretation of this word, Administration officials have announced that the President is about to take precipitate action: an immediate exchange of the instruments of ratification, with the "effective" date of March 31, 1979. This was described as making the exchange "in escrow."

If the President actually takes such a step, he will be setting the clock moving on the 17 month period--an action that could well lead to international and Constitutional confrontation.

1. THE INTENT OF CONGRESS IN PASSING THE BROOKE RESERVATION

Senator Brooke, in presenting his amendment on the Floor, very carefully spelled out his intent. He was very specific in describing the nature of the timetable it set up:

> "The reservation as I am not submitting it provides the following timetable:
>
> "First, the exchange of ratification shall not be effective earlier than March 31, 1979. It need not take place even at that date."

Thus, the distinguished Senator from Massachusetts took pains to indicate that March 31, 1979 was the earliest possible date, and that it need not take place even then. He went on:

> "Second, the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted before March 31, 1979. This stipulation sets the earliest dates the Treaties could come into effect. It does not require that it do so on a specific date."

Thus, once more, the Senator emphasized that March 31 and October 1, 1979, were "the earliest dates." He went on to explain the complexity of the problem and the need to use caution:

> "It would provide us an opportunity to monitor the drift of events in Panama and elsewhere that would have an impact on U.S. capacity to manage the canal over the next 20 years or so. Given the emotions that have been evoked by this issue, I see great merit in not feeling forced to proceed immediately with the implementing legislation if the decision is made to ratify the Panama Canal Treaty.
>
> "A relatively long time period between the decision to ratify, if it is made, and the effective date of the treaties is needed for several reasons. First, if the implementing legislation is needed, it will be extremely complex. Numerous statutes will be affected. All legal ramifications of the end to U.S. jurisdiction in an area we have controlled for three-quarters of a century will have to be explored. A new employment system will have to be established.

In short, the passage of the Panama Canal Treaty of 1977 would entail a wholesale reorganization of the canal enterprise.

"Second, any reasonable assessment of the legislative schedule for the rest of this year leads to the conclusion that it would be impossible to give the necessary in-depth attention to the implementing legislation it deserves this year. There is a backlog of important legislation on energy, farm problems, labor relations, and so forth....

"Third, the implementing legislation would be of interest to many committees. This will inevitably add to the time necessary to consider it in an adequate manner.

"Fourth, this is an election year. The necessity of campaigning will further restrict the capacity of Members to give the needed attention to this matter.

"Fifth, there are likely to be many controversies between Congress and the executive regarding this legislation. For instance, it appears that the administration, in many of its calculations regarding the financial arrangements envisioned in the treaty, has assumed that the United States will forgo the interest payments on the U.S. investment that are presently going to the Treasury from canal revenues. I believe Congress would and should insist that those payments continue....

"There is, thus, ample reason to prolong the period before the treaties go into effect."

Senator Brooke, therefore, put the Executive Branch on notice that he did not expect ratification to take place until the President had time to review events in Panama and the Congress had time to act. He made it perfectly clear that the President was not required or expected to act by March 31, 1979. He outlined the difficulties facing the implementing legislation, and, finally, he pointed out the constitutional crisis that would be involved if the President acted precipitously:

"There is an additional important reason why sufficient time should be allowed to pass the implementing legis-

> lation. If the treaty came into effect before the United States had passed the legislation, we would find ourselves in the rather untenable position of being bound by a legitimate international obligation but unable to carry out our responsibilities under it. Such a situation would, at a minimum, be damaging to our international image. Moreover, it could precipitate a constitutional crisis if the executive acted to implement the treaties by Executive order rather than await the needed action by Congress. There is no reason to precipitate such a crisis if we can avoid it. By adopting the pending reservation, a major step will have been taken to lessen the liklihood that such a problem would develop."

The intent of the Brooke reservation, therefore, was to give time to allow prudence, caution, moderation, and discretion in the timing of the instruments of ratification. It was not expected that the President would take hasty action which might foreclose a decision not to ratify later on, and which would eliminate any leverage that the President might have in in the post-treaty negotiations that the United States might have with Panama over implementation.

Yet the State Department has announced that it intends for the President to exchange the instruments of ratification immediately, with the effective date to be March 31, 1979. The theory that the instruments be exchanged "in escrow" means that the power of pulling back or delaying the entry into force will be removed from United States control. It means that the United States will be committed to a specific date even before the President can be sure that Congress will have completed its work in time. The proposed exchange of instruments "in escrow" is like delivering over a post-dated check to a creditor.

If the President fears that the Congress will unduly prolong the legislative process, the sensible procedure would be to use the date in the Brooke reservation as a trump card, a force held in reserve to back up more expert and subtle forms of persuasion. But by playing it now, before he has had time to see how Congress might react, or how events develop in Panama, he is forcing an unnecessary confrontation that can only exacerbate his relations with Congress. He is saying to Congress, "I don't trust you and your judgment." He has almost a whole year to play that card, yet he appears to be on the verge of playing it now. The results could be unfortunate, both for Panama and the United States. Yet it appears that he is about to play it now as another capitulation to Panama's desires, despite the intention of Congress.

2. PANAMA'S INTERPRETATION OF THE BROOKE AMENDMENT

The Foreign Ministry Communique's comment on the Brooke reservation shows that Panama either willfully misunderstood the original provisions of the treaty, before it was modified, or has adopted an erroneous interpretation now to justify the earliest possible date for ratification. The comment begins:

> "In view of the abovementioned reservation, the fact that the instruments are exchanged will not make the treaties effective within 6 months as was previously agreed."

Of course, there was never any agreement that the treaties would become effective within six months. The agreement was that the treaties would become effective within six months after ratification (Article II), not six months after Senate approval,

The decision to ratify could take an indefinite length of time, as previously explained. Neither before the Brooke reservation was passed, nor afterwards, has there been any agreement in the treaty that exchange of ratifications would take place at any specified time. Nor does the Brooke reservation contain any hint that the effective date of the exchange of ratifications might be different than the actual date.

Indeed, the fact that the Brooke reservation specifies March 31 as the earliest date, rather than the specified date, shows that no specific time-frame was envisaged. Yet the communique goes on to say:

> "The significant ceremony in which the chiefs of government of Panama and the United States will exchange the instruments of ratification of the Torrijos-Carter treaties will soon take place in Panama. However, the exchange will not be effective until 31 March."

There is absolutely nothing in the treaty that requires the exchange to take place "soon." Nor is there any obligation to make the exchange "effective" on March 31.

As a result, Panama's interpretation for the date of the entry into force of the treaties is completely erroneous:

> "Panama understands that the deadline for the treaties' entry into force is 1 October 1979; however, it may take place before that date if the U.S. Congress completes, before that date the legislation to implement the treaties."

Plainly, October 1 is not a "deadline." A "deadline" is the latest possible date. What Congress intended was that October 1 would be the earliest possible date, not the latest.

Thus,President Carter, in agreeing to exchange ratifications with an effective date of March 31, 1979, and an entry into force

of October 1, 1979 is capitulating to a Panamanian interpretation of the treaty which is not justified by the text of the Brooke reservation. In so doing, he will be repudiating the Brooke reservation just as assuredly as Panama does in the communique.

E. THE CANNON RESERVATION TO THE PANAMA CANAL TREATY

The Cannon Reservation was passed by the Senate on April 18, 1978, by a vote of 90 to 10, as an amendment to the resolution of ratification of the Panama Canal Treaty. The substantive portion reads as follows:

> "After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless it is otherwise provided by legislation enacted by the Congress, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government and not reimbursed before the date of entry into force of the Treaty. Such reimbursement of such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase 'funds or other assets directly invested' shall have the same meaning as the phrase 'net direct investment' had under section 62 of title 2 of the Canal Zone Code."

This reservation was brought up late in the afternoon of April 18, and was allotted two minutes of debate, equally divided. With the exception of the phrase "unless otherwise provided by legislation enacted by the Congress," it is identical to a reservation brought up by the distinguished Senator from Nevada earlier in the day. No substantive points were

made in the debate, except for the following comment by the distinguished Senator from Idaho, Mr. Church:

> "Since the reservation offered by the distinguished Senator from Nevada provides that the final decision on the reimbursement of interest will be left to the Congress when it passes upon the enabling legislation to implement this treaty, we see no objection to the adoption of the reservation."

The effect of that addition was to postpone the real debate on this issue to a later time, thus stripping the reservation of any content. The only action it accomplishes is to leave the door open for Congress to consider the problem later--an action to which Panama must implicitly agree in accepting the reservation.

The substantive points, however, were touched upon in the earlier debate on the amendment for which this was a substitute. The distinguished Senator's statement was also short, but it is worth quoting in full:

> "The subject of my reservation is interest payments and recovery of the U.S. investment. I was privileged to chair hearings in the Senate Armed Services Committee on the financial impact of the proposed Panama Canal Treaty. One of our witnesses was Elmer B. Staats, Comptroller General of the United States, who discussed the financial issues. He made the assumption that the forthcoming implementing legislative package will relieve the Panama Canal Commission of the obligation to pay interest to the Treasury on the interest-bearing portion of the U.S. investment. This assumption is in line with the administration's statements that the commission will be relieved of this obligation. The U.S. investment in the Canal is sizeable and amounts to about $318 million. When figured at the rate of long-term treasury bonds the interest amounts to around $20 million a year. The Panama Canal Company has the statutory obligation to pay. At $20 million per year over 22 years this would amount to $440 million loss to the Treasury over the life of the Treaty. I might note that Comptroller General Staats stated that this $20 million estimate annual interest payment 'could be substantially more' per year over the next 22 years. Since the interest rate is based on the U.S. Treasury average rate for long-term issues and 'as that port-

folio turns over, these rates are bound to go up, and I do not believe that this has been fully taken into account in these projections.' According to an Armed Services Committee staff study, Mr. Staats estimated the total loss to the Treasury over the next 22 years at $505 million.

"I have quite a problem accepting the forgiveness of this obligation. As a matter of fact, I cannot accept it. On Febraury 1, 1978, President Carter in a nationally telcvised address to the American people stated:

"'Are we paying Panama to take the Canal? We are not. Under the new treaties payments to Panama will come from tolls paid by ships which use the Canal.'

"On December 28, 1977, the President said:

"'We wanted a treaty that did not put a financial burden on the American taxpayer and we got it.'

"On September 26, 1977, Secretary of State Vance in testimony before the Senate Foreign Relations Committee stated concerning the cost of the treaties:

"'The treaties require no new appropriations nor do they add to the burdens of the American taxpayer.'

"Well in line with this spirit of not imposing upon the taxpayer, I submit my reservation to not relieve the Panama Canal Commission of this statutory interest obligation because if the Commission is relieved of that obligation obviously it would impose a burden on the American taxpayer by the loss of those revenues of at least $20 million a year for the next 22 years."

The distinguished Senator's remarks are so apt, so much to the point, that it is hard to believe that anyone could disagree with them. His original amendment would have, by direct action, imposed upon the Commission the obligation to repay the Treasury for those costs to the American taxpayer. Yet later on, he withdrew that amendment, and inserted language postponing the Senate's decision on the matter--an action that particularly pleased the distinguished Floor leader, so much so that he was willing to accept the revised version. The question therefore

arises: Why, therefore, was it so necessary to postpone the actual decision on this matter, while at the same time permitting the distinguished Senator from Nevada to have the honor of getting his reservation passed? The distinguished Senator from Nevada performed an outstanding service in preserving the Senate's option to debate this point at greater length in the future; yet that debate can only come to the conclusion that Senator's intent to protect the American taxpayers is impossible to fulfill, given the Canal's earning potential and the exorbitant payments which the treaties require us to give to Panama.

1. LIMITATIONS ON FINANCIAL POTENTIAL OF THE PANAMA CANAL

The Senator from North Carolina has been deeply concerned by the multi-billion dollar costs which will have to be paid by the American taxpayers to implement the Panama Canal Treaties. It is claimed that all payments to Panama will come from Canal revenues; yet in order to make those payments available to Panama, the American taxpayer must pay huge costs of operation which can never be recovered from tolls. As a result, the Senator from North Carolina made a careful study of the conclusions of experts who have examined Canal finances.

The central question is: How high can tolls be raised? All the experts agree that tolls cannot be raised without limit. Everytime the tolls are raised, some of the traffic is diverted to other routes. With less traffic, fewer ships are paying tolls. So even with the higher tolls on each ship, the aggregate income might be less than before tolls were raised. At a certain point

one reaches the point of diminishing returns as the curve flattens out. Once toll increases pass 40 percent, the net aggregate income remains the same. Even if increases of 100 per cent were imposed, the aggregate revenue increase would still hover near 40 per cent. Thus there is a practical ceiling on the Canal's income.

The Comptroller General, in the same statement quoted by the distinguished Senator from Nevada, went on to demonstrate the impact of interest charges and amortization charges on the Canal's deficit. According to his rough estimates for FY 79, the net tolls income deficiency, after payments to Panama, would be $37 million. But if interest and amortization were included as payments to the U.S. Treasury, the net tolls income deficiency would be $79 million.

Governor Parfitt estimated the necessary toll increase at 19.5 per cent, including the bonanza of income from Alaskan oil. To raise $79 million, tolls would have to be increased by 40 per cent the first year. Thus in one stroke, the ceiling would be reached. From that point on, the upward spiral of deficits would be paid by the American taxpayer.

However, the picture is even grimmer. According to studies by Mr. W.M. Whitman, former Secretary of the Panama Canal Company, and a consultant in Canal finance, the projected statements misstate the actual deficit. And further studies by the Institute for American Relations, projected these deficits for six years and discovered that to make all the payments to Panama and to the United States Treasury would require increases ranging from

49.8 percent in FY 79 to 63.3 per cent in FY 84 in aggregate toll revenues. Since it is impossible to increase the aggregate earning capacity of the Canal above 40 per cent, it is evident that it is simply impossible to repay the American taxpayer for his investment in the assets of the Canal.

Those who are interested in more details on the financial earning potential of the Canal should consult my presentation to the Senate on April 17, page S 5641 of the daily Record, for detailed analyses and tables. At that time, I proposed a reservation that would have created a balance of equity between Panama and the United States. The reservation would have established priorities of payment, as funds were available: Panama would have been guaranteed $20 million a year from the payment for services and the fixed payment; then, as funds were available, the U.S. Treasury would have been paid for interest and amortization; finally, Panama would have been paid under the 30¢ a ton formula to the extent that funds were available. The reservation was defeated on the morning of April 18, tabled by a vote of 56 to 39.

Nevertheless, the fact remains that, if tolls are raised high enough, some return could be made to the U.S. Treasury. Congress should carefully consider that option. Yet any such increase in tolls, will decrease tonnage passing through the Canal, and decrease payments to Panama under the 30¢ a ton formula. Moreover, it would clearly make it impossible to pay anything under the contingency payment clause. Once more, Panama's expectations are being set aside.

2. PANAMA'S EXPECTATIONS UNDER THE CANNON RESERVATION

The practical realities of Canal finance leave Congress with very little choice to exercise under the Cannon reservation. If Congress is to have the option of protecting the United States taxpayer, it can only be done at the expense of Panama. The Cannon reservation legitimizes the option of including payments to the U.S. Treasury as an operating expense, before any payments to Panama are made. The Treaty says that payments to Panama shall be made out of "Canal operating revenues," but the term "Canal operating revenues" is nowhere defined. Article XIII, Paragraph (4)(c), as already pointed out, appears to be talking about net operating revenues; but no distinction is made in Paragraphs (4)(a) and (b) between net revenues or gross revenues. It is conceivable that Congress, in the implementing legislation, could define "operating revenues" as meaning net operating revenues, consistent with Paragraph (4)(c). That is probably the only way that real meaning could be given to the Cannon reservation; yet it would mean that, if net revenues (after paying the U.S. Treasury) were not available, no payments need be made to Panama.

With this as background, the Foreign Ministry's communique sets forth Panamanian expectations:

> "Aside from the fact that it is evident that the United States has been amortized bountifully, the knowledge of its revenue-raising capacity to cover the Panama Canal costs according to studies by experts contracted especially by U.S. authorities demonstrates that the policy on revenue and expenditures for the Canal's operations can be established

> in such a manner that will satisfy the provisions of this reservation and the income which Panama hopes to receive according to Article XIII, Paragraph (4)(b) and (c), without significantly affecting the volume of traffic. Therefore, this reservation does not alter what was agreed upon. To the extent that the United States does not violate the principle of honoring the treaties in good faith, Panama cannot present claims to the United States."

It is not at all evident that "the United States has been amortized bountifully." In fact, most of the studies show that the return to the United States has been understated because of the inflation of the dollar since 1903. Moreover, as already demonstrated, Panama is incorrect in stating that the revenue projections indicate that the Canal can pay both the U.S. Treasury and Panama out of earnings. In fact, there is no way even a portion of both requirements can be met without decreasing the volume of traffic by excessive tolls, and consequently, decreasing Panama's income under the 30¢ a ton formula.

Therefore, the Cannon reservation is a significant alteration of what was agreed upon. Without the reservation, there would be no grounds whatsoever for Congress to include costs to the Treasury among the costs of operation. Panama appears to be denying to Congress the right to choose an option that might decrease Panama's financial benefits. Panama's discussion of "good faith" falls down over the assumption that the original treaty provisions can not be altered by the Senate. But the Senate did alter the treaty provisions by amendment,including the Cannon reservation. Panama must accept the full meaning of the Cannon reservation if she wants the rest of the treaty; and Panama must accept it, in good faith, as an alteration.

F. THE DANFORTH UNDERSTANDING TO THE PANAMA CANAL TREATY

The Danforth Understanding was passed by the Senate on April 17, by a voice vote, as an amendment to the resolution of ratification of the Panama Canal Treaty. The substantive portion reads as follows:

> "Nothing in subparagraph 4(c) of Article XIII shall be construed to limit the authority of the United States of America through the United States Government agency called the Panama Canal Commission to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover payment to Panama described in subparagraph 4(c) of Article XIII."

This understanding returns once more to the same theme as some of the reservations already discussed; yet it makes even more explicit certain principles which are anathema to Panama.

The distinguished Senator from Missouri, Mr. Danforth, sought to nail down the point:

> "The Commission must be free to make expenditures which it deems are required to insure the same level of Canal operations as existed under the Panama Canal Company. The contingent payment must not in any way act as a constraint on Commission decisions. This understanding makes it clear that the Commission's authority shall not be burdened or limited in any way by considerations of the contingent payment.
>
> "The understanding also makes it clear that tolls for users of the Canal need not be set at levels designed to produce sufficient revenues to cover the $10 million contingent payment, or any portion thereof. The wording does allow Congress, if it so desires, to permit tolls to account for this payment. I have noted that the draft implementing legislation proposed by the administration does not allow for this payment in the toll base. But I do not want to bind this or some future Congress in this regard. I do, however, wish to establish the fact that the United States, through the Panama Canal Commission, is under no obligation

whatsoever to compel Canal users to bear explicitly this financial burden."

This explicit rebuke to Panama's expectations somehow became almost too much for the Foreign Ministry to bear. Although it merely makes explicit what follows from the logic of the treaty and of other reservations, the Panamanian communique burst out in a long restatement of grievances--an hysterical outburst that calls into question the future cooperation of Panama and its good faith in accepting any of the amendments which the Senate added to the Treaties and the resolutions of ratification:

> "When the text of Article XIII, Paragraph (4)(b) and (c) was agreed to, it was evident from a study of the Canal operations that the Canal produces approximately $18 million annually which comprise the Canal's operating revenues. The negotiators' understanding was that this figure would serve as a base to cover the payment to Panama of the $10 million guaranteed in Article XIII, Paragraph (4)(b) and the additional $10 million agreed to in Article XIII, Paragraph 4 (c), these payments being considered as part of the Canal's operating revenues. For this reason we are in agreement that the obligations derived from Article XIII, Paragraph (4)(b) and (c) in favor of Panama can be covered without raising tolls and for this reason we agree with the Senate that it is not imperative to raise tolls to cover these obligations to Panama. By virtue of the principle of good faith which prevails in the observance of the treaties, Panama expects the United States to accommodate its policy on expenditures so that this article can be the means by which Panama receives a fairer retribution for its contribution to the Canal work. To the extent that the Panamanian people are satisfied with the Canal administration due to the products they derive from it, they will continue protecting their Canal. But if a stingy spirit prevails, aggravating the injustice suffered by Panama since 1903, then a circle of friendship will not have been built around the Canal but rather one of hatred, with possible grave consequences if a crisis occurs which the national government would be the first to deplore."

Once again, the Panamanian position is based upon economic fantasy. Even at present toll rates, there has been no surplus

of"$18 million" annually to serve as a base. The reorganization of the Canal under the Treaty is too complicated to discuss at this point, but there is no simplistic method of arriving at any $18 million figure. Indeed, the Canal has run at losses.

Every single financial study of the Canal has clearly demonstrated that tolls will have to be raised. The official figure, and minimum figure, is an increase of 19.5 per cent, but other studies show double and triple that amount. Thus the notion that payments can be paid to Panama without raising tolls has no relation to reality. When the communique says that "we agree with the Senate that it is not imperative to raise tolls to cover these obligations to Panama," it is agreeing with something the Senate never said. Moreover, if all the true costs are added in, as permitted by the Cannon reservation, the Panamanian statement is nonsense.

Thus the statement that "Panama expects the United States to accommodate its policy on expenditures" to provide the benefits which Panama expects is diametrically opposed to the Danforth understanding, the Cannon reservation, and the Hollings-Heinz-Bellmon Reservation. When Panama calls for "good faith" in implementing the treaties, Panama is insisting on implementing the treaties according to Panama's original expectations. Panama is totally rejecting the concept that the U.S. Senate has any right to alter the treaties in any respect.

When Panama makes such statements, Panama is rejecting its own principle of offer and counter-offer. Panama is demanding

that the Senate amendments have no meaning. It is perhaps not surprising that a dictatorship fails to understand the democratic process, and the constitutional requirements which United States officials must adhere to. In a dictatorship , one man can approve a treaty draft; but in the United States, the draft accepted by the Chief Executive is only a provisional document, subject to change by the U.S. Senate. For the U.S. Senate itself is acting in good faith when it changes treaty language.

If Panama is to rely upon "good faith," therefore, then Panama must accept the changes imposed by the Senate in good faith, and Panama must work to implement those changes in good faith herself. The only alternative is to reject the whole package.

Yet the Foreign Ministry goes on to raise the spectre of crisis, created by violence among the Panamanian people. Panama's use of threats has been typical of the entire negotiating process. The negotiations began in a Communist-organized riot in 1964. Panamanian government propaganda about the"martyrs" of 1964--when half the "martyrs" were looters who were trapped by greed in buildings set on fire by arsonists--has been direct incitement to violence. The multiplicity of statements by government officials --from Omar Torrijos on down--about the inability to control the anger of the people have been direct attempts to stir up the Panamanian people. Deploring such violence is thus the height of hypocrisy.

To once more use the same techniques--techniques that are doubtless tried and true--during the period preceding ratification, throws into doubt Panama's willingness to cooperate in any aspects of treaty implementation. It casts into doubt Panama's acceptance of any of the amendments and reservations. It says to the American people that the treaty does not represent a true agreement, a true meeting of minds, but is a transparent device for the rapid and total takeover of the Canal. For the President to ratify the treaties under such circumstances would be to break faith with the Senate and the American people.

III. HAS PANAMA ACCEPTED THE TREATIES AND AMENDMENTS?

The Foreign Ministry communique purports to contain Panama's acceptance of the treaties and amendments. Yet even in the concluding pages of the communique, it is clear that Panama is not yet satisfied. It is clear that Panama's "acceptance" is only a short-term tactical maneuver. For once Panama regains sovereignty, Panama will be in a strong position to denounce the treaties and demand negotiations. Having already rejected the key reservations by interpreting them as having meanings opposite to what the Senate intended, Panama is ready to re-enter the "liberation struggle," with all the trappings of Marxist dialectic:

> "The achievements obtained in the negotiations are conquests which belong to the Panamanian people. They cannot be destroyed or renounced but can be taken to their ultimate culmination by future generations. Let us strengthen these conquests, the most feasible now, and when better circumstances for struggle exist, we will again undertake the task to improve the terms of the relationship."

This passage makes it plain to all that Panama expects to

renew the "struggle" against the United States. Even though the Panama Canal Treaty is supposed to last for 22 years, and is supposed to phase in Panamanian control and operation of the Canal, the "struggle" will continue. The passage cannot be interpreted as referring to the post-Treaty period because it talks about undertaking "to improve the terms of the relationship," when "better circumstances for struggle exist." The better circumstances, of course, will exist when Panama has sovereignty over the Canal, and Panamanians are trained to operate the Canal. Those "better circumstances" will be sooner than we think.

Does Panama accept the treaties and the amendments when Panama signs the protocol of ratification? Clearly, only as a tactic:

> "The national government has reached the conclusion that the treaties unquestionably achieve, within a reasonable period of time, the fundamental objectives of the Panamanian nation. Because of this, the national government will consent to the exchange of the instruments of ratification of the Torrijos-Carter treaties. With the entry into force of the treaties, better instruments of struggle will be placed in the hands of the republic. With them, Panama will continue its efforts so that the national objectives will be realized in a shorter period of time by virtue of opportune and patriotic negotiations that the governments of the future will undertake."

The treaties and sovereign jurisdiction will provide a base for new negotiations--negotiations doubtless based on the same kind of threats exhibited as in the past. Panama's intention to shorten the 22 years of the treaty is boldly expressed. Despite all of Panama's talk about the United States lacking "good faith," this remarkable document tells us that Panama is not agreeing in good faith, either to the treaties themselves or to the amend-

ments. Panama is making a farce out of the ratification process, and is treating the Senate with contempt.

Despite the years of negotiations, despite the long months of debate, there is still no meeting of minds on the basic treaty issues. Panama's interpretation of the key amendments is openly opposed to the Senate's intention in passing those amendments. If both nations sign protocols which include the Senate amendments, it does not mean that Panama accepts the amendments with the Senate's intentions intact. It means that Panama accepts the amendments according to her own interpretion--an interpretation that repudiates the Senate's work. Panama has put us on public notice by means of the Foreign Ministry communique. The President must not ratify the treaties as long as the gulf of meaning opens wide between the two nations.

A P P E N D I X

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[Text] I. Introduction

When the Senate of the United States gave its advice and consent to President Carter regarding the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, the Foreign Ministry issued two communiques (16 and 27 March) in which it said that the government would not express its judgment on the amendments, understandings, conditions and reservations approved by the Senate until the same body also arrived at its constitutional decision regarding the Panama Canal treaty.

On the 18th of this month the U.S. Senate gave its advice and consent to President Carter regarding the Panama Canal treaty with the reservations and understandings which will be analyzed in this communique.

With the completion of the Senate's proceedings in the United States, the Foreign Ministry, complying with orders from His Excellency President Demetrio B. Lakas and His Excellency Chief of Government Brig Gen Omar Torrijos Herrera, now undertakes to fulfill its duty of explaining to the citizenry the juridical scope of the resolutions of the Senate and setting forth its stand concerning the Senate's decision.

II. Significance of the Terms "Amendments," "Understandings" and "Reservations"

The above terms are used by the Senate in its resolutions of 17 March and 18 April of the present year. For this reason it is appropriate to express the meaning given to those terms by U.S. jurists.

Amendments

An amendment to a treaty is a formal change in the letter of the text negotiated by the parties.

Reservations

A reservation modifies or limits the substantive effect of one or more of the treaty stipulations. A reservation is a condition which adds something substantial to a treaty or eliminates something substantial from it. A reservation is a notification in the sense that the state making it will not implement the treaty except in accordance with that condition.

Understandings

The term "understanding" is used to describe a declaration which is not made with the intention of modifying or limiting any of the treaty stipulations. An understanding can clarify or interpret one or more of the treaty stipulations or incorporate a declaration of policy or procedure.

Declarations

The terms "declaration" or "communication" are used to express certain matters of policy or principle and in no way abrogate or change the rights or obligations stipulated in the treaty. Frequently those terms are used interchangeably with the word "understanding."

The legal meaning of a Senate declaration, regardless of its designation, depends entirely on its substance. A declaration which modifies, limits or changes the text of the treaty or its meaning is actually a reservation. A declaration which clarifies or explains or deals with a secondary matter does not change the treaty and consequently is not a reservation. Sometimes it can be difficult to distinguish clearly between an understanding and a reservation. One may gradually obscure the other and thus become a question which the two parties may decide for themselves.

(Source: Whiteman, Digest of International Law, Vol 14, pp 137-198)

The Vienna convention of 1969 on treaty law says in Article 19:

"Article 19. A state may formulate a reservation at the time of signing, ratifying, accepting or approving a treaty or adhering to it...."

That same convention defines the term "reservation" in Article 2 (1) D:

"D. 'Reservation' is understood to be a unilateral declaration, regardless of its name or designation, made by a state in signing, ratifying, accepting or approving a treaty or in adhering to it with the purpose of excluding or modifying the legal effects of certain dispositions of the treaty in its application to that state."

In formulating the draft of the convention, the commission of international law explained the word "reservation" in the following terms:

"13. A definition of reservation becomes necessary because the states, in signing, ratifying, accepting, approving a treaty or adhering to it, usually formulate declarations on the manner in which they understand some questions or on their interpretation of certain dispositions. Such a declaration can be a simple clarification of the position of the state or can be a reservation, depending on whether it modifies the application of the clauses of the treaty already approved or excludes it."

(Document of the United Nations, Supplement No 9 A/5209, p 8)

Although this Vienna convention has not entered into force, it is the product of the work of codification of public international law sponsored by the United Nations and reflects the present state of the development of the norms which regulate relations between those subject to international law.

We can assert that, regardless of the term used, what matters is if the condition, reservation, amendment or declaration made by one party to the other modifies or changes what has been agreed to by the plenipotentiaries. If that change has been made, it is unquestionable that the treaty has not been ratified but, rather, that a counteroffer has been made by one party which the other is at liberty to reject, modify or approve. Only if it approves the counteroffer is the consent or perfecting [perfeccionamiento] of the wish of both parties to obligate themselves realized.

III. Ratification by Plebiscite in Panama

In the United States ratification is effected by the president with the advice and consent of the Senate. In Panama, in conformity with Article 274 of the constitution, ratification of the treaties concerning the canal is by plebiscite. The authority to ratify resides exclusively in the people, in each citizen who takes on the responsibility of a conegotiator. The executive branch is not responsible for ratification in Panama. Its role is limited to that of being a mere exponent of the popular will.

The plebiscite required by the constitution has already been carried out in Panama. The people of Panama expressed their desire to ratify, that is, to give their approval to, the government's negotiating effort in the plebiscite held on 23 October 1977.

IV. Documents Ratified by the Panamanian Citizenry on 23 October 1977

Under Law 33 of 1977, which summoned the people to a plebiscite, the following were submitted for the consideration of the citizenry: the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and the Panama Canal treaty with the minutes [actas], annexes, maps and agreements signed in Washington, D.C., on 7 September 1977. In addition the Panamanian people approved the statement of understanding of 14 October 1977 agreed upon by Panamanian Chief of Government Gen Omar Torrijos Herrera and U.S. President Jimmy Carter. This statement was personally explained to the citizenry by General Torrijos before 23 October 1977. In other words, the people who supported the Torrijos-Carter treaties in the plebiscite approved the true interpretation given to those instruments by their signatories, that is, by the persons most authorized to interpret them or determine their true scope.

The statement of understanding was as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the neutrality treaty), Panama and the United States have the responsibility to guarantee that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with its respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal. This does not mean, nor shall it be interpreted as, a right of intervention by the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

"The neutrality treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency to go to the head of the line of vessels in order to transit the canal rapidly."

V. The DeConcini Reservation and the Principle of Nonintervention

The struggle against colonialism has been long and bloody. The best example of a collective effort to break the chain of oppression was given by America when Bolivar liberated the people and gave them the fruits of their own government. Despite this independence, however, new forces alien to our people established spheres of influence and colonial situations which, fortunately, have been almost eliminated. In addition to their fight for their emancipation, the peoples of America have also struggled to eradicate all forms of interference in their domestic affairs.

A clear Latin American contribution to the development of international law has been the formalization of the principle of nonintervention, which was codified for the first time in Article 8 of the conference [as published] on the rights and duties of states approved by the Seventh Pan-American Conference held in Montevideo in 1933. This rule states:

"No state has the right to intervene in the internal or external affairs of another."

President Franklin Delano Roosevelt's position was clearly expressed by the U.S. delegate in these words:

Declaration made by the U.S. commission upon signing the Convention on the Rights and Duties of States in Montevideo in 1933:

"Any observing person must clearly understand now that under the Roosevelt administration the U.S. Government is as opposed as any other government to interference with the liberty, sovereignty or other domestic affairs or processes of the governments of other nations....

"I feel safe in committing myself to the statement that, with our support for the general principle of nonintervention as it has been defined, no government should fear any intervention by the United States under the Roosevelt administration."

This principle or basic norm of international conduct was successfully introduced by Latin American jurists, including our Dr Ricardo J. Alfaro, into the UN Charter, adopted in 1945, which in Article 2 (4) states:

"All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations."

In April 1948, 30 years ago, the American countries met in Bogota where they clearly and categorically reiterated their support for the principle of nonintervention as follows:

Article 15 of the OAS Charter approved in Bogota in 1948: "No state or group of states has the right to intervene, directly or indirectly, regardless of the reason, in the domestic or foreign affairs of another. The foregoing principle prohibits not only action by the armed forces, but any other form of interference or attack on the character of the state and political, cultural and economic elements which constitute it." (Note: This article is identical to Article 18 of the OAS Charter amended by the Buenos Aires protocol in 1967.)

The aforementioned article is included in Chapter 17 of the OAS Charter which is entitled "Rights and Fundamental Duties of States," and Article 11 of this same charter states:

"The fundamental duties of the states are not susceptible to impairment in any manner."

The foregoing signifies that the states have accepted a limitation to their capacity to contract internationally. The state cannot contract the destruction of its character, and there is no pact whatsoever which can validly achieve that objective.

In view of the stipulations of the aforementioned Article 11, during the plebiscite period the Foreign Ministry spokesmen explained that Article V of the canal treaty, which establishes the principle of nonintervention as a duty of the United States to abstain from meddling in the domestic affairs of Panama, was unnecessary from the legal viewpoint but that it had been included as a precautionary political measure. And in view of multilateral rules contained in treaties-laws, as are the UN and OAS charters, conventions which regulate the conduct of Panama, the United States and other countries, there is not the slightest shadow of a doubt that no state, superpower or ministate, can claim the "right" to intervene in areas which are of the exclusive competence of other states.

But a hardly edifying spectacle was given when some U.S. senators, during the Senate debate on the Torrijos-Carter treaty, rudely used language which without a doubt indicated that, in their opinion, the United States has the "right to intervene" in Panama to preserve the neutrality and security of the canal.

This must be made very clear. The "right of intervention" does not exist; everything is to the contrary [todo lo contrario]. Intervention has been proscribed in international legal life. There may be interventions. These cannot be avoided, just as crime cannot be avoided, but such interventions can only be regressively engendered by colonialist and neocolonialist minds which still do not understand that the destiny of man is freedom.

During his speech in the Senate, Senator DeConcini used language which offended the dignity of the Panamanian nation and which is not consonant with the great advancements of humanity. He spoke of so-called rights of intervention which the peoples of the world, organized under the symbol of the United Nations, extinguished once and for all in a collective manner. However, Senator DeConcini also stated:

"This does not mean, nor should it be interpreted as, a right of the United States to interfere in the domestic affairs of Panama."

Any intervention violates the basic rule of self-determination.

Any intervention violates the respect which every state owes to the independence, territorial sovereignty and honor of other states. Therefore, our citizens expressed with righteous firmness their repudiation of Senator DeConcini's words used in explaining his amendment.

Fully identified with the national will, the Panamanian Government made timely efforts before the U.S. Government to insure the Senate would reaffirm the international commitments of the United States contained in the UN and OAS charters. We were successful in that respect. To dispel any doubt, the U.S. Senate in its 18 April resolution stated:

Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure and accessible pursuant to the provisions of the treaty and the neutrality treaty, and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

This Senate resolution renders indefensible the allegation that the Torrijos-Carter treaties grant the United States any right of intervention in Panama.

According to international law, the obligation which all states have of nonintervention in the internal affairs of others is but the corollary of the principles of sovereign equality of states and respect for their political independence. If sovereignty is the right of all peoples to have their own government, to not have any other supreme state power, it is evident that any intervention conflicts with political independence and is repudiated legally by all humanity.

Panama's political independence, territorial integrity and self-determination are guaranteed by the unshakable will of the Panamanian people and the active solidarity of peoples of the world, in accordance with what was solemnly compacted in the UN Charter. On 28 November 1821 Panama declared its will to be free and independent. This decision was reaffirmed on 3 November 1903 and also on 9 January 1964 when the January martyrs who offered their lives pointed out the path of sacrifice as the price of liberation from the colonialist yoke. Therefore, the Republic of Panama rejects, in a united and decisive fashion, any attempt by any country to intervene in its internal affairs. This is not only a matter of international law but of the steadfast will of our people.

Liberty is an inborn right of human beings and people. One is free when liberty takes hold of the soul of a people. That torch exists firmly in the heart of each and every Panamanian, and therefore any attempt to intervene in matters of the exclusive competence of Panamanians will be rejected without any hesitation.

VI. Intervention Is Repudiated in the U.S. Senate

The voices of great U.S. leaders were heard clearly as they repudiated any interpretation that an alleged "right" to intervene in Panama could be inferred. Senators Frank Church, Mike Gravel, George McGovern, Jacob Javits, Paul Sarbanes, Edward Kennedy and others stated that the era of intervention is a thing of the past. It is relevant to quote a portion of Senator Kennedy's statements:

"And it is quite fair that the government and people of Panama should aspire to end the foreign military occupation of their own territory, that they should aspire to recover full national control of all their territory almost 100 years after becoming independent."

For his part, Senator Church said:

"The UN Charter, the OAS Charter and the Inter-American Treaty of Reciprocal Assistance--our military alliances with our neighbors in this hemisphere--all contain provisions which prohibit intervention in the internal affairs of other nations. Therefore, the interventionist policy of the United States is a thing of the past.

"However, in Latin America memories have not faded. The main unifying force in the foreign policy of the Latin American nations over the last 40 years has been support for the principle of nonintervention. Having committed themselves 40 years ago to a new and more mature relationship with the United States, the Latin American countries are determined to keep it that way."

VII. America in a State of Alert To Keep the Doors of Intervention From Being Reopened

As clear proof of all the American peoples' effective and affective solidarity with Panama in its struggle to free itself of every colonialist presence or vestige of colonialism in its territory, it is worthwhile to note the words of two prominent Latin American leaders.

Venezuelan President Carlos Andres Perez said the following on welcoming the President of the United States in Venezuela on 28 March of this year:

"With all this, Mr President, the feelings of the Latin American people are interpreted in a fully optimistic manner but without being able to hide the sincere concern felt throughout Latin America in the face of any eventuality.

"Just as we joyously celebrated the U.S. bicentennial, we Latin Americans want to celebrate with the same fraternal rejoicing the ratification of the new treaties, the indication of a new era of friendship and cooperation between Latin America and the United States. This is the symbolic meaning of the new Panama Canal treaties.

"Not only will this be the ratification of a new treaty that is just and respectful of sovereignty, but at the same time, it will ratify forever the eternal friendship between the United States and Latin America."

Colombian President Dr Alfonso Lopez Michelsen let his eloquent voice be heard in the following terms:

"Let not the foot of a foreign power again be placed on the sacred soil of a Latin American country.

"The Bogota charter, approved by the Pan-American Conference in April 1948, guarantees our right to never suffer intervention by any foreign power."

VIII. General Torrijos Sets the Parameters of Dignity in Order To Make a Decision

Despite the fact that the Foreign Ministry communiques expressed the government's decision to withhold judgment regarding the reservations introduced into the canal neutrality treaty, it is obvious that General Torrijos' statements to the press and his notes to the chiefs of state of the whole world and to President Carter indicated the government's dissatisfaction and concern regarding the interventionist nature of the so-called DeConcini reservation. Therefore, in his note to the chiefs of state, General Torrijos said:

"Because of the support which your people and government have given to the Panamanian cause and because, according to Article 7 of the neutrality treaty, Panama and the United States will open to the support of all the states of the world the objectives of this treaty, we have believed that it is our duty to inform you of this situation about which we have publicly expressed our deep concern."

And in his letter to President Carter, our chief of government said:

"However, I do wish to point out that this study will be based on the following concepts: Panama will consider unacceptable any reservation which offends the national dignity, which distorts or changes the objectives of the treaty or which is designed to prevent the effective exercise by Panama of sovereignty over all its territory, the turnover of the canal and the military withdrawal on 31 December 1999."

IX. Analysis of the Amendments, Reservations and Understandings

The Foreign Ministry now proceeds, methodically, to analyze the amendments, reservations and understandings by which the U.S. Senate gave its advice and consent to the Torrijos-Carter treaties.

I. Amendments:

A. At the end of Article IV, insert the following: "A correct and authorized statement of certain rights and duties of the parties under the foregoing is contained in the statement of understanding issued by the Government of the United States of America on 14 October 1977 and by the Government of the Republic of Panama on 18 October 1977, which is hereby incorporated as an integral part of this treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the neutrality treaty), Panama and the United States have the responsibility to assure that the canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal. This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

B. At the end of the first paragraph of Article VI, insert the following:

"In accordance with the statement of understanding mentioned in Article IV above: The neutrality treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the canal expeditiously. This is intended, and it shall be so interpreted, to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the canal rapidly."

A perusal of these two amendments reveals that they correspond exactly with the statement of understanding agreed upon by General Torrijos and President Carter on 14 October 1977. This declaration contains an authentic interpretation of the treaty of neutrality agreed upon by the signatories. It was released publicly in Panama before the plebiscite and accepted by the citizenry in approving the Torrijos-Carter treaties.

What the above transcribed amendments do is to formalize the statement of understanding because it was not signed. But this fact does not minimize its obligatory power. In international law commitments are also contracted in oral form. The interpretation of the neutrality treaty agreed upon by General Torrijos and President Carter obligates Panama as well as the United States and is part of the treaties even though the document is not signed. It was there that the authentic interpretation of the neutrality treaty was given by the person who in Panama has the constitutional responsibility for directing foreign relations.

II. Reservations:

A. Subject to the condition which will be included in the instrument of ratification of the treaty which will be exchanged with the Republic of Panama, notwithstanding the provisions of Article V or any other provisions of the treaty, if the canal is closed, or its operations are interfered with, the Republic of Panama and the United States of America shall each independently have the right to take such steps as it deems necessary, in accordance with its constitutional processes, including the use of military force in Panama, to reopen the canal or restore the operations of the canal, as the case may be.

This is what has commonly been called the DeConcini reservation. Obviously its scope departed from the Torrijos-Carter declaration because it eliminated the obligation of the United States not to intervene in the internal affairs of Panama and to respect the political independence and territorial integrity of Panama.

Panama has recognized the U.S. right to act unilaterally in defense of the neutrality of the canal. General Torrijos reaffirmed this to President Carter in the note he sent him on 15 March 1978:

"Subsequently, and by virtue of the confusion created regarding the two articles of the neutrality treaty, we proceeded to issue a memorandum of understanding which clearly interpreted the unilateral capacity of each of our countries to preserve the regime of neutrality against threats, attack or closure of the canal, the priority passage of warships in case of emergency and noninterference in the internal affairs of Panama as well as the inviolability of territorial integrity and political independence of my country."

As abominable as the DeConcini reservation were the baseless explanations of the same senator, who seeks to revive U.S. intervention in the internal affairs of Panama. Fortunately, the Senate approved the 18 April resolution, known as the Church amendment, which reaffirms respect for the principle of nonintervention in the internal affairs of the countries of America, which was reproduced above.

With this last Senate resolution, it is evident that the United States has reaffirmed its international commitments in light of the UN and OAS charters. With it the DeConcini reservation has been rid of its imperialistic and interventionist claws, and the enforcement of the principle of nonintervention has been reestablished. The specter of new interventions at the end of the 20th century, which rightly caused concern to all Panamanians, has been eliminated.

B. Subject to the condition that the instruments of ratification of the treaty shall be exchanged only on the conclusion of a protocol of exchange to be signed by authorized representatives of both governments, which shall constitute an integral part of the treaty documents and which shall include the following:

"Nothing in this treaty shall preclude Panama and the United States from making in accordance with their respective constitutional processes any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the treaty, including agreements or arrangements for the stationing of any U.S. military forces or maintenance of defense sites after that date in the Republic of Panama, that Panama and the United States may deem necessary or appropriate."

This is what is known as the Nunn reservation. It has been objected to in Panama with the argument that it is contrary to Article V of the neutrality treaty which stipulates:

"After the termination of the Panama Canal treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory."

The Foreign Ministry shares the national sentiment regarding the termination of U.S. military occupation. The Nunn amendment does not oblige Panama to negotiate an agreement on bases, much less to accept a treaty with this purpose. The obligation to negotiate is nonexistent and even if it did exist, the obligation to negotiate does not entail the commitment to sign a treaty. In 1970 Panama rejected the 1967 treaties without detriment to the commitments of the United States and Panama before the OAS to negotiate a treaty which would resolve the causes of conflict.

The straight interpretation of the Nunn reservation is that if the United States resolved to propose to Panama the negotiation of a treaty so that the United States could have military bases in Panama after 1999, the government ruling Panama's destiny at that time will be free to agree or not agree to the negotiations. That will be its responsibility. That government will assess the situation and make its sovereign decision which it will communicate to the United States.

With total emphasis, the Foreign Ministry declares that Article V cited previously has not been changed. All states have the power to negotiate without limitations except those imposed by the UN Charter.

C. Before the date of entry into force of the treaty, the two parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes, without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States by the American Battle Monuments Commission, including the display of the U.S. flag, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

D. The U.S. flag may be displayed, pursuant to the provisions of Paragraph 3 of Article VII of the Panama Canal treaty at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States.

E. The President of the United States:

a. Shall have announced, before the date of entry into force of the treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the termination date of the Panama Canal treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of the United States, and

b. Shall have announced immediately after the date of exchange of the instruments of ratification plans to be carried out at the expense of the U.S. Government, for:

i. Removing, before the date of entry into force of the treaty, the remains of citizens of the United States from Mount Hope, Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the secretary of the army not later than 3 months after the date of exchange of the instrument of ratification of the treaty shall not be removed; and

ii. Transporting to the United States for reinterment, if the next of kin so requests, not later than 3 months after the date of entry into force of the treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the treaty and remains removed from Mount Hope Cemetery, pursuant to Subclause i.; and

c. Shall have fully advised, before the date of entry into force of the treaty, the next of kin objecting under Clause b. i. of all available options and their implications.

This reservation also does not signify any variation from the Torrijos-Carter treaties. What is contemplated here is the possibility of negotiating an agreement on permanent respect deserved by the dead. No Panamanian objects to this agreement. This is deeply rooted in the soul of each Panamanian in view of the Christian doctrine to venerate their predecessors. The Foreign Ministry envisages no difficulty in reaching an agreement with the United States, following the examples used by other countries on this matter, such as France.

Panama has no objection in conformity with the provisions of Paragraph 3 of Article VII of the Panama Canal treaty and once the provisions therein are fulfilled, to the burial of the remains of U.S. citizens under the shadow of their flag in Corozal Cemetery. The funeral rites which any civilized nation holds for those who have offered their lives is worthy of all our respect. This is not a matter of sovereignty or expression of the exercise of juridictional powers. The Panamanian flag will always be flown in a place of honor as unequivocal proof of its sovereignty.

F. To carry out the purpose of Article III of the treaty assuring the security, efficiency and proper maintenance of the Panama Canal, the Republic of Panama and the United States of America during their respective periods of responsibility for canal operation and maintenance shall, unless the amount of the operating revenues of the canal exceeds the amount needed to carry out the purposes of such article, use such revenues of the canal only for purposes consistent with the purposes of Article III.

One of the basic norms of international law is the sanctity of treaties--faithful compliance with its commitments. The purposes of the neutrality treaty expressed in Article III will be carried out with good faith by Panama. Panama will do this as a basic practice of its foreign policy. What the Senate requests here does not deviate from the rules of international law and from what has always been Panama's practice in its foreign relations. Panama will always act in a way that is consistent with its commitments.

III. Understandings:

A. Paragraph 1 C. of Article III of the treaty shall be construed as requiring, before any adjustments in tolls for use of the canal, that the effects of any such toll adjustment on the trade patterns of the two parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

1. The costs of operating and maintaining the Panama Canal;

2. The competitive position of the use of the canal in relation to other means of transportation;

3. The interests of both parties in maintaining their domestic fleets;

4. The impact of such an adjustment on the various geographical areas of each of the two parties; and

5. The interest of both parties in maximizing their internal commerce.

The Republic of Panama and the United States shall cooperate in exchanging information necessary for the consideration of such factors.

The factors noted in this understanding are reasonable. Any good administrator of the Panama Canal, in trying to make adjustments to the tolls, must necessarily consider those factors and others deemed appropriate. Panama, as sovereign owner and exclusive administrator of the canal, will make those decisions which it considers most appropriate for the proper operation of the canal and its greatest profitability, taking into account the fact that the canal has competitors and that means which compete with it are under development.

B. The agreement "to maintain the regime of neutrality established in this treaty" in Article IV of the treaty means that either of the two parties to the treaty may, in accordance with its constitutional procedures, take unilateral action to defend the Panama Canal against any threat, as determined by the party taking such action.

C. The determination of "need or emergency" for the purpose of any vessels of war or auxiliary vessel of the United States or Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

These agreements are consistent with the Torrijos-Carter statement of 14 October 1977.

D. Nothing in the treaty, in the annexes of the protocol relating to the treaty, or in any other agreement relating to the treaty obligates the United States to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

This understanding is correct. The note which Secretary of State Cyrus Vance sent to Ambassador Gabriel Lewis Galindo on 7 September 1977 contains no obligations of economic aid to Panama. That involves measures to be taken at the discretion of the United States independently of the fate of the treaties.

Panama has always understood that the basic economic benefits granted by the treaty are contained in Articles III and XIII.

E. The President shall include all amendments, reservations, understandings, declarations and other statements incorporated by the Senate in its resolution of ratification respecting this treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

This understanding is directed toward the President of the United States rather than Panama. Panama has no objection to this understanding.

Reservations and Understandings Introduced by the U.S. Senate Into the Panama Canal Treaty

A. Reservations:

1. Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure and accessible, pursuant to the provisions of this treaty and the neutrality treaty and the resolutions of advice and consent thereto, shall be only for the purpose of assuring that the canal shall remain open, neutral, secure and accessible, and shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

This reservation is extremely important politically. With it the Senate dissipated the fears which had emerged throughout Latin America that the DeConcini amendment had revived gunboat and big stick diplomacy in this hemisphere. The Senate has reaffirmed the U.S. commitment in multilateral pacts that are treaties--laws regulating not only life on the American continent but throughout the world. Intervention is not a right; it is an international crime.

By virtue of the 1928 Kellogg-Briand Treaty the big powers renounced the use of force as a means to settle conflicts. Based on this pact, the United States, the Soviet Union, the United Kingdom and France took the Nazi war criminals to the scaffold.

The people of the world consecrated their rejection of the use of force in Article 2.3 of the UN Charter; the peoples of America did likewise in Article 20 of the OAS Charter. Additionally, Article 2:4 of the UN Charter and Article 18 of the OAS Charter consecrate the respect for the sovereign decisions of each state in matters which, as stipulated by international law, are of their sole domestic purview. These are norms that perfect the principle of nonintervention in the legal sense.

Panama experienced moments of patriotic indignation following the introduction of the so-called DeConcini reservation. Via diplomatic channels the national government firmly expressed its rejection of that amendment as something harmful not only to U.S. relations with Panama but its relations with the entire continent. President Carter and the Senate leaders quickly understood this. The Senate then pointed out that a major tenet of U.S. policy is its adherence to the principle of nonintervention. And this adherence also pertains to the neutrality treaty which is of an indefinite duration. It is necessary to stress that the Senate's definition of U.S. policy in this reservation covers both treaties, which are mentioned specifically in the reservation, so that there would not be the slightest doubt that the DeConcini amendment added to the neutrality treaty would not continue in force. [Es necesario remarcar que la expresion de politica que hace el Senado en esta reserva incluye a ambos tratados, los cuales se mencionan especificamente en esta reserva, para que no haya la menor sospecha de que la enmienda DeConcini anadida al tratado de neutralidad sigue viva] What continues in force are the legal commitments of the United States to the UN and OAS charters that forbid intervention.

And further, as the instruments drawn up by one or more parties regarding a treaty (Article 31 of the Vienna convention on treaty laws) are very important for the interpretation of treaties in international law, it is deemed pertinent to transcribe the letter that President Carter sent General Torrijos on 18 April:

"General Omar Torrijos Herrera, chief of government of Panama.

"Dear General Torrijos:

"A few moments ago the U.S. Senate granted its consent to the second of the Panama Canal treaties that you and I signed in Washington in September of last year.

"The ratification of the new treaties opens a new era in U.S. relations not only with Panama but with all the nations of the hemisphere. Working jointly our two nations can set an example and encourage others in the Americas and elsewhere to work toward just and constructive international cooperation in the pursuit of common goals.

"Precisely because these treaties are so important to our two countries, their negotiation has been drawn out and difficult. The debate in our Senate has been the longest ever in the history of the United States over a treaty and as you know the debate has been vigorous. The treaties have brought to the fore in our nation difficult and emotional subjects removed from the canal and our treaties with Panama, just as in your country patriots of good will have had clearly divergent viewpoints as occurs when one wants to make just transactions to reach common goals of greater importance.

"The patience and patriotism of the people of Panama during this lengthy process has been impressive and has earned the respect of the world. In recent months there have been moments when the outcome was uncertain and there were doubts as to whether the two treaties should be ratified. On our part, these doubts have been set aside.

"With its actions today the Senate has reaffirmed what was important in the treaties from the beginning: that the United States, while safeguarding its interest in a secure, open and accessible canal, does not intend to interfere in the domestic affairs of Panama, its government, its policies or its cultural integrity, nor in any way undermine its sovereignty or its political independence.

"These are the principles that we have always cherished as a nation. We have lived up to them in our relations with other American republics since President Roosevelt proclaimed his adherence to the principle of nonintervention in 1933. Those principles are consecrated as international rights in the UN and OAS charters. Therefore, it is appropriate that those principles, particularly the principle that no nation has the right to interfere in the domestic affairs of another, should be incorporated into the treaties and its related documents, including the Senate resolutions. When we meet to exchange the ratification documents we will be able to reiterate that this principle of nonintervention is clearly accepted by our two countries.

"Respect for the sovereignty and dignity of Panama and the United States must be the basis on which the establish the cooperation and mutual respect that will be decisive for the new kind of relationship that we are about to begin. I want to congratulate and thank you, General Torrijos, for the great courage and leadership you gave the people of Panama while our countries were negotiating this new relationship.

"I look toward the future with great hope and confidence. And, on the personal level, I hope and wish to visit Panama to reaffirm our personal friendship and this new relationship between our two countries.

"Sincerely, Jimmy Carter"

In this letter, President Carter reaffirmed the U.S. commitment to refrain from intervention in Panama's internal affairs.

2. Notwithstanding any other provisions of this treaty, no funds may be drawn from the U.S. Treasury for payments under Article XIII, Paragraph 4, without statutory authorization.

Panama's right to receive the sums stipulated in Article XIII, Paragraph 4, is very clear Now, if in order to meet its contractual obligations the United States must follow a domestic legislative procedure, Panama has no objection. What is important is for the United States to meet its obligations in Panama's favor. The domestic mechanism provided for in U.S. legislation is of no concern to Panama.

3. Any accumulated unpaid balance under Paragraph 4 C, of Article XIII at the termination of the treaty shall be payable only to the extent of any operating surplus in the last year of the treaty's duration, and that nothing in that paragraph may be construed as obligating the United States of America to pay after the date of the termination of the treaty any such unpaid balance which shall have accrued before such date.

This is a reservation which contains a correct interpretation of the treaty. Panama has always understood, and so explained to the citizenry at the time, that the budget containing revenues from and expenditures for the operation of the canal would be so drafted as to make the canal commission capable of paying to Panama the sum stipulated in Article XIII, Paragraph 4 C. If for unforeseen reasons this sum were not paid in a certain year, Panama understands that the United States will make an effort to cover that sum in subsequent budgets. Paragraph 4 C. is not symbolic or worthless. The two countries, in good faith, must give it practical content.

For this reason, Panama does not foresee the accumulation of unpaid balances in the year 2000. However, if they did exist, the United States would not be obligated to make such payment to Panama. In summary, there is a clear understanding between the U.S. Senate and the Republic of Panama in this area.

4. Exchange of the instruments of ratification shall not be effective earlier than March 31, 1979, and the treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

Article II provides that the canal treaty "...shall enter into force...6 calendar months from the date of the exchange of the instruments of ratification." In view of the abovementioned reservation, the fact that the instruments are exchanged will not make the treaties effective within 6 months as was previously agreed. The significant ceremony in which the chiefs of government of Panama and the United States will exchange the instruments of ratification of the Torrijos-Carter treaties will soon take place in Panama. However, the exchange will not be effective until 31 March. The Senate made this decision in order to provide enough time for the legislation to be enacted in the United States for the implementation of the treaties. However, the postponement of the date in which the treaties go into effect--nothwithstanding the exchange of the instruments of ratification--is not a change, because in international law there is no obligation to proceed to the exchange of the instruments of ratification of the treaties even if the treaties have been ratified. This is a political decision that is properly made by the body which manages foreign relations. In the specific case of the Torrijos-Carter treaties, the governments of Panama and the United States have the power to choose whatever date they consider most convenient for the exchange of ratification instruments. Panama understands that the deadline for the treaties' entry into force is 1 October 1979; however, it may take place before that date if the U.S. Congress completes, before that date [as published] the legislation to implement the treaties.

5. The instruments of ratification to be exchanged by the United States and the Republic of Panama shall each include provisions whereby each party agrees to waive its rights and release the other party from its obligations under Paragraph 2 of Article XII.

Article XII of the Panama Canal treaty refers to the possibility of building a sea-level canal in Panama or adding a third set of locks to the present canal. There is no question that the subject of a sea-level canal was not introduced into the negotiation at Panama's initiative. This subject was given great importance during the stage of the negotiation which led to the draft treaties of 1967. In the negotiations that began in 1971, the subject remained latent for several years and then it suddenly regained prominence in July 1977. The United States made proposals which Panama vigorously rejected. The United States wanted an option in perpetuity to build a sea-level canal in Panama. This was the main issue discussed at the meeting in Bogata of the presidents of Colombia, Venezuela, Costa Rica and Mexico, the prime minister of Jamaica and the chief of government of Panama. It was there that a formula, basically the one established in Paragraphs 1 and 2 of Article XII, was developed.

According to Paragraph 1 of Article XII, for the duration of the treaty, Panama and the United States "...commit themselves to study jointly the feasibility..." of a sea-level canal in Panama. If after this study the two parties agree that this canal is necessary, they may negotiate the terms of a new treaty for its construction. Therefore, there is no obligation here restricting Panama or placing an obligation on its territory.

Paragraph 2 A. of Article XII represents a great concession made by Panama to the United States. Panama pledged not to build a canal or to permit a canal to be built in Panama for the duration of the treaty, that is until the year 2000, without the consent of the United States. Here there is a clear obligation on the territory of Panama which limits Panama's freedom of action for 22 years.

Paragraph 2 B. of Article XII places a limitation on the United States in its negotiating capacity. According to this article, the United States cannot negotiate for 22 years with third countries of America on the construction of a canal outside Panama, unless Panama frees it from that limitation.

Paragraphs A. and B. referred to the establishemtn of a legal equilibrium in the counter-claims [contraprestaciones] of the parties. But in the material aspect, it is obvious that Paragraph 2 is balanced against Panama because it is known that the most adequate routes for building a sea-level canal are in Panama. The disproportion of the distance in the routes of Nicaragua, Costa Rica, and Colombia compared to Panama is immense. And it is not only the problem of construction costs but also the length of the routes which delays the transit of ships, which practically excludes the possibility of building a new canal outside Panama. The Senate considered that it was too much for a nation as small as Panama to have a veto over its negotiating capacity. It attributed more value to this than to the concession which Panama accepted in Bogota for the sake of reaching an agreement [transaccion].

Now Panama can, if it so desires and finds adequate financing, build a new canal whenever it deems it appropriate without having to consult the United States. At the same time, the United States is free to negotiate with third countries without Panama's veto.

The formula contained in the reservation, previously agreed upon with Panama, does not alter the treaty. What the two parties will do is that, upon exchanging the ratification instruments, each will waive its right and release one another. The treaty is not modified. If there is a waiving and mutual release of the reciprocal duties and rights agreed to in Paragraph 2, it is because this clause remained unchanged. But the presidents of the two countries will expressly waive the right given their countries by the treaty and will release each other from their obligations regarding the sea-level canal.

By order of Article 277 of the constitution, General Torrijos has the power to direct Panama's foreign relations. In the exercise of this power, he will waive any right which does not have practical significance and will accept the U.S. waiver which is of practical significance to Panama. Now we will have the free disposition of the territory which God placed in the hands of Panamanians and which for well-known historical reasons has been in foreign hands. The monopoly of routes granted to the United States is eliminated forever. An appropriate formula was found so as to avoid commitments with the United States regarding the sea-level canal in Panama.

6. After the date of entry into force of the treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by Congress, be obligated to reimburse the Treasury of the United States of America as nearly as possible for the interest cost of the funds or other assets directly invested in the commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the government and not reimbursed before the date of entry into force of the treaty. Such reimbursement of such interest costs shall be made at a rate determined by the secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings.

For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under Section 62 of Title 2 of the Canal Zone Code.

This is a duty which the Senate has assigned to the Panama Canal Commission. It is part of the right which Panama gave the United States by virtue of Article III. The responsibility for the operation of the canal rests with the United States. Its rights and duties are exercised and fulfilled through the aforementioned commission.

Aside from the fact that it is evident that the United States has been amortized bountifully, the knowledge of its revenue-raising capacity to cover the Panama Canal costs according to studies by experts contracted especially by U.S. authorities demonstrates that the policy on revenue and expenditures for the canal's operations can be established in such a manner that will satisfy the provisions of this reservation and the income which Panama hopes to receive according to Article XIII, Paragraph 4 B. and C., without significantly affecting the volume of traffic. Therefore, this reservation does not alter what was agreed upon. To the extent that the United States does not violate the principle of honoring the treaties in good faith, Panama cannot present claims to the United States.

The most significant point in Article XIII is that the canal will revert to Panama on 31 December 1999, free of debts. This remains unchanged and it is this great achievement which fills the hearts of all Panamanians with joy.

B. Understandings:

1. Nothing in Paragraphs 3, 4 and 5 of Article IV may be construed to limit either the provisions of Paragraph 1 of Article IV providing that each party shall act, in accordance with its constitutional processes, to meet any threat to the security of the Panama Canal, or the provisions of Paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the canal for the duration of this treaty.

Here the Senate expresses an understanding that can meet no opposition in Panama. Paragraph 1 of Article IV was explained to Panamanian citizens just as it was outlined by the Senate. Paragraph 2 of Article IV grants to the United States "...primary responsibility to protect and defend the canal." However, it is evident that, since the canal is on Panamanian soil, we Panamanians have the greatest interest in defending it. For that reason, the wisest course is for there to be close cooperation between the armed forces of the two countries for the protection of a canal that is of interest to them and to the world.

It is also obvious that the armed forces of the two countries must act in conformity with their respective constitutional processes. In Panama only the assembly of representatives can "declare war and authorize the executive to negotiate for peace." (Article 141, Paragraph 2 of the constitution) In the United States war and peace also depend on the popular will as represented by Congress. Each country has constitutional rules which the armed forces should always respect.

2. Before the first date of the 3-year period beginning on the date of entry into force of this treaty and before each 3-year period following thereafter, the two parties shall agree upon the specific levels and quality of services, as are referred to in Article III, Paragraph 5 of the treaty, to be provided during the following 3-year period and, except for the first 3-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of such canal operating areas and such housing areas referred to in Article III, Paragraph 5 of the treaty. If payments made under Article III, Paragraph 5 of the treaty for the preceding 3-year period, including the initial 3-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following 3 years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, or any costs of services disputed by the two parties pursuant to the reexamination of such costs provided for in this understanding.

When the sum that the United States should pay to Panama for police services, fire protection, street maintenance, public lighting, street cleaning, traffic control and garbage collection was set at $10 million, it was believed that this sum represented the real expenses that would be incurred by Panama in providing those services to the areas agreed upon without additional costs to the treasury of Panama, since said services to be assumed by Panama would have originated solely from the existence of the canal and therefore should be considered a canal operating cost. It was not an arbitrary figure, but one duly substantiated by the Panamanian negotiating mission to the U.S. negotiators. It was not a subterfuge to obtain a donation from the United States, but rather an act of justice because of the real expenses which Panama would incur upon reassuming jurisdiction over its territory called the Canal Zone. For this reason, the following adjustment clause was included in Article III:

It is agreed that every 3 years from the date that this treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

The understanding proposed by the Senate is acceptable. The mechanism of adjustment was established so that Panama will always receive what it spends in providing those services.

3. Nothing in Subparagraph 4 C. of Article XIII shall be construed to limit the authority of the United States of America through the United States Government agency called the Panama Canal Commission to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation and maintenance of the Panama Canal. In addition, toll rates established pursuant to Paragraph 2 D. of Article III need not be set at levels designed to produce revenues to cover the payments to Panama described in Subparagraph 4 C. of Article XIII.

This understanding is consistent with the treaty. During the debate which preceded the plebiscite, it was clearly explained that the United States would control the administration of the canal for 22 years by reason of its majority position on the Canal Commission. Article III, Paragraph 2 D. gives the United States the power to "establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment." The two parties agreed, in Article III, Paragraph 1 A. of the neutrality treaty that the tolls would be "...just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the canal."

When the text of Article XIII, Paragraph 4 B. and C. was agreed to, it was evident from a study of the canal operations that the canal produces approximately $18 million annually which comprise the canal's operating revenues [costo de operacion]. The negotiators' understanding was that this figure would serve as a base to cover the payment to Panama of the $10 million guaranteed in Article XIII, Paragraph 4 B. and the additional $10 million agreed to in Article XIII, Paragraph 4 B. and C. these payments being considered as part of the canal's operating revenues. For this reason we are in agreement that the obligations derived from Article XIII, Paragraph 4 B. and C. in favor of Panama can be covered without raising tolls and for this reason we agree with the Senate that it is not imperative to raise tolls to cover these obligations to Panama. By virtue of the principle of good faith which prevails in the observance of the treaties, Panama expects the United States to accommodate its policy on expenditures so that this article can be the means by which Panama receives a fairer retribution for its contribution to the canal work. To the extent that the Panamanian people are satisfied with the canal administration due to the products they derive from it, they will continue protecting their canal. But if a stingy spirit prevails, aggravating the injustice suffered by Panama since 1903, then a circle of friendship will not have been built around the canal but rather one of hatred, with possible grave consequences if a crisis occurs which the national government would be the first to deplore.

4. Any agreement concluded pursuant to Article IX, Paragraph 11, with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties.

It is evident that the treatment contemplated in Article IX, Paragraph 11, with respect to the exchange of prisoners will have to be adjusted to the constitutional processes of each country so that it may be effective. There can be no opposition to this understanding.

5. Nothing in the treaty, the annex or agreed minutes relating to the treaty, or in any other agreement relating to the treaty obligates the United States to provide any economic assistance, military aid assistance, security supporting assistance, foreign military sales credits or international military education and training to the Republic of Panama.

This is the correct interpretation. Panama has always understood that there is no provision in the Panama Canal treaty that obliges the United States to provide Panama with economic assistance or to give it donations.

It is impossible to conceive of obligatory assistance. Solidarity cannot be imposed by decree or by treaties.

6. The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this treaty in the instrument of ratification exchanged with the government of the Republic of Panama.

This is a Senate understanding addressed to the President of the United States. Panama, according to the statements expressed in this document, has accepted the amendments, reservations and understandings which the Senate of the United States attached to the Torrijos-Carter treaties.

Foreign Ministry Conclusions

The previous exposition permits the Foreign Ministry to declare that the Torrijos-Carter treaties with the Senate resolutions:

1. Do not offend the nation's dignity.

The unquestionable fact that the United States must leave the Isthmus of Panama at the latest by 31 December 1999 completes our process of independence and places in our hands the exclusive control of the canal for use as an effective lever for our economic and social development. Also, all prospects of an alleged and obsolete "right" of intervention have been dispelled since the Senate of the United States has reaffirmed in the Church amendment the contents of the Torrijos-Carter declaration, that is, that any action taken by the United States in connection with the Panama Canal"...shall not have as its purpose nor be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity."

Nothing can reaffirm our national dignity more than the knowledge that there will be an end to the military occupation of the fatherland almost 100 years after the establishment of the republic.

2. The objectives of the treaty have not been distorted or changed.

The fundamental objective of the liberating negotiations was to agree in the treaty to a clear and categorical program for our liberation. For this reason it was a fundamental objective to agree to a definite date or deadline for the new treaty. What has been the ideal of all Panamanians was realized in Article II, Paragraph 2, of the canal treaty:

"2. This treaty will expire at noon, Panama time, on 31 December 1999."

Greater conciseness and precision cannot be conceived.

Nothing has occurred after the plebiscite which weakens or alters this clause.

Another fundamental objective of the treaty was to obtain the reversion of the canal to Panama free of debts. This was agreed to in Article XIII, Paragraph 1, of the Panama Canal treaty which says:

"Upon termination of this treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree."

What was stated here and which our people understood certainly as a great achievement in the path of our liberation has not been distorted or diminished.

Other fundamental achievements of the negotiations are the abrogation of the 1903 treaty and its amendments (Article I) and the resumption by Panama of its exclusive jurisdiction throughout all national territory (Article XI). The amendments contained in the Senate resolutions have not tarnished these definitive achievements of our people.

3. Nothing will prevent Panama from effective exercise of its sovereignty throughout all its territory.

The position of the U.S. Government during the Senate debates was that the United States has no sovereignty in the Canal Zone. CARTER has spoken firmly in defense of Panama's traditional thesis. This position has cleared this legal problem in the minds of the American people. In keeping with this position, Article XI establishes that Panama will resume total jurisdiction in the Canal Zone when the treaty enters into force. U.S. jurisdictional rights, the only thing it possessed in Panama, will end on that date. The Senate debate and the firm position of the Senate majority have reaffirmed Panamanian sovereignty, which will be exercised effectively by Panama when the treaty goes into effect, because this treaty eliminates the so-called Canal Zone government. The anachronism of two governments in a single territory, as was stressed with patriotic zeal by President Demetrio Basilio Lakas in a meeting with President Nixon in 1971, has been brought to an end.

4. Great national objectives have been achieved.

By virtue of the generational alpinism spoken of very properly so by the chief of government, all generations of isthmians have contributed their ideas, efforts and sacrifices. Each Panamanian has been a volunteer soldier in the common task of liberation. Beginning with the note by Jose Domingo de Obaldia and Eusebio A. Morales in 1904, which best expresses our legal arguments, up to the tragic event of the January martyrs--22 Panamanian heroes offered their lives and gave an everlasting cry of Panama's wish to be sovereign and free--it can be said that Panama has sought to:

A. Abrogate the 1903 treaty;

B. Recover the patrimony constituted by Panama's geographic position and its isthmian configuration to exploit the most important natural resource given to it by God, that is, to exploit to its maximum transit operations of the canal, the railroad and ports under its exclusive control and administration;

C. Reincorporate the Canal Zone into the rest of the fatherland's territory;

D. End the U.S. civilian and military presence;

E. Place the canal under a system which will guarantee the transit of ships of all flags on equal conditions and isolate the canal from any public controversy; and

F. Train qualified personnel in technical matters to assume responsibility for the canal's administration to the fullest extent possible.

The Foreign Ministry can state with satisfaction that the fundamental objectives which were imbedded in the national soul have basically been achieved. Unfortunately, all of these objectives will not be achieved immediately. It involves a liberation program that will be completed in 22 years, because the treaty is the product of negotiations in which reciprocal concessions were made. All Panamanians would like this term to be shorter, but we were able to achieve only that which is established in the treaties, despite the titanic and persistent efforts of our negotiator.

As always, Bolivar's ideals are timely here: "Let us seek a medium between those extremes which could lead us to the same obstacles, to unhappiness, to dishonor. I dare to give the results of my thoughts about the future fate of America: not the best fate, but the most feasible."

Simon Bolivar, Reply from a South American to a Gentleman of This Island, Henry Cullen.

The achievements obtained in the negotiations are conquests which belong to the Panamanian people. They cannot be destroyed or renounced but can be taken to their ultimate culmination by future generations. Let us strengthen these conquests, the most feasible now and, when better circumstances for struggle exist, we will again undertake the task to improve the terms of the relationship. Let us think always of generational alpinism, of the contribution of each generation to the nation, to its progress and sustained growth. The forebears have bequeathed us a fatherland. Let us work for it each day.

The national government has reached the conclusion that the treaties unquestionably achieve, within a reasonable period of time, the fundamental objectives of the Panamanian nation. Because of this, the national government will consent to the exchange of the instruments of ratification of the Torrijos-Carter treaties. With the entry into force of the treaties, better instruments of struggle will be placed in the hands of the republic. With them, Panama will continue its efforts so that the national objectives will be realized in a shorter period of time by virtue of opportune and patriotic negotiations that the governments of the future will undertake.

The Foreign Ministry has faith in the capacity for struggle of the Panamanians. It also has faith that with time the U.S. public will better understand Panama's reasons for insisting on an improvement in the terms of its contractual relationship with the United States. This will facilitate the future decisions of the U.S. Government in its relations with Panama. The North American people are a just people. Some of their leaders have shown courage, patriotism and a clear sense of history. The Torrijos-Carter treaties are evident achievements in our liberation struggle, but they are not the final phase.

Upon agreeing to the terms of the protocol of the instruments of ratification of each treaty, Panama will reaffirm its right to self-determination, respect for its territorial integrity and political independence and its rejection of all forms of intervention in its internal affairs and will ask the United States to reaffirm its commitments in accordance with the UN and OAS charters.

Let us view the future with optimism because each Panamanian is struggling to hasten the liberation process. The rulers and those who are ruled should utilize to the maximum the favorable opportunities which present themselves to promote the common good. Panama opportunely utilized the process of decolonization and made itself part of it with reciprocal solidarity. We went to the Third World and the nonalined countries and we obtained the necessary support so that the whole world could understand Panama's liberation cause. Thanks to the persistent work of the Foreign Ministry, we concluded the negotiation with the treaties. No one can deny that the Torrijos-Carter treaties contain great and positive advances for Panama in the political and economic spheres. We have reached levels in our liberation process that place us very near the summit.

We are sure that we will climb the summit of perfecting our independence on 31 December 1999 without bringing anguish or mourning to the hearts of Panamanian mothers.

We Panamanians have followed with great interest the debates in the U.S. Senate. The Spanish version of the debates reached our homes by radio. All of us were able to perceive the intense opposition against the treaties in the Senate. At no time was it certain that the treaties would be approved with or without amendments. It is evident that no one in Panama or the United States can predict that the next Senate will be better than the current one. The Panamanian citizenry ratified the treaties on 23 October 1977 and it will again ratify them with the national jubilation that will reign when President Carter and General Torrijos sign in Panama the protocols of exchange of the ratification instruments.

We assume full responsibility for the acceptance of the treaties with the conviction, firmness and encouragement that patriotism and the dedication to the cause of Panama's liberation give us.

Panama and the United States have wanted and sought a friendly and peaceful solution. This was achieved after 14 years of intense negotiations in which Panamanian nationalism saw the flowering of its best ideas. It is now up to all Panamanians, architects and beneficiaries of the treaties, to enjoy these benefits in a climate of peace and national unity.

Panama, 25 April 1978, Foreign Ministry

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